



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
Wednesday, June 3, 2020
6:30 P.M.**

The Commission meeting for Wednesday, June 3, 2020, is scheduled as planned. However, as we stress public safety and social distancing, the meeting will be held though Zoom virtual meeting.

Through the Zoom meeting, attendees can still hear speakers, ask questions, and otherwise participate in the meeting, (where procedurally appropriate) from the comfort of their home. Attendees do NOT need a camera to participate, all they need is a phone. All materials for the meeting are available on the town's website at: <https://townofredingtonbeach.com/agendas-minutes/>. Click on the current Agenda Packet.

If you would like to speak during public forum, please email the clerk at townclerk@townofredingtonbeach.com prior to 3:00 p.m. on June 3rd to be included in public forum.

To join Wednesday's virtual meeting at 6:30 p.m. follow the instructions below.

OPTION 1

Join Zoom Meeting by logging into:

<https://us02web.zoom.us/j/8412665084>

Meeting ID: 841 266 5084

OPTION 2

**CALL THIS NMBER AND ENTER
MEETING ID NUMBER BELOW**

One tap mobile

+1-312-626-6799 841 266 5084# US
(Chicago)

+1-929-205-6099 841 266 5084# US
(New York)

If you encounter any issues joining the Zoom meeting, please call 727-391-3875. Thank you for your flexibility during this time.

Sincerely,

Mayor and Commissioners
And Town Staff



**TOWN OF REDINGTON BEACH
BOARD REGULAR MEETING AGENDA
VIRTUAL MEETING
Wednesday, June 3, 2020
6:30 P.M.**

Town Hall

Assembly Hall

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. PUBLIC FORUM: Non-Agenda Items Only NOTE:** A three minute time limit applies to all comments from the public on non-agenda items only. If a person wishes to address the Board of Commissioners, please fill out a "Speakers Card" and give it to the Town Clerk prior to the start of the meeting.
- 6. REPORTS**

Public Safety	Commissioner Kornijtschuk
Building/Code	Commissioner Will
Public Works/Parks	Commissioner Steiermann
Finance	Vice Mayor Dorgan
Mayor	
Town Clerk	
Attorney Daigneault	
Boards & Committees	
- 7. CONSENT AGENDA**
 - A. Board Regular Meeting Minutes, May 6, 2020**
 - B. Bill List for Day Ending May 15, 2020**
 - C. Bill List for Day Ending May 29, 2020**
- 8. UNFINISHED BUSINESS**
 - A. Tampa Bay Estuary Grant: Lynn Burnett**
 - B. Resolution 2020-05: A Resolution of the Board of Commissioners of the Town of Redington Beach, Florida, Entering into an Agreement with G.A. Nichols, Company for the Completion of the Friendship Park Improvements Project, Project No. ITB 2019-01, and Providing for an Effective Date.**
 - C. Reconfiguration of Dais Discussion**



9. NEW BUSINESS

10. OTHER BUSINESS

11. ADJOURNMENT

Note: The Town of Redington Beach Board of Commissioners meet the First and Third Wednesday of each month beginning at 6:30 p.m.

The Town of Redington Beach Board of Commissioners may take action on any matter during this meeting, including items that are not set forth within this agenda.

Minutes of the Board of Commissioners meeting may be obtained from the Town Clerk's office. The meetings may be recorded. The Minutes are not transcribed verbatim. It is the policy of the Board of Commissioners to make "action minutes" of all meetings

Persons requiring a verbatim transcript of any Town meeting (for purposes of appeal or otherwise) should make arrangements to have a certified Court Reporter, at their own cost and expense, present at the meeting.

Persons who wish to appeal any decision made by the Board of Commissioners with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. (F.S. 286.0105) **Notice Regarding Special Accommodations: (F.S. 286.26)**



TOWN OF REDINGTON BEACH, FLORIDA
BOARD REGULAR MEETING MINUTES
VIRTUAL MEETING
Wednesday, May 6, 2020
6:30 p.m.

Having been duly advertised as required by law, the **Regular Meeting** of the Board of Commissioners of the Town of Redington Beach, Florida, was held on **Wednesday, May 6, 2020, 6:30 p.m.**, in Redington Beach Town Hall at 105 164th Avenue, Redington Beach Florida.

Mayor Simons called the **Regular Virtual Meeting** to order and led the pledge of allegiance.

Roll Call

	Present	Absent
Commissioner Dorgan	X	
Commissioner Steiermann	X	
Commissioner Will	X	
Vice Mayor Kornijtschuk	X	
Mayor Simons	X	
Town Attorney Daigneault	X	
Town Clerk Clarke	X	

Agenda: Mayor Simons requested that the March 31, 2020 minutes be removed from the consent agenda as they had already been approved. He also requested that the audit presentation be moved after reports and before the consent agenda. A motion by Commissioner Steiermann and seconded by Commissioner Will to accept the agenda as amended. No public comment. Motion passed with all ayes to accept the agenda.

Public Forum: None

Reports

Public Safety

- Nothing to Report

Building/Code

- Looked at the outfall pipe at Friendship Park after the recent rainstorm and the outfall pipe is working very well, even during extremely high tides.

Public Works/Parks

- Beaches are back open.

Mayor

- The portion of the Gulf Blvd beautification project has been completed by CPWG. Duke Energy will start on the overhead wires and should be completed by late summer or early fall.

Town Clerk

- Nothing to Report

Town Attorney

- Nothing to Report

Boards and Committees

- Nothing to Report

-

NEW BUSINESS

- A. Clifton Larson Allen Audit Presentation:** Brian Quinlin, Director at Clifton Larson Allen provided a power presentation for the commission. He stated that the audit has a clean report and there were no material deficiencies. A motion by Vice Mayor Dorgan and seconded by Commissioner Will to accept the audit. Mayor Simons thanked the team at Clifton Larson Allen.

CONSENT AGENDA: A motion by Vice Mayor Dorgan and seconded by Commissioner Will to approve the consent agenda as amended. No public comment. Motion passed with all ayes by roll call vote.

