

REQUEST FOR BID (RFB) 2018-001

Town of Indian River Shores
Town Hall Complex
6001 State Road A1A
Indian River Shores, FL 32963
(772) 231-1771, Ext 200
E-Mail: townclerk@irshores.com
www.irshores.com

The Town Council, Indian River Shores, Florida, will receive sealed bids for:

OLD WINTER BEACH ROAD IMPROVEMENTS

Sealed bids will be received by the Town Clerk in the Town Hall Complex at the address above until **3:00 PM** local time, on **Monday, February 5, 2018**. Bids received after the designated time and date will not be considered.

The basic bid document is available at <http://www.irshores.com/RFP-s---RFQ-s---OPEN-BIDS.html>. or under the Town's Doing Business tab at www.irshores.com scroll across to the RFPS-RFQS-BIDS-SURPLUS tab to find the bid documents.

The complete bid document including plans may be downloaded from www.demandstar.com.

The work for which this contract regards consists of furnishing all labor, material and equipment to construct site improvements as depicted in this RFB and in the construction plans, titled: "Old Winter Beach Road" stamped "Construction Set" and dated December 27, 2017.

The Town of Indian River Shores is an equal opportunity/affirmative action employer.

Funds for this project are derived from grants appropriated by and administered through the State of Florida Division of Emergency Management (EM) and the State of Florida Department of Environmental Protection (FDEP)

By order of the Town Council of Indian River Shores, Florida.

Publish: The Vero Beach Press Journal January 15, 2018 and January 22, 2018.

BID DOCUMENTS

Bidders must register with Demand Star in order to receive all required documents and notification of addenda. Register for FREE at <http://www.onvia.com/demandstar-subscriptions>. Click on “Onvia Demand Star FREE AGENCY.”

This document includes:

1. Basic Scope of Services
2. Instructions to Bidders
3. Sample Agreement between Owner and Contractor
4. Contractor Performance Evaluation
5. Sample Performance & Payment Bond
6. Sample Waivers of Right to Claim against the Payment Bond

The following forms are provided for information only. The **successful bidder** will be required to complete these forms prior to bid award.

7. Certification of Non-Collusion
8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion or Explanation
9. Certification Regarding Lobbying
10. Drug-Free Workplace Certification
11. E-Verify

The following documents must be downloaded separately:

1. Special Provisions & Detailed Specifications
2. FDEP Grant Description (pending execution)
3. FDEM Grant Agreement
4. Title VI Policy Statement
5. SJWMD Environmental Resource Permit
6. Army Corps Nationwide Permit
7. Construction Plans
8. Contractor’s Bid Form

One copy only of the following documents must be returned with bid. **Do not** return other pages or documents with your bid.

9. Bid Form
10. Bid Bond
11. Bidder's Qualification Statement
12. Certificate of Corporate Principal
13. Bid Opportunity List
14. Certification of Sublet Work*
15. Addenda, if any

*Submit draft with bid and finalized form prior to or at the mandatory preconstruction meeting.

BASIC SCOPE OF SERVICES

Description

Old Winter Beach Road Improvements is a resurfacing and drainage improvement project that re-constructs western 2600 LF of Old Winter Beach Road west of State Road A1A to east of Jungle Trail in Indian River Shores, FL, to elevate road to a minimum of 3.5 NAVD, including milling, resurfacing improvements, pavement markings, sodding, maintenance of traffic controls, erosion and sedimentation control measures, dry detention swale excavation, construction of swale ditch blocks, and swale planting, exfiltration trench marking, exfiltration pipe laying, construction of two new catch basins and additional stormwater improvements and other incidental work as shown and specified in the Contract Documents.

Contractor shall be a Florida Certified General Contractor.

The work for which this contract regards consists of furnishing all labor, material and equipment to construct site improvements as depicted in this contract and in the construction plans, titled: "Old Winter Beach Road" stamped "Construction Set" and dated January 11, 2018. All work shall be performed in accordance with approved plans, permit conditions and applicable specifications (i.e. Department of Environmental Protection Utilities, City of Vero Beach Utility Department, Indian River County, Florida Department of Transportation Standard Specifications–latest edition, Town of Indian River Shores, and St. Johns River Water Management District).

Substantial completion shall be within 180 calendar days of Notice to Proceed. Liquidated damages shall be assessed at \$1,530.00 per day.

Time of Performance

Bidder proposes and hereby agrees to commence Work on a date to be specified in a written Notice To Proceed issued by owner and shall achieve Substantial Completion, as defined in the Agreement Between Town and Contractor, within 90 consecutive calendar days from and including said date, and shall achieve Final Completion, as defined in the Agreement Between Town and Contractor For Horizontal Construction, within 30 days after Substantial Completion is issued.

Contract Special Condition

1. Per FDEM Agreement No. 18SR-A7-10-40-02-292 and per FDEP Agreement No. NS036, the Bidder shall comply with all applicable federal, state and local rules and regulations in providing services to the Town. Bidder acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. Bidder further agrees to include this provision in all sub-contracts issued as a result of this project.
2. The Contractor shall, within 90 calendar days of final completion of the Project, submit a final invoice including all retainage, to the Town. Failure to submit an invoice within 90 calendar days may result in the Town incurring damages by not being eligible for grant reimbursement. Any such damages incurred by the Town as a direct result of the Contractor not submitting its final invoice within the above stipulated 90 calendar days shall be passed on to the Contractor.

INSTRUCTIONS TO BIDDERS

Bidders are encouraged to read the following instructions carefully. Deviations, changes, modifications or failures to complete the bid can, and in some instances shall, invalidate the bid.

1. Date and Place of Bid Opening

Sealed bids will be received at the Indian River Shores Town Hall Complex, 6001 State Road A1A, Indian River Shores, FL 32963 at the time set forth on the Advertisement for Bids (RFB). Bids received after the designated time and date will not be considered. Bids will be publicly opened and read. If an award of the Contract is made, it will be as soon thereafter as is practical. In case of a tie, a selection among the lowest tied responsive and responsible bidders shall be made in accordance with Town policy.

2. Inquiries/Addenda

Verbal interpretations of the meaning of the Drawings, Specifications, or other Contract Documents will not be valid. Every request for interpretation shall be in writing and e-mailed to the Town Clerk at townclerk@irshores.com no later than 3:00 PM on Monday the week prior to the bid due date. The Town will respond to all such requests for interpretation and any supplemental instructions in the form of written addenda and shall publish such addenda on www.demandstar.com not later than five (5) calendar days prior to the bid opening date fixed for the opening of bids. Bidders must acknowledge receipt of the addenda in their bid. Failure of any bidder to receive, or to acknowledge receipt of any such addenda shall not relieve such bidder from any obligation under its bid as submitted, provided, however, that failure to so acknowledge receipt of any such addenda may render a bid non-responsive and result in its rejection. Bidders are advised to contact the Town prior to submitting bids to satisfy themselves as to the existence and number of all such addenda. All addenda so issued shall become part of the Contract Documents.

3. Preparation of Bids

Bids shall be submitted on the Bid Form(s) furnished, or upon an exact copy thereof, and must be signed by an authorized representative of the firm submitting the bid. The Town shall not consider any information other than that contained on the Bid Forms; specifically, nothing written on the envelope in which the Bid Forms are contained will be considered except for purposes of identification. Bidders must quote on all items listed and failure to do so will disqualify the bid. The intent of the Bid Form is to secure a price for the work described in the Contract Documents. All bid preparation costs shall be borne by the bidder. The Town will not be responsible for paying any bidder for its costs incurred in preparing its bid.

4. Credentials of Bidders/Licenses

All Bidders shall provide proof that they are properly certified or registered as a Contractor by the State of Florida applicable to this type of work. Other information, including, but not limited to, references and the Town shall provide financial data upon specific request.

5. Bidders Disclosure

In each bid by an individual or firm, there shall be stated the name and address of every person having an interest in the bid; and in case of a corporation the names and addresses of its officers. Bids shall be signed by the person or member of the firm making the same, and in the case of a corporation, by some authorized officer or agent subscribing the name of the corporation and his

own name. Once bids are opened, they become the property of the Town and will not be returned. The bids become “public records” and shall be subject to disclosure consistent with Chapter 119, Florida Statutes.

6. Joint Venture

If the bid involves a joint venture, a copy of the joint venture agreement shall be included with the bid along with the attached “Statement of Business Organization”.

7. Public Entity Crimes

Any bidder, or any of his suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the Town shall not be a convicted vendor or, if the bidder or any of his suppliers, subcontractors, or consultants of the bidder has been convicted of a public entity crime, a period longer than 36 months shall have passed since that person was placed on the convicted vendor list. The bidder further understands and accepts that any contract issues as a result of this solicitation shall be either voidable by the Town or subject to immediate termination by the Town, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133 Florida Statutes. The Town, in the event of such termination, shall not incur any liability to the respondent for any work or materials furnished.

8. Bid Guaranty (bids over \$200,000 only)

Bid must be accompanied by the Town’s Bid Bond form, including those applicable to the sureties for the Statutory Payment Bond and Common Law Performance Bond. The bond shall be on the Bid Guaranty form provided by the Town, with Power of Attorney Affidavit attached, in the amount of 5% of the total bid amount (base bid plus any and all alternates). Alternate bond forms will not be accepted. Failure to provide the Town bond forms may deem the bid non-responsive. In lieu of the Bid Bond, the bid may be accompanied by a certified check of any national or state bank made payable to the Town in the amount of 5% of the total bid amount. Any certified check that may be received will be returned to the unsuccessful bidder(s), within thirty (30) calendar days after the opening of the bids. Bid bonds will not be returned to the bidders unless specifically requested by the bidder. Any certified check of the successful bidder(s) will be returned to them promptly after the Town and the successful bidder(s) have (i) executed the Contract. Failure of the Town to execute the Contract within ninety (90) days after the date of the bid opening shall initiate release of the Bid Bond, certified check, cashier’s check, treasurer’s check or bank draft of lowest and second lowest bidders unless mutually agreed otherwise.

9. Power of Attorney

Attorneys-in-Fact who sign bonds must file with the Council a certified copy of their power of attorney to sign such bonds.

10. Delivery of Bids

The bid shall be submitted in a sealed envelope and must indicate on the outside, bidder name, bid name and number, and the bid due date. The Town shall not be responsible for bids improperly identified. If forwarded by regular mail or express mail, the sealed envelope containing the bid and marked as directed above, shall be enclosed in another envelope addressed to the U.S. Mail address indicated on the cover page. If forwarded by overnight courier services (other than United States Postal Service Express Mail), the sealed envelope containing the bid and marked as directed above, shall be enclosed in another envelope addressed to the street address indicated on the cover page. Bids may be hand-delivered. Bids by fax or e-mail will NOT be accepted. The Town cautions

bidders to assure actual delivery of mailed or hand-delivered bids directly to the Indian River Shores Town Hall Complex, 6001 State Road A1A, Indian River Shores, FL 32963. Confirmation of timely receipt of the bid may be made by e-mailing townclerk@irshores.com before bid opening time. Bids received after the established deadline shall not be considered.

11. Withdrawal of Bids

Prior to the bid opening, a bid may be withdrawn provided that the bidder submits a written request that is signed by an authorized representative of the firm that submitted the bid. However, modifications will not be accepted or acknowledged.

12. Notice of Intended Award

A bid tabulation will be posted as soon after the bid opening as possible on our website at www.irshores.com. Notice of award will be posted on www.demandstar.com. The Town does not notify all bidders of award or intent to award.

13. Acceptance or Rejection of Bids

The Town reserves the right to reject any and all bids when (i) such rejection is in the interest of the Town; (ii) such bid is void per se; or (iii) the bid contains any irregularities, PROVIDED, however, that the Town reserves the right to waive any minor irregularities and to accept the lowest responsible and responsive bid determined by the Town. Bids may be considered irregular if there are omissions, unauthorized alterations of any forms, additions not called for, conditional or unauthorized alternate bids, or other irregularities of any kind. The Town reserves the right to request a written confirmation of the bid and the responsibility of the bidder prior to the awarding of the Contract. Failure of the bidder to confirm the bid within seven (7) working days from the date of the Town's request may render the bid unresponsive and will entitle the Town to award to the next lowest bidder and may require forfeiture of the bid bond.

14. Contractor's Financial Ability

The apparent low, responsive bidder shall provide evidence of financial health prior to bid award upon request including but not limited to financial statements, cash flow projections, bank statements and tax returns. Failure to provide requested information shall deem the bidder non-responsible.

15. Responsible Bidder. Florida Statute 287.012(25) states that a "Responsible vendor" means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. The Town shall review factors, including but not limited to, past project performance, references and length of time in business and shall make the determination of responsibility in its sole discretion. A Contractor Performance Evaluation will be completed at the end of each project. An overall rating of "poor" will result in the Contractor being deemed "non-responsible" for future bids and will result in rejection of bid.

16. Reliance Upon Bid

The Town shall be entitled to rely upon all representations, including financial and other terms of performance, contained within a bid. The bidder further agrees to be bound to perform in accordance with its bid terms, including price. All bid terms, including price, shall be valid for a period of **90 calendar days** from the date of the bid opening.

17. Contract

The bidder understands that this Request for Bids does not constitute a Contract with the bidder. Town contracts are awarded only when a fully executed written agreement has been returned to the Bidder by the Town. No one shall be entitled to rely on any other action as an award. The Town will not be liable for any costs incurred by the bidder prior to execution of the contract by the parties. The bidder to whom the award is made shall, within fourteen (14) calendar days after receipt of the Contract, execute the Contract on the form attached and return it to the Town. The executed Contract should be returned to the Town accompanied by the required performance and payment bonds as set forth herein. If the bidder fails to execute the Contract or provide the insurance and bonds within fourteen (14) calendar days, there shall be just cause for the annulment of the award and forfeiture of the Bid Guaranty to the Town. Award may then be made to the next lowest, responsible, and responsive bidder or the work may be re-advertised at the Town's sole discretion.

18. Substitute Material and Equipment

A Contract, if awarded, will be on the basis of material and equipment described in the Drawings and the Technical Specification without consideration of possible substitute or an "or equal" item of material or equipment may be furnished or used by the Contractor if acceptable to the Engineer, application for such acceptance will not be considered by the Engineer until after the date of execution of the Contract. In all cases, the low bidder shall be determined on the basis of the base bid which shall reflect the costs for the materials and equipment specified. Any bidder unable to provide the specified materials and equipment shall be determined unresponsive.

19. Equal Opportunity

The Town recognizes fair and open competition as a basic tenet of public procurement. Contractors doing business with the Town are prohibited from discriminating on the basis of race, color, creed, national origin, handicap, age or sex.

20. Award

For the purpose of award, the Town will consider as the bid the correct summation of each unit price multiplied by the estimated quantities or the submitted total of all line items at the Town's sole discretion and in the Town's best interest. The Town may award based on the basis of quantities included in the BASE BID or quantities included in the base bid plus bid alternatives, if any, and/or number of days to complete, at the Town's sole discretion.

21. Performance during emergency

By submitting a bid, bidder agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, Town shall be given "first priority" for all goods and services under this contract (if applicable). Bidder agrees to provide all goods and services to Town throughout the emergency/disaster at the terms, conditions, and prices as provided in this solicitation, and with a priority above, a preference over, sales to the private sector. Bidder shall furnish a 24-hour phone number and address to the Town in the event of such an emergency.

Failure to provide the stated priority/preference during an emergency/disaster shall constitute breach of contract and make the bidder subject to sanctions from further business with the Town.

22. Utilization of Small Business Concerns

It is the Policy of the United States, the State of Florida, or the Town that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, hubzone small business concerns, small disadvantaged business concerns, and women-owned small business concerns (hereinafter "small business concerns") shall have the maximum practicable

opportunity to participate in performing contracts, including contracts and subcontracts. It is further the policy that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns. The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the appropriate government agency as may be necessary to determine the extent of the contractor's compliance with this clause.

23. Disadvantaged Business Enterprise

Contractors, consultants, sub-contractors and/or sub-recipients shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department of Transportation (DOT) assisted contracts. Failure by the contractor to carry out these requirements is a material breach of the contract, which may result in termination of the contract or such other remedy, as the recipient deems appropriate.

23. Additional Vendor Requirements

The successful bidder(s) will be required to monitor the performance of his employee on a periodic basis while they are assigned to the Town. The successful bidder(s) is required to comply with the Immigration Reform Act of 1986 (IRCA) which requires all individuals hired after November 6, 1986, to provide employers with proof of citizenship or authorization to work in the United States.

24. Federal, State and Town Regulations

The successful bidder(s) and their employees shall conform to all Federal, State and Town regulations while in performance of their contracts. Any individual found not to conform shall not be allowed to start to work or if started shall be required to leave the job site immediately. Continued violations by any Successful Bidder shall result in the immediate termination of the Successful Bidder contract.

25. Prohibited Communications

Potential bidders shall not communicate in any way regarding this contract with the Board of Commissioners, Town Administrator or any Town staff other than Purchasing personnel regarding this Request for Bid (RFB) from the time of bid advertisement through and including bid award. Such communication shall result in disqualification.

26. Federal and State Tax

The Town of Indian River Shores is exempt from Federal Tax and State Tax for Tangible Personal Property. Vendors or contractors doing business with Town of Indian River Shores shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the Town, nor shall any Vendor/Contractor be authorized to use the Town's Tax Exemption Number in securing such materials.

27. Conflict of Interest

Section 112.313, Fla. Stat., prohibits contracts with Town employees, officers and advisory board members. All bidders must disclose the name of any Town of Indian River Shores officer or employee who owns, directly or indirectly an interest in the bidder's firm or any of its branches.

28. Warranties

The Contractor shall be required to provide a written one (1) year warranty covering all labor, equipment, and materials provided. If required, as specified elsewhere in these documents, the Contractor shall furnish to the Town a surety or performance bond in the amount of 100% of the contract value at time of signing contract.

29. Foreign Contractor and Supplier Restriction

By submission of bid, the Contractor certifies that his firm is not a non-resident alien, or a foreign corporation/entity formed under the laws of a country other than the United States as per 49 CFR 30.

30. No Obligation by the Federal Government

Absent the express written consent by the Federal Government, the Federal Government or the Federal Highway Authority is not a party to the contract and shall not be subject to any obligations or liabilities to the Town, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

31. Familiarity with Laws

The bidder is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that in any manner affect the work. Failure to familiarize himself with applicable laws will in no way relieve him from responsibility.

32. Examination of Specifications and Site of Work

The bidder is required, before submitting his proposal, to visit the site of the proposed work and familiarize himself with the nature and extent of the work and any local conditions that may in any manner affect the work to be done and the equipment, materials and labor required. He is also required to examine carefully the specifications and Form of Agreement and Performance Bond and to inform himself thoroughly regarding all conditions and requirements that may in any manner affect the work to be performed under this contract.

33. Qualifications of Bidder

The qualifications of the bidder shall be determined by the Town and Engineer prior to the opening of negotiations.

SAMPLE AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, effective this ____ day of _____ in the year, 20, between:

INDIAN RIVER SHORES TOWN COUNCIL, a political subdivision of the State of Florida,
(hereinafter TOWN), located at 6001 State Road A1A, Indian River Shores, FL 32963

AND the CONTRACTOR: _____
(hereinafter CONTRACTOR)

Project Name: _____

Project Number: _____ RFB# _____

In accordance with the following

terms: Total Contract Price:

\$ _____

Substantial Completion Time: _____ calendar days

Liquidated Damages: _____ \$per day following substantial completion

Final Completion Time: _____ Not-to-Exceed 60 calendar days following substantial

completion Liquidated Damages: _____ \$per day following final completion

INDEX

Article 1:	Definitions
Article 2:	Work / Preliminary Requirements
Article 3:	Contract Price
Article 4:	Contractor Responsibilities
Article 5:	Payment
Article 6:	Time of Performance
Article 7:	Liquidated Damages
Article 8:	Claims for Additional Time
Article 9:	Site Conditions
Article 10:	Indemnification
Article 11:	Termination
Article 12:	Suspension of the Work
Article 13:	Changes in the Work
Article 14:	Materials, Equipment, and the Workmanship, Substitutions
Article 15:	Compliance
Article 16:	Non-Discrimination
Article 17:	Defective Work
Article 18:	Bonds and Insurance
Article 19:	Performance Guarantee and Warranty
Article 20:	Shop Drawings, Product Data and Samples
Article 21:	Safety
Article 22:	Protection of the Work and Property
Article 23:	Tests and Inspections
Article 24:	Utility Coordination
Article 25:	Hazardous Materials
Article 26:	Audit
Article 27:	Public Records
Article 28:	Assignment
Article 29:	Attorney's Fees and Costs
Article 30:	Notices
Article 31:	Resolution of Claims and Disputes
Article 32:	Miscellaneous
Exhibit A:	Certification of Non-Collusion
Exhibit B:	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Exhibit C:	Certification Regarding Lobbying
Exhibit D:	Drug-Free Workplace Certification
Exhibit E:	E-Verify
Exhibit F:	Contractor's Bid Form

ARTICLE 1 DEFINITIONS

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. Actual Costs. The real Project costs attributable to:
 - A. labor, including social security, insurance, fringe benefits required by Agreement or custom, and workers' compensation insurance;
 - B. materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - C. rental machinery and equipment, exclusive of hand tools, whether rented from the CONTRACTOR or others;
 - D. premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - E. field supervision and field office personnel directly attributable to the charge, exclusive of the cost of estimating, contract administration, and purchasing.
2. Addenda. Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Bidding Requirements or the Contract Documents.
3. Agreement. The written instrument that is evidence of the Agreement between the TOWN and the CONTRACTOR covering the Work. Also referred to as "Contract".
4. Authorized Representative. The individual appointed by and acting on behalf of the CONTRACTOR, as approved by the TOWN, for the duration of the Project.
5. Bid Package. The Bid Advertisement, Instructions to Bidders, all Addenda, the Bonds, the Notice of Award, and the Notice to Proceed. The contract documents are complimentary, and what is called for by any one shall be as binding as if called for by all. The intent of the documents is to include all labor and materials, equipment, transportation and incidentals necessary for the proper and complete execution of the work. Work, or materials which are to be applied, described in words, have a well-known technical or trade meaning shall be held to refer to such recognized standards.
6. Bonds. The performance bond and payment bond and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the Contract Documents and in accordance with the laws of Florida.
7. Change Order. A written document, which is signed by the CONTRACTOR and the TOWN, that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
8. Claim. A demand or assertion by the TOWN or the CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract (a demand for money or services by a third party is not a Claim).
9. Contract Documents. The documents that establish the rights and obligations of the parties and

include the following:

- A. the Agreement (including Exhibits);
 - B. the CONTRACTOR's entire completed Bid Package;
 - C. the Design Documents;
 - D. the Bid Package; and the approved submittals, and other documents provided by, through, or under the CONTRACTOR that fix, depict, and/or describe the size, quality and character of the Project include the Notice to Contractors, Instructions to Bidders, General Conditions, Special Provisions, Detailed Specifications, Soil Borings, Regulatory Requirements, Drawings, Survey and Topo, Permits, and construction plans.
 - E. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. Contract Price. The monies paid to the CONTRACTOR under the Contract Documents.
11. Contract Times. The number of days or the dates stated in the Agreement to: (A) achieve Substantial Completion; and (B) complete the Work so that it is ready for final payment as evidenced by the TOWN's written recommendation of final payment.
12. Contractor. The individual or entity with which the TOWN has entered into this Agreement.
13. **CONTRACTOR'S UNDERSTANDING** It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of the equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the Town, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.
14. Design Documents. The Drawings (Construction Plans) and Specifications, surveys, permits, estimates, photographs, and reports, together with all Written Amendments, Change Orders, the Work Change Directives, Field Orders, and the TOWN's written interpretations and clarifications issued on or after the Effective Date of the Agreement.
15. Drawings. That part of the Contract Documents prepared or approved by an engineer that graphically shows the scope, extent, and character of the Work to be performed by the CONTRACTOR (Shop Drawings or other the CONTRACTOR submittals are not Drawings). Also referred to as Construction Plans.
16. Effective Date of the Agreement. The date indicated in the Agreement on which it becomes effective (if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the twoparties).
17. Field Order. A written order issued by the TOWN that requires minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Times.

18. Final Completion or Final Acceptance. The completion of all the Work called for under the Contract Documents, including, but not limited to:
- A. satisfactory operation of all equipment supplied by the CONTRACTOR;
 - B. correction of all punch list items to the satisfaction of the TOWN;
 - C. payment of all trade contractors, subcontractors, and materialmen;
 - D. settlement of all claims, if any;
 - E. payment and release of all mechanic's, materialmen's, and similar liens;
 - F. delivery of all guarantees, equipment operation and maintenance manuals, Record Drawings, required certificates, and all other required approvals and acceptances by the Town of Indian River Shores, itself, the State of Florida or other authorities or agencies having jurisdiction; and
 - G. removal of all rubbish, tools, scaffolding, and surplus materials and equipment from the Work site.
19. Notice to Proceed. A written notice given by the TOWN to the CONTRACTOR fixing the date on which the Contract Times will commence and on which the CONTRACTOR shall start to perform the Work under the Contract Documents.
20. Project Manager. The individual appointed by and acting on behalf of the TOWN for the duration of the Project; the individual that is responsible for receiving the Applications for Payments from the CONTRACTOR on behalf of the TOWN.
21. Public Record. All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the TOWN and the CONTRACTOR.
22. Samples. Physical examples of materials, equipment, or workmanship that is representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
23. Shop Drawings. All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.
24. Specifications. That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
25. Substantial Completion. For the purpose of this Agreement, and for the compliance of those procedures, duties and obligations as set forth in the Florida Statutes' "Local Government Prompt Payment Act", the term "Substantial Completion" is defined as that point where the TOWN is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the TOWN is able to utilize the entire the Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or

incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific as set forth in Exhibits (if any). The Project should be completed to the point that the Work can be utilized for the purposes for which it was intended, as well as the satisfaction of the following requirements: (A) the items that affect operational integrity and function of the Project must be capable of continuous use; (B) all permits and other regulatory requirements must be satisfied; and (C) where required, a Certificate of Occupancy must be issued.