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk			X		
Commissioner Steiermann			X		
Commissioner Will		X	X		
Vice Mayor Dorgan	X		X		
Mayor Simons			X		

UNFINISHED BUSINESS

- A. Friendship Park Update: Rejection of All Bids:** Town Planner, Bruce McLaughlin requested that this be tabled to the next meeting on May 20th, as he is waiting for some additional items from Mr. Nichols.
- B. Resolution 2020-05: A Resolution of the Board of Commissioners of the Town of Redington Beach, Florida, Entering into an Agreement with G.A. Nichols, Company for the Completion of the Friendship Park Improvements Project, Project No ITB 2019-01, and Providing for an effective date.** A motion by Commissioner Kornijtschuk and seconded by Commissioner Will to table this until the May 20th meeting as suggested by the town planner. Motion passed with all ayes. No public comment.
- C. Final Reading: Ordinance 2020-05: An Ordinance of the Town of Redington Beach, Florida, Amending Chapter 12 of the Town Code Concerning Nuisances to Correct Inconsistencies and Scrivener's Errors; Providing for Codification, Severability, and an Effective Date.** Attorney Daigneault read the ordinance by title only. He noted that in subsection (a) should be changed to the building code administrator instead of the board of commissioners. A motion by Commissioner Will and seconded by Commissioner Steiermann to adopt Ordinance 2020-05 on its final reading with the correction. Roll Call vote was taken and the motion passed unanimously. No public comment

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk			X		
Commissioner Steiermann		X	X		
Commissioner Will	X		X		
Vice Mayor Dorgan			X		
Mayor Simons			X		

NEW BUSINESS

- A. **Public Works 6 month Review:** Town Clerk reported that Christian Wittman completed his six months probation and has been doing a good job. Commissioner Steiermann reported that Christian is a good fit for the town and makes a recommendation to increase his wage by \$1.00 per hour. A motion by Commissioner Steiermann and seconded by Commissioner Will to increase the pay of Christian Wittman to \$16.00 per hour. Motion passed with all ayes.
- B. **Park Board Appointment:** Town Clerk reported that this position was open due to Jill Gallego resigning from the park board. One application was received from Mr. Kahn. Mr. Kahn spoke on his desire to be on the park board. He stated that he bought his home in 2007 and is now a full time resident. A motion by Commissioner Steiermann and seconded by Commissioner Will to appoint Mr. Kahn to the park board. Motion passed with all ayes.
- C. **Six Month Review of Financials:** Vice Mayor Dorgan reviewed the financials with the town clerk and the town is on tract with the revenues and expenditures for the year.
- D. **Resolution 2020-04: A Resolution of the Town of Redington Beach, Florida Approving and Adopting the Local Mitigation Strategy Developed for Pinellas County; Providing for an Effective Date.** A motion by Commissioner Will and seconded by Commissioner Kornijtschuk to adopt Resolution 2020-04. Town clerk reported that this is to help the town's CRS rating, and the other municipalities within the county are also adopting the Pinellas County Local Mitigation Strategy. Bruce McLaughlin, town planner also noted that if there are monies available, the town would be eligible to receive them. Motion passed with all ayes. No public comment.
- E. **Penny IV discussion:** Mayor Simons reported that the Big C has been working with the county administrator on the 35 million for Penny IV. The town's portion of that would be \$2,165,795.00. The town would also be able to carry forward approximately \$500,000.00 from the current allocation. This would be for undergrounding only.
- F. **Reconfigure Dais:** Mayor Simons reported that the current dais currently could only accommodate three members on the board if the 6' social distancing was used. The dais would need to be reconfigured. On the south wall would be accommodations for the town clerk and the town attorney and on the north wall a place for the town planner and building official. The podium would be centered in front of the commissioner, with a wireless mike. It was also suggested to remove the carpet and put in laminate flooring, as well as painting the walls. The consensus of the commission was to move forward with this.

Other Business

With no further business, a motion was made by Commissioner Kornijtschuk and seconded by Vice Mayor Dorgan to adjourn. Regular meeting was adjourned at 7:03 p.m.

Adopted: , 2020

Missy Clarke, CMC, Town Clerk

INVOICE APPROVAL LIST BY FUND REPORT

Date: 05/15/2020

Time: 12:07 pm

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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 512 Town Clerk							
101-512-512.230	Group Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	737.88
							737.88
101-512-512.231	Life Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	9.75
							9.75
101-512-512.232	Dental Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	63.75
							63.75
101-512-512.409	Con Education/R CHASE CARD SERVICES	14739	Virtual Training-NIEVES	0	05/05/2020	05/05/2020	75.00
							75.00
101-512-512.410	Telephone BRIGHT HOUSE NETWORKS	056775401050920	5/8/2020-6/7/2020	0	05/09/2020	05/09/2020	199.96
							199.96
101-512-512.411	Internet Services BRIGHT HOUSE NETWORKS	056775401050920	5/8/2020-6/7/2020	0	05/09/2020	05/09/2020	131.97
							131.97
101-512-512.420	Postage CHASE CARD SERVICES	2020-04-17	Postage	0	04/17/2020	04/17/2020	100.00
							100.00
101-512-512.421	Stamps.com CHASE CARD SERVICES	2020-05-13	Stamps.com	0	05/13/2020	05/13/2020	17.99
							17.99
101-512-512.440	Utilities- Water/EI DUKE ENERGY	73928-48713	2020-04-28 April 2020	0	04/28/2020	04/28/2020	326.90
							326.90
101-512-512.490	Advertising TIMES PUBLISHING COMPAN	78614	Ordinance 2020-05	0	04/22/2020	04/22/2020	42.80
							42.80
101-512-512.510	Office Supplies WATER BOY INC	2020-05-13	April 2020	0	05/13/2020	05/13/2020	15.80
							15.80
101-512-512.515	Office Copier/Lea KONICA MINOLTA BUSINESS	265784898	4/1/2020-4/30/2020	0	04/30/2020	04/30/2020	129.13
							129.13
101-512-512.520	Office Copier/Us KONICA MINOLTA BUSINESS	265784898	4/1/2020-4/30/2020	0	04/30/2020	04/30/2020	20.52
							20.52
101-512-512.542	Dues & Subscrip I.I.M.C.	2020-05-13	2020-2021 Annual dues-NIEVES	0	05/02/2020	05/02/2020	110.00
	TAMPA BAY TELEPHONE	30884	Maint. June-July-Aug 2020	0	05/01/2020	05/01/2020	99.00
							209.00
Total Dept. Town Clerk:							2,080.45
Dept: 513 Finance & Admin							
101-513-513.230	Group Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	745.13