26. Surety. The corporate body that is responsible for the CONTRACTOR in connection with the Work as set forth in the Bonds and that is included in the most recent United States Department of the Treasury List of Acceptable Sureties and authorized to issue surety bonds in Florida, and which maintains a surety rating of “A-” or better.

27. Underground Facilities. All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

28. Unit Price Work. The Work to be paid for on the basis of unit prices included in the Project bid.

ARTICLE 2 WORK / PRELIMINARY REQUIREMENTS

2.1 The CONTRACTOR agrees to furnish and complete all authorized and approved work, materials, supplies, tools, furnishings, fixtures, labor, services, equipment, site development, permitting, regulatory matters, environmental mitigation, traffic control, accounting, coordination, and construction of the Project, more specifically described in the Design Documents, as applicable.

2.2 The CONTRACTOR shall be responsible to produce a color audio-visual recording of the Project site prior to construction. The purpose of the audio-visual recording is to document the condition of the Project site prior to construction with attention focused on the existence of any faults, fractures, or defects. Therefore, the recording shall be produced by a skilled videographer that is regularly engaged in the production of pre-construction recordings. The video recording shall be produced with sharp picture and accurate colors and shall be free of vibrations, distortion, or other significant picture imperfections; it shall be recorded during daylight hours and when the Project site is free of debris or obstructions. The pan rate, rate of travel, camera height, and zoom rate shall be maintained steady and clear at all times. The audio commentary shall be produced with proper volume and clarity and shall be free of distortion; it shall be simultaneously recorded with the video to assist the TOWN with the orientation, location, identification, and description of the recorded features that are included in or adjacent to the Project site, which include, but are not limited to: (A) each side of the roadways; (B) sidewalks, bicycle paths, and other modes of transportation facilities; (C) buildings, walls, retaining walls, and seawalls; (D) elements of the stormwater management system, including ponds, culvert ends, and visible drainage structures; and (E) landscaping/trees, visible components of the irrigation system, and fencing.

2.3 Prior to the issuance of the Notice to Proceed, the TOWN shall schedule a pre-construction meeting with the CONTRACTOR. At the pre-construction meeting, the CONTRACTOR shall submit for the TOWN’s review its audio-visual recording of the Project site, the proposed Critical Path Method (CPM) Schedule, the Final Schedule of Values, personnel and subcontractor lists, and the proposed mobilization requirements. It is the intent of the pre-construction meeting to ensure that the Project

Manager and the Authorized Representative have a clear understanding of the proposed Work and the requirements of this Agreement and to establish the appropriate Date of Commencement, which may or may not coincide with the date of the pre-construction meeting.

2.4 The Date of Commencement of the Work shall be the date indicated in the Notice to Proceed. The Notice to Proceed shall be issued by the Project Manager after the CONTRACTOR has delivered to the TOWN the executed Agreement together with the Bonds and Insurance Certificates required in accordance with the Agreement and the Town of Indian River Shores Council has approved this Agreement. No Work shall be performed by the CONTRACTOR or its Professionals, sub consultants, or subcontractors, and no irrevocable commitments to vendors shall be made prior to the Date of Commencement, at which time, the CONTRACTOR may commence to perform the Work.

ARTICLE 3 CONTRACT PRICE

3.1 The TOWN shall pay the CONTRACTOR for the performance of this Agreement and completion of the Work under the Project in accordance with the Contract Documents, subject to adjustment by Change Order, the fixed Contract Price as stated on Page 1 of this Agreement, based on the unit costs and quantities in the Bid. The obligations of the TOWN under this Agreement are subject to the availability of funds lawfully appropriated for the Project by the TOWN.

3.2 The CONTRACTOR fully understands that the Lump Sum and/or Unit Price for all items includes a sufficient allowance for the completion of all Work associated with the Project, as depicted in the Contract Documents, including, but not limited to, all profit and overhead, incidentals, all labor, supervision, testing, machinery, equipment, tools, utility coordination, clean up, and other means of construction necessary to complete the Work in accordance with all applicable regulatory agencies.

ARTICLE 4 CONTRACTOR RESPONSIBILITIES

4.1 The CONTRACTOR represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, the Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. The CONTRACTOR also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Specifications and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

4.2 The CONTRACTOR shall give all notices and comply with all municipal, local, state and federal laws, ordinances, codes, rules, licenses, and regulations applicable to the Work. If the CONTRACTOR observes that any of the Agreement is contradictory to such laws, rules, and regulations, it shall notify the Project Manager promptly in writing. If the CONTRACTOR performs any the Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations, it shall bear all related costs.

4.3 The CONTRACTOR understands and acknowledges that all documents and materials provided with the Request for Bid package and any addenda are general and preliminary, and that the

CONTRACTOR shall not rely on the accuracy or completeness thereof. The CONTRACTOR acknowledges that its duties hereunder shall not be excused or discharged in any respect based on the incompleteness or inaccuracy of any such documents or materials.

44 The CONTRACTOR shall be responsible to the TOWN for acts and omissions of the CONTRACTOR and the CONTRACTOR's agents, employees, professionals, sub consultants, subcontractors, and all other parties performing the Work by, through, and under the CONTRACTOR.

45 The CONTRACTOR shall be responsible for the management, coordination and supervision of all construction means, methods, techniques, sequences, and procedures for completion of the Work.

46 The CONTRACTOR agrees to bind specifically every professional, sub consultant and subcontractor to the applicable terms and conditions of the Agreement, for the benefit of the TOWN.

47 The CONTRACTOR represents that it is fully experienced and properly qualified to perform the Work under the Contract Documents and that it is properly licensed, equipped, organized, and financed to perform such the Work.

48 The CONTRACTOR shall act as an independent contractor and not as the agent of the TOWN. The CONTRACTOR shall supervise and direct the Work and shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction subject to compliance with the Contract Documents.

49 The CONTRACTOR shall employ and maintain a full time on-site Authorized Representative who shall have been designated in writing by the CONTRACTOR and pre-approved by the TOWN. The Authorized Representative shall be dedicated to this the Project full time and shall have full authority to act on behalf of the CONTRACTOR. All communications given to the Authorized Representative shall be as binding as if given to the CONTRACTOR. Copies of written communications given to the Authorized Representative of the CONTRACTOR shall be mailed to the address set forth in the Agreement for notices. Nothing contained herein shall be construed as modifying the CONTRACTOR's duty of supervision and fiscal management as provided by Florida law. The TOWN shall have the right of direct removal of any Authorized Representative of the CONTRACTOR. Any change in the Authorized Representative of the CONTRACTOR assigned to the Project shall be subject to the TOWN's prior written approval.

4.10 The CONTRACTOR shall perform at least 15% (fifteen percent) of the total amount of the Work in-house. The foregoing 15% (fifteen percent) is exclusive of administrative work performed by the CONTRACTOR in connection with the Work.

4.11 The CONTRACTOR shall not employ any subcontractor or Consultant against whom the TOWN may have reasonable objection.

4.12 The CONTRACTOR represents to the TOWN that the CONTRACTOR (and its officers, directors, partners, or shareholders holding ten 10% (ten percent) or more of the outstanding stock of the CONTRACTOR), does not have any financial interest in or with (i.e. is not an officer, director, partner or 10% (ten percent) plus shareholder) any person, entity, subcontractor, consultant, design professional, materialmen, supplier, or any other subcontractor performing the Work or the Project. The CONTRACTOR agrees to obtain prior written consent from the TOWN before entering into any agreement on this the Project in which it has a common financial interest.

4.13 The CONTRACTOR shall keep on-site one record copy of all Drawings, Specifications, Addenda, Modifications, and Shop Drawings that is annotated to show all changes made during the construction process. Final acceptance of the Work will be withheld until all such modifications have been properly inserted electronically into the design documents, thus creating Record Drawings, and the Record Drawings are accepted by the TOWN.

4.14 The CONTRACTOR shall provide the TOWN two copies of the Record Drawings verifying the as-built conditions for all installed and constructed components of the Work, including, but not limited to, the surface water management, traffic control, lighting, water distribution, and wastewater collection systems. The Record Drawings, which shall be signed and sealed by a Professional Engineer or Surveyor and Mapper, licensed in the State of Florida, must demonstrate to the Project Manager that the Project components were constructed in substantial conformance with the approved Construction Plans and applicable permits and that the Project will function as designed and intended. The Record Drawings must be certified based on an As-Built Survey prepared in accordance with the Minimum Technical Standards established in Florida Administrative Code (FAC) 5J-17.051 and 5J-17.052. If the Project Manager determines that the as-built conditions of one or more components are not constructed in substantial conformance with the approved Construction Plans or that the Record Drawings do not sufficiently demonstrate conformance with the Construction Plans, one set of the Record Drawings will be returned to the CONTRACTOR that identify the deficient component(s) of the Work. The CONTRACTOR shall correct the component(s) or the Record Drawing in the timeframes set forth in Article 6 of this Agreement. Upon acceptance by the Project Manager, the CONTRACTOR shall provide the TOWN Record Drawings electronically in AutoCAD[®] and Adobe Acrobat[®]. The Adobe Acrobat[®] file shall be a replica of the signed and sealed Record Drawing.

4.15 The CONTRACTOR shall, at its expense, attend any and all meetings called by the TOWN to discuss the Work under the Agreement.

4.16 The CONTRACTOR shall not establish and shall not allow its employees to engage in any non-Project related commercial activities on the Project site.

4.17 The CONTRACTOR shall, at its expense, arrange for, develop, and maintain all utilities required to execute the Work. Such utilities shall be furnished by the CONTRACTOR at no additional cost to the TOWN, including, but not be limited to: telephone service for the CONTRACTOR's use; construction power; and potable water, and sanitary sewer. Prior to Final Acceptance of the Work, the CONTRACTOR shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of the Agreement.

4.18 The CONTRACTOR shall be responsible for the proper control, maintenance, and detour of traffic in the construction area, at all times during the course of the Work. All traffic control and maintenance procedures shall be in accordance with the requirements of the Florida Department of Transportation, Town of Indian River Shores, or the local municipality, within their respective area of jurisdiction. It shall be the CONTRACTOR's responsibility, as Bidder, prior to submitting its Bid, to determine the requirements of these agencies so that its Bid reflects all costs to be incurred. No claims for additional payment will be considered for costs incurred in the proper control, maintenance, and detour of traffic. The CONTRACTOR shall notify all such agencies and the TOWN at least 7 (seven) days in advance of any traffic detour. The CONTRACTOR shall notify all such agencies and the TOWN at least 14 (fourteen) days in advance of any road closure.

4.19 The CONTRACTOR is responsible for adequate NPDES-compliant drainage at all times. Existing functioning storm sewers, gutters, ditches, and other run-off facilities shall not be obstructed.

420 The CONTRACTOR shall ensure that all fire hydrants on or adjacent to the Project shall be kept accessible and no obstruction shall be placed within fifteen feet of any hydrant.

421 The CONTRACTOR shall ensure that heavy equipment is not operated close enough to pipe headwalls or other structures to cause their displacement.

ARTICLE 5 PAYMENT

51 A Schedule of Values shall be approved by the TOWN prior to the commencement of the Work. The approved Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the TOWN. Progress payments on account of Unit Price Work will be based on the number of units completed.

52 Applications for Payments

A. The CONTRACTOR shall submit to the TOWN for review, an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as required by the Contract Documents. Such supporting documents shall include but not be limited to: (i) a current release from the CONTRACTOR releasing all claims, other than those previously submitted pursuant to Article 10 herein, through the date of the Application for Payment; and (ii) a monthly dated Critical Path Method (CPM) Schedule for the Project. Written consent from the surety in a form acceptable to the Town regarding the project or payment may be given in lieu of waivers. Submission of this supporting documentation shall be a condition precedent to the CONTRACTOR's entitlement to receive payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the TOWN has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the TOWN's interest therein, all of which must be satisfactory to the TOWN.

B. Beginning with the second Application for Payment, each Application shall include:

(i) an affidavit by the CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge the CONTRACTOR's legitimate obligations associated with prior Applications for Payment and

(ii) a "Conditional Waiver of Right to Claim Against Payment Bond and the Town of Indian River Shores" completed by the CONTRACTOR and all subcontractors.

C. The amount of retainage with respect to progress payments will be 10% (ten percent) of the Contract Price or as otherwise stipulated in the Agreement. After 50% (fifty percent) completion of the construction, the amount of retainage withheld from each subsequent progress payment shall be 5% (five percent). "Fifty Percent Completion" of the Work is defined as that point in time when 50% (fifty percent) of the overall value of the Work items are incorporated and will remain in place subsequent to final completion of the Work based upon the schedule of values contained in the Agreement. As such, and by way of example,

the value of the CONTRACTOR's mobilization, general conditions, supervision or like items which do not involve permanent incorporation of the Work do not apply to the determination of "Fifty Percent Completion" of the Work for purposes of establishing entitlement to a reduction of retainage.

- D. The Application for Final Payment shall be made after the CONTRACTOR has, in the opinion of the TOWN, 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, and other documents.
- E. The Application for Final Payment shall be accompanied (except as previously delivered) by:
 - (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to the TOWN) of all Lien rights arising out of or Liens filed in connection with the Work.
- F. In lieu of the releases or waivers of Liens and as approved by the TOWN, the CONTRACTOR may furnish receipts or releases in full and an affidavit of the CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the TOWN or the TOWN's property might in any way be responsible have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the TOWN to indemnify the TOWN against any Lien.

53 Review of Applications

- A. The TOWN's approval of any payment requested in an Application for Payment will constitute a representation by the TOWN that to the best of the TOWN's knowledge, information and belief:
 - (i) the Work has progressed to the point indicated;
 - (ii) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price the Work, and to any other qualifications stated in the recommendation); and
 - (iii) the conditions precedent to the CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is the TOWN's responsibility to observe the Work.
- B. The TOWN's approval of any payment requested in an Application for Payment will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work performed have been exhaustive, extended to every aspect of the Work, or were detailed inspections of the Work; or (ii) there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the TOWN or entitle the TOWN to withhold payment to the CONTRACTOR.
- C. The TOWN may reject the payment request or invoice within 20 (twenty) business days after

the date on which the payment request or invoice is stamped as received by the TOWN. The rejection must be in writing and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application.

D. The TOWN may refuse to make payment of the full amount because:

- (i) claims have been made against the TOWN on account of the CONTRACTOR's performance or furnishing of the Work;
- (ii) Liens have been filed in connection with the Work, except where the CONTRACTOR has delivered a specific Bond satisfactory to the TOWN to secure the satisfaction and discharge of such Liens;
- (iii) there are other items entitling the TOWN to a set-off against the amount recommended.
- (iv) the Work is defective or the completed Work has been damaged, requiring correction or replacement;
- (v) the Work for which payment is requested cannot be verified;
- (vi) the CONTRACTOR failed to make proper payments to subcontractor(s) for labor, materials or equipment in connection with the Work;
- (vii) the Contract Price has been reduced because of modifications or there is reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (viii) the TOWN has been required to correct defective Work or complete the Work in accordance with the Contract Documents;
- (ix) the CONTRACTOR failed to carry out the Work in accordance with the Contract Documents, or otherwise unsatisfactory prosecution of the Work;
- (x) of any other breach of, default under, violation of, or failure to comply with the provisions of the Contract Documents.

E. If the TOWN refuses to make payment of the full amount, the TOWN must give the CONTRACTOR written notice within 10 (ten) business days of receipt of invoice stating the reasons for such action and promptly pay the CONTRACTOR any amount remaining after deduction of the amount so withheld. The TOWN shall promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the TOWN and the CONTRACTOR, when the CONTRACTOR corrects the reasons for such action to the TOWN's satisfaction.

54 All payments made to the CONTRACTOR, whether Progress or Final, shall be in strict accordance with the "Local Government Prompt Payment Act" addressing payment, retainage, and punchlist procedures for the performance of the Work.

55 The CONTRACTOR warrants and guarantees that title to all the Work covered by an Application for Payment, whether incorporated in the Work or not, shall pass to the TOWN prior to the making of the Application for Payment, free and clear of all liens, claims, security interests, purchase money security interest, chattel paper or encumbrances of any nature whatsoever ("Liens").

56 The CONTRACTOR shall promptly pay all subcontractors, laborers, materialmen, and suppliers upon receipt of payment from the TOWN out of the amount paid to the CONTRACTOR on account of such person's portion of the Work, the amount to which such person is entitled, reflecting percentages actually retained from payments to the CONTRACTOR. The CONTRACTOR shall, by appropriate agreement with each subcontractor or other person, require each subcontractor or other person to make payments to sub-subcontractors in similar manner.

57 A Certificate of Payment, a progress payment, or partial or entire use of the Project by the TOWN shall not constitute acceptance of Work not in accordance with the Contract Documents.

58 In accordance with the provisions of §255.05, Florida Statutes, where the CONTRACTOR requires a waiver from laborers, materialmen, subcontractors, or sub-subcontractors (as each such term is defined by §713.01, Florida Statutes) of the right to make a claim against the Payment Bond in exchange for or to induce payment of a progress payment or a final payment, such waivers shall comply with the form set forth in §255.05, Florida Statutes, as amended from time to time.

59 If one or more Notice of Non-Payment is received by the TOWN, no further payments will be approved until non-payment(s) have been satisfied and a Release of Claim for each Notice of Non-Payment has been submitted to the TOWN. Upon request, the CONTRACTOR shall furnish acceptable evidence that all such claims or liens have been satisfied. If the CONTRACTOR fails to satisfy the non-payment, the TOWN may make payment and back-charge the CONTRACTOR for any and all costs associated with such payment.

5.10 If at any time during the progress of the Work, the CONTRACTOR's actual progress is inadequate to meet the requirements of the Agreement, the TOWN may, but is not required to, notify the CONTRACTOR to implement some or all of the following remedial actions at the sole cost and expense of the CONTRACTOR:

- A. Increase construction manpower in such quantities and crafts as necessary to eliminate the schedule progress deficiency;
- B. Increase the number of working hours per shift, shifts per working day, working days per week, the amount of construction equipment, or any combination of the foregoing to eliminate the schedule progress deficiency;
- C. Reschedule the Work in conformance with the specification requirements.

5.11 Neither such notice by the TOWN nor the TOWN's failure to issue such notice shall relieve the CONTRACTOR of its obligation to achieve the quality of the Work and rate of progress required by the Agreement.

ARTICLE 6 TIME OF PERFORMANCE

Time is of the essence under this Agreement.

6.1 Prior to requesting an inspection for Substantial Completion, as defined in Article 1.25, the CONTRACTOR shall confirm that:

- A. All construction is complete, the project components are clean, and all systems fully functional.
- B. All utilities are installed or adjusted, as required, and are fully functional.

- C. The Project site is clear of the CONTRACTOR's excess equipment, temporary facilities and/or trailers.
- D. All operations and maintenance manuals for all equipment have been delivered to the TOWN.
- E. All operations and maintenance training related literature, software, and back-up disks have been delivered to the TOWN.
- F. All manufacturers' certifications and warranties have been delivered to the TOWN.
- G. All required spare parts, materials, as well as any special measuring devices and tools have been delivered to the TOWN.

6.2 The TOWN shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion, but the TOWN shall allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

6.3 When the CONTRACTOR considers the Work ready for its intended use, the CONTRACTOR shall notify the TOWN, in writing, that the Work is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the TOWN issue a certificate of Substantial Completion. Promptly thereafter, the TOWN and the CONTRACTOR shall make an inspection of the Work to determine the status of completion. For the purpose of this Agreement, and for the compliance of those procedures, duties, and obligations as set forth in §218.70 et seq. and §218.735 et seq., Florida Statutes, the term "Substantial Completion" is defined as that point where the TOWN is able to enjoy beneficial occupancy of the Work and where the Work has achieved that level of completion such that the TOWN is able to utilize the entire Project for its intended purposes, including but not limited to the completion of all specified systems and items relating to life, safety, and regulatory use, with the exception of incidental or incomplete items except where a lack of completion of such incidental or incomplete items of the Work will adversely affect the complete operation of other areas of the Work. Additional conditions (if any) needed to achieve Substantial Completion of the Work and which are project specific are as set forth in attached Exhibits. If the TOWN does not consider the Work substantially complete, the TOWN will notify the CONTRACTOR in writing giving the reasons therefore. If the TOWN considers the Work substantially complete, the TOWN will issue and deliver to the CONTRACTOR a certificate of Substantial Completion, which shall fix the date of Substantial Completion. In addition to §218.735(7)(a), Florida Statutes, punch list procedures for construction projects having an estimated cost of less than \$10,000,000 (ten million dollars) to render the Work complete, satisfactory, and acceptable are established as follows:

- A. The intent of this section is for the TOWN and the CONTRACTOR to cooperate to develop a Final Punchlist no later than 30 (thirty) days from the date of reaching Substantial Completion.
- B. Within 5 (five) days of Substantial Completion of the Project, the CONTRACTOR shall schedule a walkthrough with the TOWN ("Punchlist Walkthrough"). The purpose of the Punchlist Walkthrough is to determine that the project has achieved Substantial Completion, and if so, to develop a Punchlist of items to be performed by the CONTRACTOR, based upon observations made jointly between the CONTRACTOR and the TOWN during the Punchlist Walkthrough. The TOWN shall issue the Final Punchlist within 30 (thirty) days of the Substantial Completion date.

- C. The CONTRACTOR shall endeavor to address and complete as many items as possible noted on the Punchlist either during the Punchlist Walkthrough itself or within 25 (twenty five) days from the date of the Punchlist Walkthrough.
- D. No more than 20 (twenty) days following the issuance of the Final Punchlist, the CONTRACTOR shall again initiate and request a second walkthrough (“Final Walkthrough”) of the Project with the TOWN. The purpose of the Final Walkthrough is to identify which items on the Punchlist remain incomplete and to supplement that list as legally necessary (based, for example, upon work, which may have been damaged as a result of the CONTRACTOR’s performance of completion of items contained on the Punchlist.
- E. The CONTRACTOR shall complete the Final Punchlist items within 30 (thirty) days of the date of its issuance by the TOWN.
- F. In no event may the CONTRACTOR request payment of final retainage under §218.735(7)(e), Florida Statutes, until the CONTRACTOR considers the Final Punchlist to be 100% (one hundred percent) complete.
- G. The CONTRACTOR acknowledges and agrees that no item contained on the Final Punchlist shall be considered a warranty item until such time as: (i) the Final Punchlist is 100% (one hundred percent) complete; and (ii) the TOWN has been able to operate or utilize the affected punchlist item for 15 (fifteen) days, whichever occurs last.
- H. The CONTRACTOR acknowledges and agrees that the TOWN may, at their option, during performance of the Work and prior to Substantial Completion, issue lists of identified non-conforming or corrective work for the CONTRACTOR to address. The intent of any such lists prior to Substantial Completion is to streamline the Punchlist process upon achieving Substantial Completion, and to allow for the CONTRACTOR to address needed areas of corrective work as they may be observed by the TOWN during performance of the Work.
- I. The CONTRACTOR acknowledges and agrees that in calculating 150% (one hundred fifty percent) of the amount which may be withheld by the TOWN as to any Final Punchlist item for which a good faith basis exists as to it being complete, as provided for by §218.735(7)(e), Florida Statutes, the TOWN may include within such percentage calculation its total costs for completing such item of work, including its administrative costs as well as costs to address other services needed or areas of work which may be affected in order to achieve full completion of the Final Punchlist item. Such percentage shall in no event relate to the schedule of value associated with such the Work activity, but rather total costs are based upon the cost of completing the Work activity based upon market conditions at the time of Final Punchlist completion.

6.4 If Substantial Completion has not been obtained at the Punchlist Walkthrough inspection called by the CONTRACTOR, for reasons that are the fault of the CONTRACTOR, the cost of any subsequent inspections requested by the CONTRACTOR for the purpose of determining Substantial Completion shall be at the cost of the CONTRACTOR and shall be assessed against the final payment application. Punch list items recorded as a result of inspections for Substantial Completion are to be corrected by the CONTRACTOR within the time-frame established.

6.5 Use by the TOWN, at the TOWN’s option, of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the TOWN and the CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the TOWN for its intended purpose without significant interference with the CONTRACTOR’s performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

- A. The TOWN may request, in writing, the CONTRACTOR permit the TOWN to use any such part of the Work that the TOWN believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees that such part of the Work is ready for its intended use and substantially complete, the CONTRACTOR will certify to the TOWN that such part of the Work is substantially complete and will request the TOWN issue a certificate of Substantial Completion for that part of the Work. The CONTRACTOR may notify, in writing, the TOWN that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request the TOWN issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either a request or notification is made, the TOWN and the CONTRACTOR shall inspect that part of the Work to determine its status of completion. If the TOWN does not consider that part of the Work to be substantially complete, the TOWN will notify the CONTRACTOR in writing giving the reasons therefore.
- B. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of this Agreement regarding property insurance.

6.6 Upon written notice from the CONTRACTOR that the entire Work, or an agreed portion thereof, is complete, the TOWN will promptly make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The CONTRACTOR shall immediately take such measures necessary to complete such Work or remedy such deficiencies.

ARTICLE 7 LIQUIDATED DAMAGES

7.1 Upon failure of the CONTRACTOR to Substantially Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the TOWN daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the TOWN's estimated damages resulting from the delay to Substantial Completion.

7.2 Upon failure of the CONTRACTOR to Finally Complete the Agreement within the specified period of time, plus approved time extensions, the CONTRACTOR shall pay to the TOWN daily liquidated damages in the amount shown on Page 1 of this Agreement to reflect the TOWN's estimated damages resulting from the delay to Final Completion.

7.3 Milestones, milestone completion dates, and applicable Liquidated Damages shall be in accordance with the Contract Documents.

7.4 If the milestones are not strictly complied with, then Liquidated Damages will be assessed against the CONTRACTOR, which are agreed upon, and it is further agreed that such Liquidated Damages bear a reasonable relationship to damages to be incurred by the TOWN, and are not a penalty.