Date: 05/15/2020

Time: 12:07 pm

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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
							745.13
101-513-513.231	Life Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	9.75
							9.75
101-513-513.232	Dental Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	31.81
							31.81
101-513-513.320	Audit Fee CLIFTON LARSON ALLEN LL	2485008	Audit FY ending 9/30/2019	0	05/07/2020	05/07/2020	5,000.00
							5,000.00
Total Dept. Finance & Admin:							5,786.69
Dept: 514 Legal Counsel							
101-514-514.124	Town Attorney TRASK, DAIGNEAULT, LLP A	3364	April 2020 Town Attorney	0	05/01/2020	05/01/2020	1,697.50
							1,697.50
Total Dept. Legal Counsel:							1,697.50
Dept: 515 Comprehensive Planni							
101-515-515.310	Planning BRUCE MCCLAUGHLIN CONS	2020-05-15	5/1-5/14/2020	0	05/15/2020	05/15/2020	972.00
							972.00
Total Dept. Comprehensive Planning:							972.00
Dept: 521 Law Enforcement							
101-521-521.340	Law Enforcement PINELLAS COUNTY SHERIFI	875629	May 2020-Law Enforcement	0	05/01/2020	05/01/2020	21,899.00
							21,899.00
Total Dept. Law Enforcement:							21,899.00
Dept: 524 Protective Services							
101-524-524.310	Code Enforceme PINELLAS COUNTY SHERIFI	864138	March 2020 Code Enforcement	0	04/02/2020	04/02/2020	1,580.66
							1,580.66
101-524-524.421	Attorney Fees TRASK, DAIGNEAULT, LLP A	3320	April 2020 Code Enf./Stolz	0	05/01/2020	05/01/2020	455.00
							455.00
Total Dept. Protective Services:							2,035.66
Dept: 539 Department of Public V							
101-539-539.230	Group Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	1,467.62
							1,467.62
101-539-539.231	Life Insurance - L FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	19.50
							19.50
101-539-539.232	Dental Insurance FLORIDA MUN INSURANCE	2020-05-13	6/1/2020-6/30/2020	0	05/13/2020	05/13/2020	136.03
							136.03
101-539-539.440	P/W Utilities DUKE ENERGY	31525-72269	05-14-2020 4/8/2020-5/8/2020	0	05/08/2020	05/08/2020	60.84
							60.84

Date: 05/15/2020
Time: 12:07 pm
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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
al Dept. Department of Public Works:							1,683.99
Dept: 541 Roads & Streets							
101-541-541.467	Maint - Street Lig						
	DUKE ENERGY	73928-48713	2020-04-28 April 2020	0	04/28/2020	04/28/2020	2,275.54
							2,275.54
Total Dept. Roads & Streets:							2,275.54
Dept: 572 Parks and Recreation							
101-572-572.430	Utilities						
	DUKE ENERGY	60814-47178	2020-04-23 3/23-4/23/2020	0	04/23/2020	04/23/2020	15.60
	DUKE ENERGY	73928-48713	2020-04-28 April 2020	0	04/28/2020	04/28/2020	40.98
	DUKE ENERGY	54246-18249	2020-05-14 4/8/2020-5/8/2020	0	05/08/2020	05/08/2020	24.69
							81.27
101-572-572.462	Maintenance - Gr						
	HOME DEPOT CREDIT SERV	012727/5615150	Clamps, bolt cutters, cleaners	0	05/12/2020	05/12/2020	109.19
							109.19
101-572-572.510	Maintenance Eqt						
	CHASE CARD SERVICES	2020-05-08	Battery for Lawn Mower	0	05/08/2020	05/08/2020	55.10
	DOUDNA'S SEMINOLE MOW	4068	Tire repair-Mower	0	05/04/2020	05/04/2020	14.00
							69.10
101-572-572.521	Twin Towers Ope						
	FLORIDA MONUMENT	200404-1	2 Bricks Mclroy	0	04/20/2020	04/20/2020	52.00
							52.00
101-572-572.522	Gasoline & Oil						
	WEX BANK	2020-04-10	Unleaded	0	04/10/2020	04/10/2020	43.91
	WEX BANK	868620	Unleaded	0	05/05/2020	05/05/2020	33.69
							77.60
101-572-572.527	Tools & Equipme						
	HOME DEPOT CREDIT SERV	012727/5615150	Clamps, bolt cutters, cleaners	0	05/12/2020	05/12/2020	24.97
							24.97
101-572-572.599	Swim Buoys						
	HOME DEPOT CREDIT SERV	005040/2015016	Swim buoys	0	05/05/2020	05/05/2020	300.92
	JOHN MARSHALL	2020-05-14	10 Swim Buoys-placement	0	05/14/2020	05/14/2020	750.00
	ROLYAN BUOYS	3677704	Swim buoys	0	05/08/2020	05/08/2020	1,524.50
							2,575.42
Total Dept. Parks and Recreation:							2,989.55
Total Fund General Fund:							41,420.38
Fund: 400 Storm Water							
Dept: 535 Storm Water							
400-535-535.441	Utility Mailing Co:						
	PINELLAS COUNTY UTILITIE	90000123	April 2020 Stormwater billing	0	05/12/2020	05/12/2020	598.32
							598.32
Total Dept. Storm Water:							598.32
Total Fund Storm Water:							598.32
Grand Total:							42,018.70