ARTICLE 8 CLAIMS FOR ADDITIONAL TIME

8.1 If the CONTRACTOR's performance of this Agreement is delayed, either by delays that are beyond the reasonable control and without the fault or negligence of the CONTRACTOR or its subcontractors or by changes ordered in the Work, and in either event where such delay or change in the

Work affects the critical path, then the Agreement Time shall be extended by Change Order as determined by the TOWN. If the CONTRACTOR wishes to make Claim for an increase in the Contract Time, the CONTRACTOR shall provide the TOWN a written notice of claim upon discovering the cause of the alleged delay. Such notice of claim shall include the following information, or else be waived:

- A. Nature of the delay or change in the Work;
- B. Dates of commencement and cessation of the delay or change in the Work;
- C. Activities on the current progress schedule affected by the delay or change in the Work;
- D. Identification and demonstration that the delay or change in the Work affects the critical path;
- E. Identification of the source of delay or change in the Work;
- F. Anticipated extent of the delay or change in the Work; and
- G. Recommended action to minimize the delay.

8.2 The CONTRACTOR shall not be entitled to any extension of time for delays resulting from any cause unless the CONTRACTOR has notified the TOWN in writing within 7 (seven) calendar days of commencement of the delay.

8.3 No Damages for Delay; Exclusive Remedy. The CONTRACTOR shall not be entitled to and hereby waives any and all claims for damages which it may suffer by reason of delay, acceleration, loss of efficiency, or other related time or impact-based claims (hereinafter collectively "delay") or for delay attributable to any foreseen or unforeseen condition, or for delays claimed to be the result of active, intentional, knowing, or passive interference by the TOWN, or its agents, and waives damages that it may suffer by reason of such claims for lost profits, loss or impairment of bonding capacity, destruction of business, extended overhead, supervision, extended, unabsorbed home office overhead; the extension of time granted herein, being the CONTRACTOR's sole remedy, with the exception that in the event of demonstrated critical, compensable, non-concurrent delay suffered by the CONTRACTOR, the CONTRACTOR may claim as its sole and exclusive remedy any associated, extended direct jobsite general conditions expended by the CONTRACTOR (hereinafter "applicable extended general conditions") in a sum not to exceed \$250.00 (two hundred fifty dollars) per each day of delay. Apart from extensions of time or acceleration costs approved by the TOWN and any applicable extended general conditions, no payment of claim for delay damages shall be made to the CONTRACTOR as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay be avoidable or unavoidable. Notwithstanding anything herein to the contrary, provided the CONTRACTOR has otherwise satisfied the requirements of this Agreement, the CONTRACTOR shall be entitled to an increase in the Contract Price based upon approved general condition, insurance, and bond premium costs resulting from delays for which the TOWN has approved by Change Order or Construction Change Directive, provided, however, the TOWN shall not be required to pay such additional amounts for any days following the date on which the CONTRACTOR achieves Final Completion for the appropriate portion of the Work.

8.4 The time during which the CONTRACTOR is delayed in the performance of the Work by the acts or omissions of the TOWN, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the CONTRACTOR's control and which the CONTRACTOR could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the

Agreement; provided, however, that no claim by the CONTRACTOR for an extension of time for such delays be considered unless made in accordance with Paragraph 8.1.

8.5 The TOWN shall not be obligated or liable to the CONTRACTOR for and the CONTRACTOR hereby expressly waives any claims against any damages, costs, or expenses of any nature whatsoever which the CONTRACTOR, its subcontractors or sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the TOWN, or any of the events referred to in Paragraph 8.4 above, it being understood and agreed that the CONTRACTOR's sole and exclusive remedy in such event shall be an extension of Contract Time, but only if claim is properly made in accordance with Paragraph 8.1.

ARTICLE 9 SITE CONDITIONS

9.1 Field Measurements. Before undertaking each part of the construction, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the TOWN any conflict, error, or discrepancy that the CONTRACTOR or any of its subcontractors or Suppliers may discover and shall obtain a written interpretation or clarification from the TOWN before proceeding with any Work affected. The CONTRACTOR shall remain liable to the TOWN for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents prepared by the CONTRACTOR.

9.2 Differing Site Conditions. The CONTRACTOR shall promptly, and before such conditions are disturbed, notify the TOWN in writing of: (A) subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or (B) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Agreement. The TOWN will promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performance of any part of the Work under this Agreement, an equitable adjustment shall be made and the Agreement modified in writing accordingly. The CONTRACTOR's failure to provide notice upon discovery of the differing site condition shall waive any entitlement to such an adjustment in the Contract Price or Contract Time.

9.3 Physical Conditions (Including Underground Facilities). The CONTRACTOR shall have full responsibility for physical conditions, and Underground Facilities owned by the TOWN or others, as shown or indicated in the Contract Documents. The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data. The TOWN shall not be responsible for accuracy or completeness of data, plans, and specifications and the CONTRACTOR shall have full responsibility for checking all information and data. If the Contract Documents necessitate amending to order changes in the Work due to Underground Facilities owned by the TOWN or others, whether they be shown or indicated or newly discovered, the TOWN shall authorize the required changes in the Work by Change Order. If those Underground Facilities owned by the TOWN or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension, or acceleration costs, however caused, except that if the TOWN and the CONTRACTOR agree that the delays require a change in Contract Time, the TOWN shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the

CONTRACTOR's sole and exclusive remedy with respect to the TOWN for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance, and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the TOWN or others as shown or indicated, or from newly discovered Underground Facilities owned by the TOWN or others.

9.4 Special Requirements for Underground Facilities. The CONTRACTOR shall have full responsibility for the following list. Except as otherwise provided, all costs involved and time required to perform these responsibilities shall be considered as having been included in the Contract Price and in the CONTRACTOR's schedule for the performance of the Work within the Contract Time, even if the Contract Documents need amending to authorize minor deviations or changes in the Work due to those Underground Facilities including utilities.

- A. Field locating any and all Underground Facilities including utilities shown or indicated as to depth and alignment in advance of excavation;
- B. Notifying the TOWN of any newly discovered Underground Facility and promptly notifying that the TOWN of that discovery;
- C. Shoring, blocking and protecting Underground Facilities including utilities shown, indicated or discovered;
- D. Coordination, scheduling and sequencing the Work with the TOWN's of all Underground Facilities shown, indicated or discovered;
- E. Repairing any damage to the satisfaction of the TOWN, to the extent that the damage was due to the CONTRACTOR's failure to adhere to the requirements, or to the fault or negligence of the CONTRACTOR; and
- F. The safety and protection of any affected the Work, and for repairing any damage done to the work.

9.5 If those Underground Facilities owned by the TOWN or others cause or will cause delays in the performance or extend completion of all or part of the work, the CONTRACTOR shall absorb all related delay, extension or acceleration costs, however caused, except that if the TOWN and the CONTRACTOR agree that the delays require a change in Contract Time, the TOWN shall authorize the necessary change in Contract Time only to the extent that such delays exceed 30 (thirty) days impact to controlling work items. However, an extension in Contract Time, when and if so granted shall be the CONTRACTOR's sole and exclusive remedy with respect to the TOWN for any delay, disruption, interference, inefficiency, acceleration, extension or hindrance and associated costs, however caused, resulting from variance in the location or configuration of Underground Facilities owned by the TOWN or others shown or indicated, or from newly discovered Underground Facilities owned by the TOWN or others.

9.6 Unless it prejudices the Work already excavated and uncovered, the CONTRACTOR shall schedule layout, excavation and uncovering of the Work or Underground Facilities a sufficient time in advance to allow the TOWN'S design professional's review, and the possible amending or supplementing of the Contract Documents.

**ARTICLE 10
INDEMNIFICATION**

The CONTRACTOR hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the CONTRACTOR, its SUBCONTRACTS, CONSULTANTS or SUPPLIERS or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Agreement, or in preparation for the work and services under this Agreement, or any extension, modification, or amendment thereto by change order to otherwise.

The CONTRACTOR hereby agrees to indemnify and hold harmless the Town of Indian River Shores Council, its officers and employees from liabilities, damages, lawsuits, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR or persons employed or utilized by the CONTRACTOR in the performance of this Agreement.

**ARTICLE 11
TERMINATION**

11.1 Notwithstanding any other provision of this Agreement, the CONTRACTOR may be held in default of its contractual obligation under this Agreement if the CONTRACTOR:

- A. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
- B. fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;
- C. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- D. performs the Work that does not conform to Contract Documents requirements;
- E. fails to meet the Contract Schedule or fails to make progress on the Work so as to endanger performance of the Agreement;
- F. abandons or refuses to proceed with any or all the Work; or
- G. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents.

11.2 The TOWN must provide written notice to the CONTRACTOR notifying it that the TOWN is declaring it in default and providing the CONTRACTOR with 3 (three) business days after receipt of such written notice of default, to cure such default. In the event that the CONTRACTOR fails to cure the default within the 3 (three) business day default period, the TOWN may:

- A. take possession of the Work site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR; and
- B. accept assignment of subcontracts pursuant to this Agreement; and

(i) finish the Work by whatever reasonable method the TOWN may deem expedient, and charge all completion costs against any monies owed or to be owed to the CONTRACTOR, or back charge the CONTRACTOR for any and all such completion costs, or

(ii) terminate the CONTRACTOR and hire a completion contractor to finish the Work by whatever reasonable method the TOWN may deem expedient, and charge all completion costs, including costs for construction, architectural, engineering, project management, and any other expenses, against any monies owed or to be owed to the CONTRACTOR, or backcharge the CONTRACTOR for any and all such completion costs, or

C. set off any and all such completion costs against any monies then due or to become due on any other projects that the TOWN has with the CONTRACTOR.

11.3 Upon default, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

11.4 If, after notice of termination, it is determined for any reason that the CONTRACTOR was not in default, or that the delay was excusable under the provisions of the Contract Documents, the rights and obligations of the parties shall be the same as if the notice of termination had been a Termination by the TOWN for Convenience.

11.5 Termination by the TOWN for Convenience. Notwithstanding any other provision to the contrary in the Contract Documents, the TOWN reserves the right at any time and in its sole and absolute discretion to terminate the services of the CONTRACTOR with respect to the Work by giving written notice to the CONTRACTOR. In such event, the CONTRACTOR shall be entitled to, and the TOWN shall reimburse the CONTRACTOR for, an equitable portion of the Contract Price based on the portion of the Work completed prior to the effective date of termination and for any other reasonably expended costs attributable to such termination. However, the CONTRACTOR shall not be entitled to receive its anticipated profits for any unperformed Work.

ARTICLE 12 SUSPENSION OF WORK

The TOWN may, without cause, order the CONTRACTOR in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the TOWN may determine.

ARTICLE 13 CHANGES IN THE WORK

13.1 The TOWN may, at any time or from time to time, order additions, deletions, or revisions in the Work by requesting a proposal from the CONTRACTOR detailing the proposed additions, deletions, or revisions to the Work. The proposal shall include such details as man-hours, man-hour rates, quantities, quantity unit rates, equipment, equipment unit rates, and mark-ups. The CONTRACTOR shall complete and return the proposal to the TOWN within 10 (ten) calendar days from receipt thereof. The proposal shall include any increases or decreases in Contract Time or Contract Price and shall include any additional modifications required by virtue of the requested change, whether or not such additional modifications were specifically identified in the request for proposal. The proposal may then be: (A) issued as a Change Order in accordance with the provisions of the Contract Documents; (B) modified and thereafter issued as a Change Order in accordance with the provisions of the Contract Documents; or (C) withdrawn.

132 The TOWN may authorize minor changes or alterations in the Work not involving extra cost or time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the CONTRACTOR believes that any minor change or alterations authorized by the TOWN entitles it to an increase in the Contract Price or extension of Contract Time, it shall treat the Field Order as a request for proposal and issue a proposal for the change in Contract Price and Contract Time prior to proceeding with the Work covered in the Field Order. The procedures outlined in the Contract Documents shall then be followed. Acceptance of the Final Payment by the CONTRACTOR shall constitute acknowledgment by the CONTRACTOR that all payments due for modifications required under Field Orders have been incorporated into the Final Payment.

133 Additional Work performed by the CONTRACTOR without authorization of a written Change Order will not entitle it to an increase in the Contract Price or an extension of the Contract Time.

134 It is the CONTRACTOR's responsibility to notify its Surety of any changes affecting the general scope of the Work or change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR shall furnish proof of such adjustment to the TOWN.

135 The TOWN may, at any time, without notice to the Surety, by Field Order or by properly executed Change Order, make any change in the Work within the general scope of the Contract Documents, including but not limited to changes:

- A. in the Drawings and designs, and Specifications;
- B. in the method or manner of performance of the Work;
- C. directing acceleration in the performance of the Work.

136 Except as herein provided, no order, statement, or conduct of the TOWN shall be treated as a Change Order or Field Order or entitle the CONTRACTOR to an equitable adjustment hereunder.

137 No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

138 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways at the sole discretion of the TOWN:

- A. where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- B. by negotiated lump sum; or
- C. cost plus. If this option is selected, the TOWN reserves the right to request any and all documentation from the CONTRACTOR in support of its foregoing Actual Costs, and the CONTRACTOR agrees promptly to supply such information.

139 For changes in the Work performed by the CONTRACTOR's own forces, the CONTRACTOR shall be entitled to a percentage 10% (ten percent) mark-up for Actual Costs as defined in Section 1.

13.10 For changes in the Work performed by subcontractors: (A) the subcontractor shall be entitled to mark-up the cost of the change(s) by 10% (ten percent); and (B) the CONTRACTOR shall be entitled to

mark-up the subcontractor's total by 5% (five percent). The foregoing shall be the maximum amount allowable for subcontractors and the CONTRACTOR's Actual Costs as defined in Section 1.

ARTICLE 14
MATERIALS, EQUIPMENT AND WORKMANSHIP, SUBSTITUTIONS

14.1 Only new, unused items of recent manufacture, of designated quality, free from defects, will be accepted. Rejected items shall be removed immediately from the Work and replaced with items of specified quality. Failure by the TOWN to order removal of rejected materials and equipment shall not relieve the CONTRACTOR from responsibility for quality of the materials supplied or from any other obligation under the Contract Documents.

14.2 No Work defective in construction or quality, or deficient in meeting any requirement of the Contract Drawings and Specifications, will be acceptable regardless of the TOWN's failure to discover or to point out defects or deficiencies during construction; nor will the presence of field representatives at the Work or the satisfaction of the Work meeting applicable code requirements relieve the CONTRACTOR from responsibility for the quality and securing progress of the Work as required by the Contract Documents.

14.3 Prior to proposing any substitute item, the CONTRACTOR shall satisfy itself that the item proposed is, in fact, equal or better to that specified, that such item will fit into the space allocated, that such item affords comparable ease of operation, maintenance and service, that the appearance, longevity and suitability for the climate are comparable, and that by reason of cost savings, reduced construction time, or similar demonstrable benefit, the substitution of such item will be in the TOWN's interest, and will in no way have a detrimental effect upon the Project completion date and schedule.

- A. The burden of proof of equality of a proposed substitution for a specified item shall be upon the CONTRACTOR. The CONTRACTOR shall support its request with sufficient test data and other means to permit the TOWN to make a fair and equitable decision on the merits of the proposal. The CONTRACTOR shall submit drawings, samples, data and certificates and additional information as may be required by the TOWN for proposed substitute items as required by the Contract Documents.
- B. Any item by a manufacturer other than those specified or of brand name or model number or of generic species other than those specified will be considered a substitution. The TOWN will be the sole judge of whether or not the substitution is equal in quality, utility, and economy to that specified.
- C. The CONTRACTOR shall allow an additional 15 (fifteen) calendar days for the TOWN's review of requested substitutions. All requests for substitutions with submittal data must be made at least 50 (fifty) calendar days prior to the time the CONTRACTOR must order, purchase or release for manufacture or fabrication. Approval of a substitution shall not relieve the CONTRACTOR from responsibility for compliance with all requirements of the Agreement. The CONTRACTOR shall coordinate the change with all trades and bear the expense for any changes in other parts of the Work caused by any substitutions.
- D. If the TOWN rejects the CONTRACTOR's requested substitute item on the first submittal, the CONTRACTOR may make only one additional request for substitution in the same category. Upon the second request, the CONTRACTOR shall be invoiced the expenses of the TOWN allocable to the review of such submittal data. The foregoing amounts shall be

deducted, as applicable, from the next succeeding partial payment to the CONTRACTOR, or from the final payment.

ARTICLE 15 COMPLIANCE

15.1 All work, labor, materials and equipment provided under this Agreement shall be performed in strict compliance with any and all applicable building and fire, life and safety codes and strictly in accordance with plans and specifications. The CONTRACTOR must satisfy itself that the Plans, Drawings and Specifications in fact comply with all applicable codes. The CONTRACTOR shall notify the TOWN prior to commencement of the Work of any requirement of the plans and specifications not in strict compliance with such codes. There will be no extra payment for compliance to existing codes or any item of interpretation regarding enforcement of existing codes. The CONTRACTOR is representing by acceptance of this Agreement that it has thoroughly researched all applicable codes and regulations affecting the Project.

15.2 If, during the term of this Agreement, there are any changed or new laws, ordinances or regulations not known or foreseeable at the time of signing this Agreement which become effective and which affect the cost or time of performance of the Agreement, the CONTRACTOR shall immediately notify the TOWN in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Agreement. Upon concurrence by the TOWN as to the effect of such changes, an adjustment in the Contract Price and/or time of performance will be made. If any discrepancy or inconsistency should be discovered between the Contract Documents and any law, ordinance, regulation, order or decree, the CONTRACTOR shall immediately report the same in writing to the TOWN who will issue such instructions as may be necessary. However, it shall not be grounds for a Change Order that the CONTRACTOR was unaware of or failed to investigate the rules, codes, regulations, statutes, and all ordinances of all applicable governmental agencies having jurisdiction over the Project or the Work.

15.3 The CONTRACTOR shall give all notices and at all times comply with all applicable laws, codes, ordinances, rules and regulations in effect during the time of performance of the Work.

15.4 The CONTRACTOR shall deliver a product, which will meet or exceed the Design package standards, provide a complete and functional facility including but not limited to all necessary interfaces between this facility and adjacent existing facilities, and/or anticipated future facilities. All built-in equipment, systems, controls, devices and finishes necessary for the efficient use and maintenance of the facility and its related site work (if applicable), except as otherwise noted and/or clarified herein, shall be included in the Work.

ARTICLE 16 NON-DISCRIMINATION

The CONTRACTOR covenants and agrees that the CONTRACTOR shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement with the respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, physical handicaps (except where based on a bona fide occupational qualification) marital status, race, color, religion, national origin or ancestry.

ARTICLE 17
DEFECTIVE WORK

171 The TOWN shall have authority to disapprove or reject the Work which is "defective" (which term is hereinafter used to describe the Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to final acceptance). Such parties shall also have authority to require special inspection or testing of the Work as such parties may individually or severally deem necessary, whether or not the Work is fabricated, installed or completed.

172 Upon presentation of a Defective the Work Notice to the CONTRACTOR or the CONTRACTOR's the Project Superintendent, the CONTRACTOR shall meet within 24 (twenty four) hours with the TOWN to discuss and develop a plan of remedial action and time-line to correct the defective the Work. The CONTRACTOR shall have no more than 5 (five) working days to begin corrective action and repairs in accordance with the agreed upon schedule; provided, however, all repairs to natural gas, telephone, radio, computer security, water, waste water, electric air conditioning services and all emergency services shall be commenced within 12 (twelve) hours of notification, or by 7:00 a.m. whichever is earlier, and the CONTRACTOR shall complete the repairs in an expeditious manner befitting the nature of the deficiency. If the CONTRACTOR refuses to comply with the 24 (twenty four) hour meeting requirement, or the agreed upon correction schedule, the TOWN has the right to do any of the following: (A) correct any the Work so performed by the CONTRACTOR and deduct the expenses for doing so from the final payment due the CONTRACTOR; or (B) hold back final payment due the CONTRACTOR until such time as the Work is completed to the satisfaction of the TOWN and in compliance with the Contract Documents. The TOWN shall have the sole discretion to determine if the Work is satisfactory and in compliance with Contract Documents. The foregoing remedies are not exclusive and the TOWN reserves the right to pursue any and all other remedies it deems applicable.

ARTICLE 18
BONDS AND INSURANCE

18.1 Payment and Performance Bonds. The CONTRACTOR shall, upon execution and return of this Agreement to the TOWN, furnish a Public Payment Bond and a Performance Bond, pursuant to §255.05, Florida Statutes, in at least an amount equal to the Contract Price, for any Agreement over \$200,000 (two hundred thousand dollars), covering the faithful performance of this Agreement and all the CONTRACTOR's faithful performance and payment of all the CONTRACTOR's obligations under the Contract Documents. The Bonds shall be recorded at the Town of Indian River Shores Town Clerk of the Circuit Court's Office at the CONTRACTOR's expense. The Surety must be included in the most recent United States Department of the Treasury List of Acceptable Sureties, authorized to issue surety bonds in Florida, and which maintains a surety rating of "A-" or better. A complete copy of the fully executed Payment Bond shall be posted in a conspicuous place at the Project site. If the Surety on any Bond furnished by the CONTRACTOR is declared bankrupt, becomes insolvent, its authorization to do business in the State of Florida is terminated, it ceases to be listed on the United States Department of Treasury List of Acceptable Sureties, or its surety rating ceases to be an "A-" or better, the CONTRACTOR shall within 5 (five) days thereafter substitute another Payment Bond, Performance Bond, and Surety, each of which shall be in accordance with the Contract Documents and acceptable to the TOWN . An action to enforce any claim against a payment bond must be brought within one year from the last furnishing of labor, services, or materials, or as otherwise stated in §95.11 (5)(e),

Florida Statutes. An action to enforce any claim against a performance bond must be brought within five years in accordance with §95.11(2)(b), Florida Statutes, and applicable case law.

18.2 Insurance

- A. Certificate of Insurance. 1 (One) certified true copy of the policy(s) must be furnished by the CONTRACTOR to the TOWN prior to commencement of any demolition, Site Work, Site preparation or construction Work. The Certificate(s) of Insurance must indicate Town of Indian River Shores Council as Additional Insured on all policies, except the Workers Compensation. The statement “Additional Insured” is to be listed in the Description Block of the Insurance Certificate along with the Project name. The indication that Town of Indian River Shores Council is a Certificate Holder is not sufficient for this issue. The Additional Insured endorsement must be attached to the Certificate of Insurance and shall include coverage for Completed Operations under the General Liability policy.
- B. General Insurance Requirements. The CONTRACTOR and, where designated, each of its subcontractors and sub-subcontractors shall obtain and maintain during the full duration of the Work required under this Agreement, and through any period of limitation allowed by law for actions for personal injury, bodily injury, disease, death, property damages and other losses or damages required to be insured hereunder, the following insurance coverages, in the type, amounts, terms and in conformance with the following minimum requirements.
- (i) All policies and endorsements shall be issued on Insurance Service Office (ISO) forms or on forms providing broader and no less restrictive coverage. Notwithstanding the foregoing, the form and content of all policies and endorsements must be acceptable to the TOWN. All insurance carriers must carry an A.M. Best Rating of A:IX or better and coverage should apply on a Primary and Noncontributory basis. At the discretion of the TOWN, other coverage types and /or specific endorsements may be required depending upon the type and scope of work to be performed. All insurance must be acceptable by and approved by the TOWN as to form and types of coverage.
 - (ii) The policy(s) shall provide for 30 (thirty) days prior written notice to the TOWN, by registered or certified mail, if cancellation or any change that will reduce the coverages required herein.
 - (iii) The policy(s) shall be written for the Contract Times, commencing with the initial demolition, Site Work and/or Site preparation, and ending at the Final Completion and shall contain an endorsement providing for extension of the policy(s) for up to 2 (two) years. The Products and Completed Operations portions of the General Liability shall extend for a period of 10 (ten) years after the Final Acceptance of the Project by the TOWN and shall include an “Additional Insured” endorsement.
 - (iv) All liability policies required herein shall be written on an occurrence basis
 - (v) The policies shall name the TOWN, its commissioners and staff as additional insured (including Completed Operations coverage under the General Liability) as their interest may appear under this Agreement.
 - (vi) All insurers shall agree to waive all rights of subrogation against the TOWN and each individual member of the Board of Town Commissioners, Constitutional Officers, or staff.

(vii) It is the responsibility of the CONTRACTOR to ensure any independent contractors and subcontractors utilized on the project also comply with these insurance requirements.

C. Premiums. The CONTRACTOR shall be solely responsible for payment of all premiums for insurance required under this Agreement and shall be solely responsible for the payment of all deductibles to which such policies are subject.

D. Specific Insurance Limits

(i) Workers' Compensation. The CONTRACTOR shall carry Workers' Compensation insurance on behalf of all employees who are required to provide a service under this Agreement, as required by Chapter 440, Florida Statutes, and Employers Liability of limits no less than:

\$ 500,000	each accident
\$ 500,000	disease - policy limit
\$ 500,000	each employee

Should the scope of work performed by the CONTRACTOR qualify its employees for benefits under Federal the Worker's Compensation Statute (i.e. Longshoreman & Harbor the Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

(ii) Commercial General Liability, with limits of not less than:

\$ 1,000,000	each occurrence
\$ 1,000,000	personal/advertising injury
\$ 2,000,000	products/completed operations (per project aggregate)
\$ 2,000,000	general aggregate (per project aggregate)
\$ 100,000	fire damage legal (any 1 fire)
\$ 10,000	medical expense (any 1 person)

Coverage to include bodily injury, property damage liability, personal and advertising injury, products and completed operations, fire damage legal liability and medical expense coverage. Contractual Liability is to be included to cover the hold harmless agreement set forth in the Agreement. Coverage is to extend to independent contractors and fellow employees. XCU coverage is to be included. Coverage is to include a cross liability or severability of interest provision as provided under the standard ISO form separation of insured clause. There should be no "damage to your work" exclusion for work performed by subcontractors. Policy is to include coverage for pollution release at project location in which the insured is performing non- environmental operations. There shall be no exclusion for mold, silica or respirable dust or bodily injury or property damage arising out of heat, smoke, fumes or ash from a hostile fire. If the project involves environmental exposures, Environmental Impairment Liability coverage shall be maintained.