Date: 05/29/2020

Time: 11:46 am

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Town of Redington Beach

Fund/Dept/Acct	Vendor Name	Invoice #	Invoice Desc.	Check #	Due Date	Posting Date	Amount
Fund: 101 General Fund							
Dept: 512 Town Clerk							
101-512-512.510	Office Supplies						
	APEX OFFICE PRODUCTS	2065794-0	Copy paper, tissues	0	05/27/2020	05/27/2020	55.94
	CHASE CARD SERVICES	2020-05-25	ZOOM - June 2020	0	05/25/2020	05/25/2020	14.99
	DELUXE	02047366931	500 Checks	0	05/22/2020	05/22/2020	292.50
	WATER BOY INC	61028815	Water delivery	0	05/29/2020	05/29/2020	43.35
							406.78
						Total Dept. Town Clerk:	406.78
Dept: 515 Comprehensive Planning							
101-515-515.310	Planning						
	BRUCE MCLAUGHLIN CONS	2020-05-29	5/15-5/28/2020	0	05/29/2020	05/29/2020	1,685.30
							1,685.30
						Total Dept. Comprehensive Planning:	1,685.30
Dept: 521 Law Enforcement							
101-521-521.340	Law Enforcement						
	PINELLAS COUNTY SHERIFF	876840	June 2020-Law Enf.	0	06/01/2020	06/01/2020	21,899.00
							21,899.00
						Total Dept. Law Enforcement:	21,899.00
Dept: 572 Parks and Recreation							
101-572-572.460	Maint - Automotiv						
	CHASE CARD SERVICES	118396	Truck repairs-INS	0	05/18/2020	05/18/2020	3,935.36
	CHASE CARD SERVICES	118399	Truck repairs-self pay	0	05/18/2020	05/18/2020	1,749.14
							5,684.50
101-572-572.522	Gasoline & Oil						
	CHASE CARD SERVICES	55492	Diesel-Speedway	0	05/14/2020	05/14/2020	30.34
	WEX BANK	878959	Unleaded	0	05/14/2020	05/14/2020	30.79
	WEX BANK	893180	Unleaded	0	05/27/2020	05/27/2020	48.29
							109.42
						Total Dept. Parks and Recreation:	5,793.92
						Total Fund General Fund:	29,785.00
						Grand Total:	29,785.00

5/6/2020

9236 Payroll
9237 Payroll
9238 Payroll
9239 Payroll

2,259.26
1,353.33
1,298.99
1,043.47

5,955.05

MAYOR SIMONS

COMMISSIONER KORNIJTSCHUK

COMMISSIONER WILL

VICE MAYOR DORGAN

ATTEST:

COMMISSIONER STEIERMANN

Regular Meeting of May 20, 2020

Missy Clarke, CMC, Town Clerk

5/21/2020

9268 Payroll	277.05
9269 Payroll	277.05
9270 Payroll	381.75
9271 Payroll	277.05
9272 Payroll	277.05
9273 Payroll	2,259.26
9274 Payroll	1,353.33
9275 Payroll	1,298.99
9276 Payroll	1,043.47
EFT	3,383.78
Payroll Liabilities	
Retirement	1,161.08

11,989.86

MAYOR SIMONS

COMMISSIONER WILL

COMMISSIONER KORNIJTSCHUK

VICE MAYOR DORGAN

ATTEST:

COMMISSIONER STEIERMANN

Regular Meeting of June 3, 2020

Missy Clarke, CMC, Town Clerk



May 18, 2020

Sent via e-mail to Mayor@townofredingtonbeach.com

Dear Mayor Simons:

Congratulations! The Tampa Bay Estuary Program and Restore America's Estuaries are pleased to inform you that your proposal to the 2020 Tampa Bay Environmental Restoration Fund entitled **Town of Redington Beach Stormwater Retrofits** has been awarded for \$28,875.00. Your project will be managed by the Tampa Bay Estuary Program.

To start the contracting process, please complete the attached scope of work summary and return your completed summary to me. All TBERF projects are required to define measurable environmental benefits for each phase of the project, which must be approved by the TBERF Project Manager as part of the contract. Your scope of work summary should include specific quantitative performance metrics that will be tracked and measured to evaluate the success of the project in achieving stated goals. If your project has more than one phase, measurable resource benefits for each project phase must be clearly defined. Project phase deliverables for early phases of a project may include educational materials, construction, or applied research elements which contribute to the attainment of final measurable resource benefits by the end of the project.

Please return your scope of work summary to me for inclusion as an attachment to the contract at your earliest convenience. We look forward to working with you and your team on this exciting project.

Regards,

A handwritten signature in black ink, appearing to read "Maya Burke".

Maya Burke
Science Policy Coordinator, TBEP
mburke@tbep.org

Elsa Schwartz
Senior Director of Restoration and Administration, RAE
eschwartz@estuaries.org



CONTRACTOR AGREEMENT
BETWEEN
THE TAMPA BAY ESTUARY PROGRAM
AND
THE TOWN OF REDINGTON BEACH
FOR
BOCA CIEGA BAY STORMWATER QUALITY IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this ____ day of August, 2020 by and between the Tampa Bay Estuary Program (TBEP) and the Town of Redington Beach, hereinafter referred to as the TOWN.

W I T N E S S E T H:

WHEREAS, the TOWN desires funding assistance from TBEP for the Boca Ciega Bay Stormwater Quality Improvement Project; and

WHEREAS, TBEP and the TOWN have reached an understanding on the type, extent and quality of services to be rendered and the amount and method of compensation to be paid to the TOWN and the law requires said agreement to be reduced to writing;

NOW, THEREFORE, in consideration of the mutual terms, covenants, representations, and conditions herein contained, the parties agree as follows:

1. Covenant for Services.

The TBEP does hereby wish for the TOWN to perform the services identified in the Scope of Work, Exhibit "A", attached hereto, and the TOWN does hereby agree to perform such services hereinafter referred to as the "PROJECT", for the TBEP upon the terms and conditions set forth in this agreement.

2. Scope of Services.

Upon receipt of written notice to proceed from TBEP, the TOWN shall perform the services necessary to complete the PROJECT in accordance with the TOWN'S Scope of Work set forth in Exhibit "A". Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the TBEP and the TOWN prior to being performed by the TOWN. The TOWN shall be solely responsible for managing and controlling the PROJECT. Once the TBEP accepts the deliverables specified in the Scope of Work, the obligation of the

TOWN is considered complete. The TOWN shall provide to the TBEP, upon completion of the PROJECT, one (1) electronic copy of the Final Project Report in a format approved by the TBEP.

3. Project Managers.

In order to assure proper coordination and review throughout the term of this agreement, TBEP shall designate a Project Manager who shall be the person with whom the TOWN shall communicate. The Project Manager shall be responsible for transmitting and receiving information and will interpret and communicate all TBEP decisions which are pertinent to this agreement to the TOWN. The Project Manager will meet with the TOWN as necessary to provide guidance. The Project Manager for TBEP shall be Maya Burke, 263 13th Avenue South, Suite 350, St. Petersburg, Florida 33701, mburke@tbep.org. The TOWN shall designate James Simons, 105 164th Avenue, Redington Beach, FL 33708, mayor@townofredingtonbeach.com with whom the TBEP Project Manager can coordinate.