(iii) Automobile Liability - \$1,000,000 (one million dollars) Combined Single Limit coverage for all owned, hired, leased and non-owned vehicles.

(iv) Umbrella Liability - to include the Employers Liability, general liability and automobile in underlying policy schedule, with limits of not less than \$1,000,000 (one million dollars).

(v) Hazardous Material - if the Work being performed involves hazardous materials, the need to procure appropriate insurance coverage will be addressed in a modification to the Agreement. However, if hazardous materials are identified while carrying out this Agreement, no further the Work is to be performed in the area of the hazardous material until the TOWN has been consulted as to the need to procure and maintain such coverage.

- E. Waiver of Subrogation. The CONTRACTOR hereby waives any and all rights of Subrogation against the TOWN, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent.

ARTICLE 19 PERFORMANCE GUARANTEE AND WARRANTY

191 All materials and equipment incorporated into any Work shall be warrantied and guaranteed as new quality and of the highest grade of quality for their intended use. All Work shall be performed in good workmanship and shall be in accordance with all Contract Documents and industry standards. The Work shall be functionally sound, technically proficient, developed with structural integrity, and shall be in compliance with all governing laws, regulations, and applicable codes. The CONTRACTOR warrants all Work against defects for a period of 1 (one) year (unless longer guarantees or warranties are provided for elsewhere in the Agreement or at law, in which case the longer periods of time shall prevail) from the date of Substantial Completion, regardless of whether the Work was performed by the CONTRACTOR or any of its subcontractors.

192 If defects are identified during the warranty period, the CONTRACTOR shall repair or replace the defect and cure such defect within 48 (forty eight) hours of receipt of written notice. The CONTRACTOR warrants such repaired or replaced Work for a period of 1 (one) year from the completion of the warranty work or the warranty period specified, whichever is longer. Should the CONTRACTOR fail to timely cure such defects, the TOWN may proceed to perform the work at the CONTRACTOR's expense and may back charge the CONTRACTOR for all costs associated with the work.

193 The CONTRACTOR agrees to require that all of its subcontractors, suppliers, and materialmen provide warranties in their agreements at least sufficient to satisfy the CONTRACTOR's obligations in this Agreement and the CONTRACTOR shall assign all such warranties to the TOWN as a condition precedent to the receipt of Final Payment. The CONTRACTOR agrees to defend and indemnify the TOWN against all fees and costs should the CONTRACTOR fail to obtain the warranty protections required herein.

194 For all equipment that has a manufacturer's warranty, the CONTRACTOR shall assign such warranty to the TOWN. The manufacturer's warranty period shall be concurrent with the CONTRACTOR's warranty to the TOWN. In the event that the equipment manufacturer or supplier is unwilling to provide such a warranty, the CONTRACTOR shall obtain a 2 (two) year equipment warranty commencing at the time of acceptance of the equipment by the TOWN.

ARTICLE 20
SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

20.1 Documents and Samples at the Site. From and after commencement of the Construction of the Work, the CONTRACTOR shall maintain at the site one record copy of the Construction Documents and any and all amendments thereto, in good order and marked, to record changes to the Contract Documents as approved during the construction of the Project. In addition, the CONTRACTOR shall maintain at the site approved shop drawings, product data, samples, and similar required submittals. These shall be provided to the TOWN upon completion of the Work.

20.2 Shop Drawings, Product Data and Samples.

- A. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the CONTRACTOR proposes to conform the construction to the Contract Documents.
- B. The CONTRACTOR shall review and take appropriate action upon Shop Drawings, Product Data, Samples, and similar submittals. The TOWN shall review Shop Drawings, Product Data, Samples, and similar submittals for compliance with the Design Documents and shall provide comments, if any, within 15 (fifteen) days of receiving such documents.
- C. The CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the TOWN's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the CONTRACTOR has specifically informed the TOWN of such deviation at the time of the submittal and the TOWN has given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals to the TOWN for approval thereof.

ARTICLE 21
SAFETY

21.1 The CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees, and licensees of the TOWN and users who may be affected thereby.

21.2 All the Work, whether performed by the CONTRACTOR, its subcontractors or sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliance, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

- A. all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970 and the Trench Safety Act, as amended, and all state, Town of Indian River Shores and, where

the Project is located in a municipality, municipal, rules and regulations now or hereinafter in effect; and

- B. all codes, rules, regulations and requirements of the TOWN and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

21.3 Should the CONTRACTOR fail to provide a safe area for the performance of the Work or any portion thereof, the TOWN shall have the right, but not the obligation, to suspend the Work in the unsafe area. All costs of any nature resulting from the suspension, by whomever incurred, shall be borne by the CONTRACTOR.

21.4 The CONTRACTOR shall provide, or cause to be provided, to each worker on the Work site, the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Work site who fails or refuses to use the same. The TOWN shall have the right, but not the obligation, to order the CONTRACTOR to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order the CONTRACTOR shall promptly comply.

21.5 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the TOWN, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss. If the CONTRACTOR believes that additional Work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, it may make a claim therefore as provided in the Contract Documents.

ARTICLE 22 PROTECTION OF WORK AND PROPERTY

22.1 The CONTRACTOR: (A) shall, throughout the performance of the Agreement, maintain adequate and continuous protection of all completed Work and temporary facilities against loss or damage from whatever cause; (B) shall protect the property of the TOWN and third parties from loss or damage from whatever cause arising out of the performance of the Agreement; and (C) shall comply with the requirements of the TOWN and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to the property. The TOWN, its insurance carriers or representatives, may, but shall not be required to, make periodic patrols of the Work site as a part of its normal safety, loss control, and security programs. In such event, however, the CONTRACTOR shall not be relieved of its aforesaid responsibilities and the TOWN shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the CONTRACTOR by this Agreement.

22.2 Before the CONTRACTOR disposes of any existing improvements or equipment which are to be removed as a portion of the Work and for which disposition is not specifically provided for elsewhere in the Contract Documents, the CONTRACTOR shall contact the TOWN and determine if the removal items are to be salvaged. Items to be salvaged by the TOWN shall be neatly stockpiled or stored in a neat and acceptable manner at the construction site easily accessible to the TOWN. Equipment and materials, which will not be salvaged by the TOWN, shall become the property of the CONTRACTOR to be removed from the site and disposed of in an acceptable manner. To the extent the CONTRACTOR intends to temporarily store materials at a site near or adjacent to the Project site prior to ultimate removal or disposal, the CONTRACTOR must first obtain written authorization from the TOWN, as well as, the property owner.

223 Preservation of Trees. Those trees, which are designated on the Drawings for preservation shall be carefully protected from damage. The CONTRACTOR shall erect and maintain such protections such as barricades, guards, and enclosures as is necessary for the protection of the trees during all construction operations. The CONTRACTOR shall replace any and all trees damaged during construction activities (other than trees specified to be removed) at no expense to the TOWN.

224 Preservation of Private Property. The CONTRACTOR shall exercise extreme care to avoid unnecessary disturbance of private property as applicable. Trees, shrubbery, gardens, lawn and other landscaping that must be removed shall be replaced and replanted to restore the construction easement to the condition existing prior to construction. All soil preparation procedures and replanting operations shall be under the supervision of a nurseryman experienced in such operations. Any vegetation requiring relocation, temporary or otherwise, which is damaged or destroyed, shall be replaced at no cost to the TOWN. The CONTRACTOR shall replace any and all such vegetation damaged during construction activities (other than vegetation specified to be removed) at no expense to the TOWN.

225 Until final acceptance of the Work by the TOWN pursuant to this Agreement, the CONTRACTOR shall have full and complete charge and care of and, except as otherwise provided in this subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including the TOWN-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever.

226 Existing manholes, fire alarms, etc., shall not be obstructed by the CONTRACTOR, unless called for in the Contract Documents. The CONTRACTOR is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written approval from the appropriate governmental entity.

ARTICLE 23 TESTS AND INSPECTIONS

23.1 If any Work (including the work of others) that is to be inspected, tested, or approved is covered without written concurrence of the TOWN, it must be uncovered for observation if requested by the TOWN. Such uncovering shall be at the CONTRACTOR's expense.

23.2 The CONTRACTOR shall be liable for any additional testing or inspections necessitated by defective work performed or materials supplied by the CONTRACTOR or by any of its subcontractors or vendors of any tier.

ARTICLE 24 UTILITY COORDINATION

24.1 The CONTRACTOR shall be responsible for making all necessary arrangements with governmental departments, utilities, public carriers, service companies and corporations owning or controlling roadways, railways, water, sewer, gas, electrical, cable television, telephone, and telegraph facilities such as pavements, tracks, piping, wires, cables, conduits, poles, guys, etc., including incidental structures connected therewith, that are encountered in the Work in order that such items may be properly shored, supported, and protected, or the CONTRACTOR shall be solely responsible for coordinating their relocation. The CONTRACTOR: shall (A) give all proper notices; (B) comply with requirements of such parties in the performance of its the Work; (C) permit entrance of such parties on the Work site in order that they may perform their necessary the Work; and (D) pay all charges and fees made by such parties for this the Work. The CONTRACTOR's attention is called to the fact that there

may be delays on the Project due to the Work to be done by governmental departments, public utilities, and others in repairing or moving poles, conduits, etc. The CONTRACTOR shall cooperate with the above parties, in every way possible, so that the construction can be completed in the least possible time.

242 At all points where the Work constructed by the CONTRACTOR connects to existing utilities and services, the actual the Work of making the necessary connection to the existing service or utility shall be arranged for by the CONTRACTOR at no expense to the TOWN (unless specifically indicated otherwise). Services and utilities included within (but not limited to) this responsibility are roads, ditches, electrical, sewer, mechanical utilities, water, fencing, etc. Connections shall be made at a time that will result in the least possible interference with existing services.

243 FPL calls attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this Project. The CONTRACTOR must visually survey the area and take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment, or object closer to FPL's power lines than the OSHA-prescribed limits. If the CONTRACTOR identifies such, it shall re-design the Project to allow for safe construction given the pre-existing power line location, or make arrangements with FPL to, either deenergize and ground its facilities, or relocate them. The CONTRACTOR must do this before allowing any construction near power lines. If it is necessary for the CONTRACTOR and/or subcontractor to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, the CONTRACTOR or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented. The CONTRACTOR shall be required to complete a "Notification of FPL Facilities" form prior to the commencement of the Work.

ARTICLE 25 HAZARDOUS MATERIALS

The CONTRACTOR shall obtain all required Federal, State, and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage, and use of any explosive or hazardous materials brought onto or encountered within the Project, and at its expense, make good any damage caused by its handling, transporting, storage, and use. The CONTRACTOR will notify the TOWN immediately if explosive or hazardous materials are encountered on the Project site. Transporting explosive or hazardous materials onto the site will require prior written approval from the TOWN. The CONTRACTOR shall maintain and post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of its work. In the event that hazardous material is improperly handled or stored by the CONTRACTOR, its subcontractors, or any employee or agent of any of the aforementioned, which results in contamination of the site, the CONTRACTOR shall immediately notify the TOWN and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the CONTRACTOR's sole cost and expense.

ARTICLE 26 AUDIT

The CONTRACTOR agrees that the TOWN, or any of its duly authorized representatives, shall have access to and the right to examine any and all books, documents, papers, and records of the CONTRACTOR, and may at its option conduct an audit of the CONTRACTOR's financial books and records concerning this the Project. The CONTRACTOR agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto, which are found on the basis of audit examination, to constitute non-allowable costs under this Agreement. The CONTRACTOR shall promptly refund by check payable to the TOWN the amount of such reduction of payments. All required records shall be maintained until the latter of the completion of the audit and all questions arising therefore are resolved, or six (6) years after completion of the Work and issuance of the Final Payment.

ARTICLE 27 PUBLIC RECORDS

27.1 The CONTRACTOR shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law), in connection with this Agreement and shall provide access to public records in accordance with §119.0701, Fla. Stat. and more specifically Contractor shall:

27.1.1 Keep and maintain public records required by the Town to perform the Agreement.

27.1.2. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

27.1.3. 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 Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the Town.

27.1.4. Upon completion of the Agreement, transfer, at no cost, to the Town all public records in possession of the CONTRACTOR or keep and maintain public records required by the Town to perform the Agreement. If the CONTRACTOR transfers all public records to the Town upon completion of the Agreement, 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 Agreement, 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.

27.2 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 CUSTODIAN OF PUBLIC RECORDS AT (772) 231-1771, ext. 200, TOWNCLERK@IRSORES.COM, 6001 STATE ROAD A1A, INDIAN RIVER SHORES, FL 32963.

27.3 Failure to comply with the requirements of this Article shall be deemed a default as defined under the terms of this Agreement and constitute grounds for termination.

ARTICLE 28 ASSIGNMENT

28.1 The TOWN and the CONTRACTOR each binds itself, its officers, directors, qualifying agents, partners, successors, assigns, and legal representatives to the other party hereto and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Agreement.

28.2 The CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of the Agreement or its right, title, or interest in or to the same or any part thereof, or allow legal action to be brought in its name for the benefit of others, without previous written consent of the TOWN and Surety.

28.3 If for any reason the TOWN terminates its Agreement with the CONTRACTOR, the CONTRACTOR hereby assigns this Agreement to the TOWN. The CONTRACTOR shall include in each of its subcontracts language that requires its subcontractors to agree to such assignment and to perform their responsibilities and to fully complete the work required by this Agreement directly for the TOWN.

ARTICLE 29 ATTORNEY'S FEES AND COSTS

29.1 In the event the CONTRACTOR defaults in the performance of any of the terms, covenants, and conditions of this Agreement, the CONTRACTOR agrees to pay all damages and costs incurred by the TOWN in the enforcement of this Agreement, including reasonable attorney's fees, expert fees, court costs, and all expenses, even if not taxable as court costs, including, at the State Court, Appellate Court, and in Bankruptcy Proceedings.

29.2 In cases other than outlined in Section 29.1, the parties expressly agree that each party will bear its own attorney's fees incurred in connection with this Agreement.

ARTICLE 30 NOTICES

All notices under this Agreement shall be in writing and shall be (as elected by the person giving such notice) mailed solely by Certified Mail, Return Receipt Requested, Hand Delivery with Proof of Service, or by Overnight Courier to the TOWN and the CONTRACTOR at the addresses listed on page one of this Agreement. Either party may change its address, for the purposes of this Section, by giving the other party 30 (thirty) days written notice.

ARTICLE 31 RESOLUTION OF CLAIMS AND DISPUTES

31.1 As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the TOWN shall select the mediator, who, if selected solely by the

TOWN, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator.

312 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

313 The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of Agreement as to any issue in any way connected with this Agreement.

**ARTICLE 32
MISCELLANEOUS**

32.1 Taxes. The TOWN is exempt from payment of Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the TOWN, nor is the CONTRACTOR authorized to use the TOWN's Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of all federal, state, and local taxes and fees applicable to the Work and same shall be included in the Contract Price.

32.2 Pledge of Credit. The CONTRACTOR shall not pledge the TOWN's credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of the Agreement.

32.3 Remedies and Choice of Law. This Agreement is to be governed by the law of the state in which the Project is located. Venue for any lawsuit to enforce the terms and obligations of this Agreement shall lie exclusively in Town of Indian River Shores, Florida.

32.4 Entirety of Agreement. All prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein are merged into this Agreement. No modification, amendment, or alteration of this Agreement may be made unless made in writing pursuant to the terms of this Agreement.

32.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, then the remaining provisions survive and are fully binding and enforceable.

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR have executed this Agreement as of the last date written below.

REVIEWED BY

**TOWN OF INDIAN RIVER SHORES
INDIAN RIVER SHORES, FL**

David Knight
Town Engineer

Robert Stabe
Town Manager

CONTRACTOR

**APPROVED AS TO FORM & LEGAL
SUFFICIENCY BY TOWN ATTORNEY**

CONTRACTOR EVALUATION FORM

Report Type: Interim Completion of Construction

Project Name: _____

Project Location: _____

Contractor Name: _____

Contractor Project Manager Name: _____

Contractor Address: _____

Bid #: _____ Contract Dates: _____ to _____

Project Complexity: Difficult Routine

Description of Work:

--

Amount of Basic Contract:	\$	Date of Award:	
Amount of Change Orders:	\$	Original Contract Completion Date:	
Liquidated Damages Assessed:	\$	Revised Contract Completion Date:	
Net Amount Paid to Contractor:	\$	Date Work Accepted:	

Performance Elements	Excellent	Good	Average	Poor
Quality of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timely Performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Effectiveness of Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with Labor Standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with Safety Standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Overall Rating: Excellent (explain) Good Average Poor (explain)

--

This evaluation represents the opinion of the project manager in the Town department responsible for this project.

Preparer's Name: _____ Title: _____

Preparer's Signature: _____ Date: _____

Department Director Signature: _____

Signed copy to: Contractor (upon final payment)
Save document in P:/project_evaluation using naming convention: contractor name MM-YY.

NOTE TO CONTRACTOR: AN OVERALL RATING OF POOR WILL RESULT IN DETERMINATION OF "NON-RESPONSIBLE VENDOR" BY TOWN OF INDIAN RIVER SHORES AND REJECTION OF BID FOR FUTURE PROJECTS.

This is the *front page* of the bid guaranty performance bond issued in compliance with Florida Statute Chapter 255.05



6001 North A1A,
Indian River Shores, FL 32963
(772) 231-1771

Surety Name: _____

Bond Number: _____

Contractor Name: _____

Owner Name: _____

Project Number: _____

Project Description: _____

Project Address: _____

Legal Description of Property: _____

This is the *front page* of the bond. All other pages are subsequent regardless of the pre-printed numbers.



6001 North A1A,
Indian River Shores, FL 32963
(772) 231-1771

BID GUARANTY FORM

PERFORMANCE BOND NO. _____

BY THIS BOND, _____, as Principal and _____ as Surety, are bound to Town of Indian River Shores Council, as Owner and obligee, 10% of the total bid in the sum of \$ _____ for payment of which Principal and Surety bind themselves, their heirs, personal representatives, successors, and assigns, jointly and severally.

WHEREAS, Principal has by written agreement dated ____, 20____, entered into a contract which may be referenced by Project Name ____, Contract # ____, in accordance with Drawings and Specifications prepared by ____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, Principal and Surety agree as follows:

Condition of Bond

1. The condition of this bond is that if Principal:
 - 1.1. Timely and satisfactorily performs, and complies with, all of the terms and conditions of the Contract being incorporated into this Bond by reference, at the times and in the manner prescribed in the Contract;
 - 1.2. Pays Owner all losses, damages (including but not limited to any damages resulting from Principal's delays to the Work), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by the Principal under the Contract; and
 - 1.3. Performs the guaranty/ warranty 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.

Surety's Obligations:

2. The Surety's obligation under this Bond shall arise after:
 - 2.1 The Owner has declared a Contractor Default and formally terminated the Principal's right to complete the contract, and so advised the Surety in writing; and
 - 2.2 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
3. The Surety shall promptly and at the Surety's expense take one of the following actions:
 - 3.1 Arrange for the Principal, with consent of the Owner, to perform and complete the Construction Contract; or
 - 3.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

- 33 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract; arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages incurred in excess of the Balance of the Contract Price, resulting from the Principal's default; or
- 34 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the Circumstances:
 - a After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment to the Owner; or
 - b Deny liability in whole or in part and notify the Owner citing reasons therefore.

4. If the Surety does not proceed as provided in Paragraph 3 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 3.4, and Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce and remedy available to the Owner.

5. After the Owner has terminated the Principal's right to complete the Construction Contract; and if the Surety elects to act under Subparagraph 3.1, 3.2, or 3.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Principal under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages of the Construction Contract, the Surety is obligated without duplication for:

- 5.1 The responsibilities of the Principal to correct defective work and complete the Construction Contract;
- 5.2 Additional legal, design professional and delay costs resulting from the Principal's Default, and resulting from the actions or failure to act of the Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract actual damages caused by delayed performance or non-performance of the Principal.

6. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

7. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located.

8. Notice to Surety, the Owner or the Principal shall be mailed or delivered to the Address shown on the signature page.

9. DEFINITIONS:

- 9.1 Balance of the Contract Price: The total amount payable by the Owner to the Principal under the Construction contract after all proper adjustments have been made, including allowance to the Principal or any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Principal is entitled, reduced by all valid and proper payments made to or on behalf of the Principal under the Construction Contract.
- 9.2 Construction Contract: The agreement between the Owner and the Principal identified on the signature page, including all Contract Documents and changes thereto.
- 9.3 Contractor Default: Failure of the Principal, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this Bond.

DATED on this ____ day of ____, 20 ____.

PRINCIPAL (IF CORPORATION):

PRESIDENT

SECRETARY

STATUTORY PAYMENT BOND FORM



6001 North A1A,
Indian River Shores, FL 32963
(772) 231-1771

BY THIS BOND, _____, as Principal and _____ as Surety, are bound to Town of Indian River Shores Town Council, as Owner and obligee, in the sum of \$__ for payment of which Principal and Surety, as well as, their heirs, personal representatives, successors, and assigns, shall be jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. 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 Contract #_____, _____ (project name), in accordance with Drawings and Specifications prepared by (architect/engineer), all of the terms and conditions of the Contract being incorporated into this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays Town all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings, that Town sustains because of a default by Principal under the Contract, then this Bond is void; otherwise it remains in full force and effect.
3. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this Bond.
4. Principal and Surety expressly acknowledge that any and all provisions relating to liquidated damages contained in the Contract are expressly covered by and made a part of this Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this Bond.
5. Pursuant to Section 255.05, Florida Statutes as amended from time to time, a claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the Work, furnish the Principal with a notice that he or she intends to look to this bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his or her labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the Work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. Notices required or permitted under this section may be served in accordance with Section 713.18, Florida Statutes. An action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or the Surety on this bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action exclusively for recovery of retainage must be instituted against the Principal or the Surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after receipt of final payment (or the payment estimate containing the Owner's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the Principal or Surety, whichever comes last.

DATED on this _____ day of ____, 20__.

PRINCIPAL (IF CORPORATION):

PRESIDENT

SECRETARY

(SEAL)

SURETY:

By: (As Attorney in Fact)
[Attach Copy of Power of Attorney]

**WAIVER OF RIGHT TO CLAIM AGAINST PAYMENT BOND AND
TOWN OF INDIAN RIVER SHORES (OWNER)
(PROGRESS PAYMENT)**



6001 North A1A,
Indian River Shores, FL 32963
(772) 231-1771

Project No:

STATE OF FLORIDA, TOWN OF INDIAN RIVER SHORES

WHEREAS the undersigned has been employed by (1) **CONTRACTOR (AGENT)** to furnish (2) **MATERIALS/ SERVICES** for the Premises known as (3) **PROJECT NAME/ ADDRESS** of which (4) **TOWN OF INDIAN RIVER SHORES COUNCIL, a political subdivision of the State of Florida**, is Owner.

The undersigned does hereby certify and warrant that the following statement of contract account is correct and complete to and including the date hereof, and that all charges and amounts now due to the undersigned and all charges and costs heretofore incurred by or for the undersigned for labor and materials in connection with the above described premises or improvements therein have been paid in full:

Statement of Contract Account

Total Contract Amount (including approved change orders)	\$ _____
Total Net Payments to Date	\$ _____
Total Amount of Retention Properly Withheld	\$ _____

The undersigned, for and in consideration of \$ _____ and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby waive and release any and all claim or right of claim under the statutes of the State of Florida relating to Payment Bonds, on the above described premises and improvements thereon, and on the monies or other considerations due or to become due from the Agent, on account of labor services, material, fixtures or apparatus heretofore furnished to this date by the undersigned for the above described premises. The undersigned further covenants and agrees to save and hold harmless Owner, its agents, partners, lenders, successors, and assignees from any and all liability or expenses on account of any charges or claims for labor and/or materials furnished to or by the undersigned on or for said job on or prior to the date hereof.

Done this _____ day of _____, 20____.

Attest or Witness:

Firm: _____

By: _____

Title: _____

NOTE: All waivers must be for the full amount paid. If the waiver is for a corporation, corporate names should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

**FINAL WAIVER OF RIGHT TO CLAIM AGAINST PAYMENT BOND
AND TOWN OF INDIAN RIVER SHORES (OWNER)**



6001 North A1A,
Indian River Shores, FL 32963
(772) 231-1771

Contract No:

STATE OF FLORIDA, TOWN OF INDIAN RIVER SHORES

WHEREAS the undersigned has been employed by (1) **CONTRACTOR (AGENT)** to furnish (2) **MATERIALS/ SERVICES** for the Premises known as (3) **PROJECT NAME/ ADDRESS** of which (4) **TOWN OF INDIAN RIVER SHORES COUNCIL, a political subdivision of the State of Florida,** is Owner.

The undersigned, for and in consideration of \$ _____, and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby waive (i) rights to claim against the payment bond for labor, services, or materials on the above described premises and improvements thereon, and (ii) any other claim or cause of action of any other nature, whether known or unknown, arising directly or indirectly as a result of labor, services, materials and/or equipment, fixtures, or apparatus heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above described premises. This release includes any claim for monies due, or to become due, from the Owner. Further, the undersigned states that it has not assigned any claim for payment against the Owner, its agents, partners, lenders, successors, and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures, or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless Owner, its agents, partners, lenders, successors, and assignees, from any and all charges, costs, expenses, demands, suits, and legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, materials, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. The undersigned hereby certifies and warrants that it has fully paid for the work, labor, services, materials, and/or equipment provided to it in connection with the above-described improvements. Finally, the undersigned states that it has the right, power, and authority to execute this instrument, which shall be an independent covenant.

Done this _____ day of _____, 20__.

Attest or Witness:

Firm: _____

By: _____

Title: _____

NOTE: All waivers must be for the full amount paid. If the waiver is for a corporation, corporate names should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.