4. Consideration.

a) The TBEP will make available to TOWN a sum not to exceed Twenty-Eight Thousand Eight Hundred Seventy Five (\$28,875.00) Dollars.

b) The TOWN shall submit its invoices to the TBEP at specific PROJECT Milestone Dates as provided in Exhibit "A". The TBEP shall review each invoice submitted by the TOWN and TBEP shall make payment to the TOWN in accordance with this Agreement when the TBEP determines that the Measurable Benefit(s) associated with a PROJECT Milestone as set forth in Exhibit "A" Scope of Work have in fact been achieved. The TOWN acknowledges and agrees that it has no right to payment until TBEP determines that the Measurable Benefit(s) for that phase have been achieved. The TBEP may not unreasonably withhold final payment once the deliverables have been approved.

c) The TOWN shall provide TBEP with a quarterly report describing the progress of the PROJECT, adherence to the performance schedules and any developments affecting the PROJECT. The TOWN shall promptly advise the TBEP of issues that arise that may impact the successful and timely completion of the PROJECT.

d) Upon request by the TBEP, the TOWN shall provide the TBEP with copies of reports, models, studies, maps or other documents resulting from the PROJECT.

e) The TOWN shall submit the final invoice for payment to TBEP no more than sixty (60) days after the PROJECT is complete and all deliverables have been delivered. Payments shall be

made to the TOWN within sixty (60) days of receipt of the invoices with adequate supporting documentation to satisfy auditing purposes.

f) Invoices requesting payment must be sent to the Project Manager at the following address:

Maya Burke
Science Policy Coordinator
Tampa Bay Estuary Program
263 13th Avenue South, Suite 350
St. Petersburg, Florida 33701
mburke@tbep.org

g) It is understood by the parties that the TOWN is responsible for the appropriate expenditure of the funds provided to it by the TBEP and shall only expend such funds pursuant to the terms and conditions of this agreement and shall not utilize such funds for any other purpose.

5. Payment Limitations.

Project costs incurred prior to the effective date of this agreement are not fundable under this agreement.

6. Independent Contractor Status.

The TOWN acknowledges that it will provide services contemplated pursuant to this agreement, and that it is neither an agent, employee, partner nor joint venture of or with the TBEP. No work area, supplies, telephone lines, equipment or other resources shall be supplied to the TOWN by TBEP. In addition thereto, both parties acknowledge that this agreement is for their mutual benefit and is not intended to create any third-party beneficiary rights or obligations.

7. Requirements of Section 287.058, Florida Statutes.

The TOWN agrees:

a) To submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.

b) Where applicable, to submit bills for any travel expenses in accordance with Section 112.061, Florida Statutes.

c) To provide units of deliverables, as specified in this Agreement and the Scope of Work, to be received and accepted by the Project Manager prior to payment.

d) To allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the TOWN in conjunction with this Agreement.

8. Contract Data, Documents, Patent, and Copyrights.

All documents and data including draft, interim, and final reports developed, created or written by the TOWN shall be the property of the TOWN. TBEP's use of the data, reports or other work product generated by the TOWN pursuant to this Agreement shall be at the risk of TBEP, and TOWN makes no representations or warranties as to the correctness of the material when used for unrelated purposes.

9. Audits and Records.

The TOWN agrees:

a) To maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the TBEP under this agreement.

b) To assure that these records shall be subject at all reasonable times to inspection, review, audit, or copy by TBEP personnel and other personnel duly authorized by the TBEP.

c) To include these aforementioned audit and record keeping requirements in all subcontracts.

10. Retention of Records.

The TOWN agrees:

a) To retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of three (3) years after termination of this Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings.

b) TBEP shall have full access to and the right to examine any of said records and documents during said retention period.

11. Public Access to Records.

The TOWN acknowledges that all said documents regarding the PROJECT, as well as all of the documents, papers, letters or other material prepared and completed, made or received in conjunction with this Agreement, are subject to the provisions of Chapter 119, Florida Statutes and shall be made available to the public at the TOWN's custodial, to-wit: 105 164th Avenue, Redington Beach, FL, 33708.

12. Funding Recognition.

The TOWN shall ensure that TBERF funding is recognized in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to TBEP approval. If construction is involved, the TOWN shall ensure that signage is placed at the PROJECT site that recognizes funding for this PROJECT provided by the TBERF.

13. Permits and Real Property Rights.

The TOWN shall ensure that all permits, local government approvals and all real property rights necessary to complete the PROJECT are obtained prior to commencing any construction involved in the PROJECT.

14. Period of Agreement.

This agreement shall begin upon execution of this Agreement by both parties and end on December 31, 2022, inclusive, or upon satisfactory completion of the PROJECT, whichever occurs first. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the TOWN, the TOWN'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist.

15. Indemnification.

To the extent permitted by Section 768.28, Florida Statutes, and without waiving sovereign immunity, the TOWN shall be liable for and shall indemnify, defend, and hold harmless the TBEP and all of its officers, agents, and employees from all claims, suits, judgments, or damages, consequential or otherwise and including attorneys' fees and costs, arising from the negligent acts or omissions by the TOWN, its agents, or employees during the performance or operation of this Agreement or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property.

16. Members Liability.

No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future member of the governing body or agent or employee of TBEP or the Board, nor any official executing this agreement shall be liable personally or be subject to any accountability for reasons of execution by the TBEP of this Agreement or any act pertaining thereto.

17. Default.

Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured within thirty (30) days, then the thirty (30) days may be extended at the non-defaulting party's discretion, if the defaulting party is pursuing a cure for the default with reasonable diligence. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

18. Availability of Funds.

The performance by TBEP under this agreement shall be subject to and contingent upon the availability of moneys lawfully appropriated, including funds from the settlement of the case styled the City of Gulfport v. Suncoast Waterkeeper, that are applicable and available to TBEP for the purposes of this agreement.

19. Modification of Agreement.

This agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

20. Assignment.

This agreement may not be assigned by either party without the expressed written consent of the other. The parties each bind itself, its successors, assigns, and legal representatives to the other party hereto and to the successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained herein.

21. Subcontractors.

The TOWN may not subcontract any portion of the work required by this Agreement, except as provided in Exhibit "A", without the written consent of TBEP.

22. Notices.

All notices and other communications received or permitted to be given under the Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or mailed certified mail, return receipt requested, postage prepaid on the date posted and addressed to the appropriate party at the following address or such other address as may be given to the parties:

- a) James Simons
Mayor
Town of Redington Beach
105 164th Avenue
Redington Beach, Florida 33708
mayor@townofredingtonbeach.com
- b) Maya Burke
Science Policy Coordinator
Tampa Bay Estuary Program
263 13th Avenue South, Suite 350
St. Petersburg, Florida 33701
mburke@tbep.org

24. Remedies.

Unless otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the TBEP and the TOWN arising out of, or relating to, this Agreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the TBEP is located.

25. Governing Laws.

Nothing in this Agreement shall be effective if contrary to Florida law.

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida. Venue for any legal action brought hereunder shall be in Pinellas County, Florida.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed, as of the day and year first above-mentioned.

Tampa Bay Estuary Program

BY: _____
Ed Sherwood, Executive Director

Date

Town of Redington Beach

BY: _____
James Simons
Mayor

Date

EXHIBIT A

Scope of Work

Boca Ceiga Bay Stormwater Quality Improvement Project 2020 Tampa Bay Environmental Restoration Fund

Project Summary

This is a water quality improvement project which incorporates green infrastructure techniques. The project is located in the Town of Redington Beach. Activities will include design, permitting and bidding for a stormwater retrofit project. The Town of Redington Beach outfalls directly to Boca Ciega Bay (part of the Tampa Bay Watershed). This project proposes implementation of Best Management Practices (BMPs) and Low Impact Development (LID) designs to reduce pollutant loads to the outfalls located within the 5.15-acre project area.

Neighborhood workshops and public outreach/education will be incorporated into the project activities. The outcomes of the project will reduce sediment and pollutant loadings to Boca Ciega Bay, will reduce flooding impacts during storm events and extreme high tides and increase resiliency in the face of climate change. Additional benefits of the project will be a better informed and educated public. The long-term goal of this project is to establish a successful model which can be used and implemented in the adjacent coastal communities discharging to Boca Ciega Bay and other parts of the Tampa Bay Watershed.

Project Phases

Invoices can only be submitted upon completion of a Phase, and the invoiced amount should match the budgeted amount for that Phase. Invoices will be paid once the Project Manager has confirmed that the measurable benefit and deliverables as defined in the contract scope of work have been received.

1. **Project Phase/Measurable Benefit #1:** Design and Permitting, to be completed within **6 months** of Notice to Proceed.

Phase Summary, including Measurable Benefit: Required permit(s) for water quality treatment of 5.15 acres of high urbanized stormwater runoff and at least 1 neighborhood workshop.

Deliverables for Phase 1:

- Quarterly/Phase Reports
- 30/60/100% Design Plans
- Copies of Required Permits

- Sign-In Sheets from Neighborhood Workshop

Phase 1 Budget: \$20,250.00 total (\$20,250.00 TBERF/\$0 Town)

Project Phase Description: Phase 1 will consist of design, permitting and bidding, while Phase 2 will consist of construction and final certifications. The Phase 1 deliverables include quarterly project reports; a phase completion report with estimated nitrogen load reduction calculations; cost estimates and construction plans will be provided at 30%, 60% and final design; and copies of permits issued.

2. **Project Phase/Measurable Benefit #2:** BMP Implementation, to be completed within **12 months** of Notice to Proceed.

Phase Summary, including Measurable Benefit: Installation of approximately 1,800 linear feet of stormwater infiltration trenches and tide valves on four outfall pipes.

Deliverables for Phase 2:

- Quarterly Reports
- Final Report including:
 - Before, during, and after photographs
 - As-Built Drawings and Final Certifications
- A minimum of 1 presentation to the TBEP TAC, TBRRRC, or similar.

Phase 2 Budget: \$136,125.00 (\$8,625.00 TBERF/\$127,500.00 Town & SWFWMD CFI)

Project Phase Description: Improvements will include installation of approximately 1,800 linear feet of stormwater infiltration trenches along the sides of the streets to collect sediments and pollutants. Tide valves (WaStop Valves) will be installed on the four outfall pipes to prevent flooding from high tides events and to prevent salt water intrusion into the infiltration systems and pipe systems used for conveyance. The combination of the infiltration systems with the WaStop valves provides opportunity for infiltration through the native sands and reduces in excess of 90% the pollutant loads otherwise conveyed to the bay through open pipes. Annual monitoring reports of the outfalls will be obtained prior to and after implementation of the project to observe and document the success of the pollutant removals outlined in the measurable benefits of this project.

Required Match

Source, amount and type (cash or in-kind) of match:

Total Project Cost: \$156,375.00

Town Share (Cash): \$127,500.00
TBERF Share: \$28,875.00

The TOWN's matching funds come from Stormwater Utility Assessments and the pending SWFWMD Cooperative Funding Initiative Grant. Matching contributions will be documented in the final project report.

BRUCE McLAUGHLIN CONSULTING SERVICES, INC.

900 Gulf Boulevard, Suite 303
Indian Rocks Beach, Florida 33785
Phone: 727/595-7634 Cell: 727/244-7311
Email BruceSandy@aol.com

May 26, 2020

RB

Meeting Date: June 3, 2020

Agenda Item: _____

MEMORANDUM

TO: Honorable Mayor and Members, Town of Redington Beach Board of Commissioners

FROM: R. Bruce McLaughlin, AICP, MCIP, Town Planner 

SUBJECT: Friendship Park Improvements: Invitation to Bid 2019-01

EXECUTIVE SUMMARY

The Town received and subsequently rejected four bids – \$50,663, \$58,500, \$108,584, and \$113,431 – for this project. Pursuant to the Town's purchasing policy, Resolution 2016-04, the Town sought an additional bid on the open market. G.A. Nichols Company bid \$44,118. Nichols' bid is now the lowest responsive and responsible bid. **STAFF RECOMMENDS THAT THE TOWN ACCEPT NICHOLS' OPEN MARKET BID AT \$44,118 AND ENTER INTO THE ATTACHED CONTRACT FOR THE WORK.**

BACKGROUND

Owner:	Town of Redington Beach
Location:	Friendship Park, Northwest side 164 th Avenue, W/NW of 16434 Redington Drive
Future Land Use Designation:	Recreation/Open Space
Zoning:	District 1F

The Town purchased Friendship Park in March, 1991, to provide an interior, waterfront, community park. The Town developed the park as a passive park with seating, a pergola for shelter, a kayak launch, landscaping, and other park amenities. After 9/11, a 9/11 memorial was added. Otherwise, Friendship Park has generally just undergone routine maintenance.

THE PROJECT

However, a project has now been designed on behalf of the Town to improve the park.¹ This project includes demolishing the existing pergola,² installing some retaining walls and adding some paving. This project was designed by Architectonics and has received zoning and building approval, subject to the substitution of a new contractor. The project became ready for construction bids in December, 2019.

NOTICE

No notice beyond notice of this Board meeting and inclusion of this matter on the Agenda is required.

AUTHORITY

Pursuant to §§ 4 and 5 of the Town Charter, the Town is governed by the Board of Commissioners which may exercise all powers available to a municipality under the Constitution and laws of the State of Florida. Those powers include making improvements to Town-owned property, including Friendship Park.

Purchasing goods or services for the Town is governed by state law and by Town Resolution 2016-04.

Resolution 2016-04 requires that projects estimated to cost more than \$15,000 be awarded through a competitive bid process. It is staff's opinion that the bid process established in the Invitation to Bid (ITB) and reviewed in the staff report dated December 13, 2019, complies with Resolution 2016-04.

¹ A separate project to relocate a stormwater outflow pipe on the northeast edge of the park property was recently completed by the G. A. Nichols Company.

² Construction of a new pergola will be part of a subsequent project to be bid separately.

Resolution 2016-04 further provides in pertinent part:

Section 5: The commission shall have the power in respect to all purchases or contracts **to reject any and all bids**, to re-advertise for bids **or to make the purchase or contract in the open market after the rejection of all bids**, provided that any such purchase or contract on the open market shall not exceed the price of the lowest responsible bidder of the bids rejected. The commission shall have further power to purchase or make contracts for professional services.

Resolution 2016-04, § 5, [Emphasis Added]

ANALYSIS

The bids received were:

Kloote Contracting	\$49,670.00 ³	90 days
Right of Way Contracting ⁴	58,500.00	30 days
Tampa Contracting	108,584.00	90 days
Eveland Brothers	113,411.00	120 days

All of the bids were in order in terms of signatures, license numbers, forms, etc. ⁵

At its February 5, 2020, meeting, this Board authorized Staff to prepare a formal contract with Kloote at its bid price plus 2% for the performance bond. However, at the initial field meeting with Kloote, Mr. Kloote claimed – incorrectly – that the plans and specifications did not accurately reflect the full scope of the work, and Mr. Kloote declined to honor his bid.

Subsequently, at its March 4, 2020, meeting, the Board was advised that Staff were negotiating with the second lowest bidder, Right of Way Contracting. Those negotiations progressed to the point that there was a draft contract with General and Special Conditions.

³ Subject to Clarifications and Exceptions. With the required performance bond, the Kloote bid is actually \$50,663.40.

⁴ Not on the Pinellas County pre-qualified list.

⁵ Not every bidder returned the debris disposal form but that form is not required until time of payment for the job.

At that point, Right of Way announced their “non-negotiable” refusal to provide a warranty for two key components of the project: the wall and the footer. At this Board’s meeting of April 1, 2020, the Board decided that the required warranties were also “non-negotiable” from the Town’s perspective and instructed Staff to cease negotiations with Right of Way, which was done on April 3, 2020.

Since the third lowest bid is more than \$50,000 higher than the second lowest bid, it is obviously imprudent to proceed with negotiations with the third lowest bidder. Subsequently, at its April 1, 2020 meeting, the Town Board, pursuant to Resolution 2016-04, the Town rejected all the bids it received and instructed staff to negotiate a contract for the work at or below the price of the lowest responsible bidder.

Staff elected to work with Greg Nichols of G. A. Nichols Company, a Clearwater based general contractor. Nichols did the work on the outfall pipe at Friendship Park and was also recently retained to repair two damaged stormwater pipes in the 159 block of Redington Drive. Nichols is known to the Town and his work to date has been satisfactory. Accordingly, Nichols is an appropriate “open market” bidder with which to work, the competitive bidding process having failed to produce an acceptable contract for the work.

Nichols’ bid is attached along with an e-mail supplementing the bid with the cost of a performance bond required by the Town. As noted above, Nichols’ bid, including the performance bond, is \$44,118.00. In the past several weeks, the Nichols contract has been perfected with the provision of the necessary forms and of the required performance bond.

RECOMMENDATION

THE STAFF RECOMMENDS THAT THE BOARD ADOPT PROPOSED RESOLUTION 2020-05 AUTHORIZING AND ENTERING INTO AN AGREEMENT WITH G. A. NICHOLS COMPANY FOR THE FRIENDSHIP PARK IMPROVEMENTS IDENTIFIED IN ITB 2019-01 FOR THE SUM OF \$44,118, AS SET OUT IN THE PROPOSED CONTRACT.

TOWN OF REDINGTON BEACH

Resolution 2020-05

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF REDINGTON BEACH, FLORIDA, ENTERING INTO AN AGREEMENT WITH G. A. NICHOLS, COMPANY FOR THE COMPLETION OF THE FRIENDSHIP PARK IMPROVEMENTS PROJECT, PROJECT NO. ITB 2019-01, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the Town of Redington Beach, Florida has the authority to award a contract for the Friendship Park Improvements project; and

WHEREAS, the Town has rejected all bids received pursuant to Invitation to Bid 2019-01; and

WHEREAS, the Town has elected to proceed with the bid process as provided by Resolution 2016-04, which permits the Town to seek a contract on the open market at a cost less than the lowest bid in the competitive bidding process; and

WHEREAS, G. A. Nichols Company has submitted a competitive bid at a price lower than the lowest bid in the competitive bidding process; and

WHEREAS, pursuant to the award of bid, a contract has been drafted for the execution of said Friendship Park Improvements Project;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF REDINGTON BEACH, FLORIDA AS FOLLOWS:

Section 1: The Board of Commissioners is authorized and enters into an agreement with G. A. Nichols Company for the Friendship Park Improvements in the amount of \$44,118.00

Section 2: Said agreement is attached to this Resolution and made a part thereof.

Section 3: This Resolution shall become effective immediately upon its passage.

Section 4: All Resolutions and parts of Resolutions in conflict herewith are repealed.

PASSED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF REDINGTON BEACH, FLORIDA, IN REGULATION SESSION THIS 20th Day of May, 2020.

1 Attest:

2
3
4 By:

5 Missy Clarke, CMC, Town Clerk

By:

Nick Simons, Mayor

6
7

	Motion	Second	Aye	Nay	Absent
Commissioner Kornijtschuk					
Commissioner Steiermann					
Commissioner Will					
Vice Mayor Dorgan					
Mayor Simons					

8

CONSTRUCTION AGREEMENT

for

STIPULATED SUM

between

**TOWN OF REDINGTON BEACH
(AS OWNER)**

and

**G. A. NICHOLS COMPANY
(AS CONTRACTOR)**

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**CONSTRUCTION AGREEMENT FOR STIPULATED SUM
ITB 2019-01: FRIENDSHIP PARK IMPROVEMENTS**

THIS AGREEMENT ("Agreement") is made and entered into by and between the Town of Redington Beach, a Florida municipal corporation, referred to herein as "Owner", and the firm of G. A. Nichols, Company, incorporated in the State of Florida and registered and licensed to do business in the State of Florida (license # CGCA 17846), referred to herein as "Contractor."

WHEREAS, the Owner intends to construct the improvements to Friendship Park as set forth in ITB 2019-01, the aforementioned improvements being hereinafter referred to and defined as the "Project"; and

WHEREAS, as provided for by Resolution 2016-04, Contractor has, in the open market, submitted its Bid (the "Contractor's Bid") to provide the aforementioned construction services, which bid has been determined to be the lowest responsible and responsive bid.

NOW THEREFORE, Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

1. **Contract Documents.** The Contract Documents consist of this Agreement and all attached Exhibits including Drawings and Specifications (attached hereto as **Exhibit A**), Contractor's Certificate(s) of Insurance (attached hereto as **Exhibit B**), Contractor's Payment & Performance Bond (attached hereto as **Exhibit C**), Standard Forms (attached hereto as **Exhibit D**), the attached General Conditions of the Construction Agreement (attached hereto as **Exhibit E**), Supplementary Conditions (attached hereto as **Exhibit F**), Special Conditions (if any), Addenda issued prior to execution of this Agreement, the Invitation for Bid (including any Instructions to Bidders, Scope of Work, Bid Summary, Supplements, and Technical Specifications), any interpretations issued pursuant to the Invitation for Bid, the Contractor's Bid including only exceptions allowed by Owner, permits, notice of intent to award, Notice to Proceed, purchase order(s), any other documents listed in this Agreement, and Modifications [to include written Amendment(s), Change Order(s), Work Directive Change(s) and Field Directive(s)] issued after execution of this Agreement. These form the Agreement, and are as fully a part of the Agreement as if attached hereto or repeated herein. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. No other documents shall be considered Contract Documents.

2. **Work.** The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

3. **Date of Commencement and Substantial Completion.**

1 **5. Payments.**

2
3 **A. Progress Payments.**

4
5 (1) Based upon Applications for Payment submitted to the Town's Architect/
6 Engineer/Project Manager by the Contractor and Certificates for Payment issued by the
7 Architect/ Engineer/Project Manager, the Owner shall make progress payments on account of the
8 Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
9

10 (2) The period covered by each Application for Payment shall be one calendar month ending
11 on the last day of the month.
12

13 (3) Payments shall be made by Owner in accordance with the requirements of Florida
14 Statutes § 218.735.
15

16 (4) Each Application for Payment shall be based on the most recent schedule of values
17 submitted by the Contractor in accordance with the Contract Documents. The schedule of values
18 shall allocate the entire Contract Sum among the various portions of the Work. The schedule of
19 values shall be prepared in such form and supported by such data to substantiate its accuracy as
20 the Architect/Engineer/Project Manager may require. This schedule, unless objected to by the
21 Owner or Owner's Architect/Engineer/Project Manager, shall be used as a basis for reviewing the
22 Contractor's Applications for Payment.
23

24 (5) Applications for Payment shall indicate the percentage of completion of each portion of
25 the Work as of the end of the period covered by the Application for Payment.
26

27 (6) Subject to other provisions of the Contract Documents, the amount of each progress
28 payment shall be computed as follows:
29

30 I. Take that portion of the Contract Sum properly allocable to completed Work as
31 determined by multiplying the percentage completion of each portion of the Work by the share of
32 the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of
33 ten percent (10.00%). Pending final determination of cost to the Owner of changes in the Work,
34 amounts not in dispute shall be included as provided in Section 3.3.B. of the General Conditions;
35

36 ii. Add that portion of the Contract Sum properly allocable to materials and equipment
37 delivered and suitably stored at the site for subsequent incorporation in the completed
38 construction (or, if approved in advance by the Owner, suitably stored off the site at a location
39 agreed upon in writing), supported by paid receipts, less retainage of ten percent (10.00%);
40

41 iii. Subtract the aggregate of previous payments made by the Owner; and
42

43 iv. Subtract amounts, if any, for which the Architect/Engineer/Project Manager has withheld

1 or nullified an Application for Payment, in whole or in part as provided in Section 3.3.C. of the
2 General Conditions.

3 (7) The progress payment amount determined in accordance with Section 5.A(6) shall be
4 further modified under the following circumstances:
5

6 I. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total
7 payments to the full amount of the Contract Sum, less such amounts as the
8 Architect/Engineer/Project Manager shall determine for incomplete Work, retainage applicable to
9 such work and unsettled claims.
10

11 ii. Add, if final completion of the Work is thereafter materially delayed through no fault of
12 the Contractor, any additional amounts payable in accordance with Section 3.2.B. of the General
13 Conditions.
14

15 (8) Reduction or limitation of retainage, if any, shall be as follows:
16

17 Notwithstanding the foregoing, upon completion of at least 50% of the Work, as determined by
18 Owner and its Architect/Engineer/Project Manager, the Owner shall reduce to five percent (5%)
19 the amount of retainage withheld from each subsequent progress payment.
20

21 (9) Except with the Owner's prior approval, the Contractor shall not make advance payments
22 to suppliers for materials or equipment which have not been delivered and stored at the site.
23

24 A. Final Payment. Final Payment, constituting the entire unpaid balance of the Contract
25 Sum, shall be made by the Owner to the Contractor when:
26

27 (1) The Contractor has fully performed the Work except for the Contractor's responsibility to
28 correct Work as provided in Section 2.4.C. of the General Conditions, and to satisfy other
29 requirements, if any, which extend beyond final payment; and
30

31 (2) A final Application for Payment has been approved by the Architect/Engineer/Project
32 Manager.
33

34 2. Termination or Suspension.

35

36 A. Termination. The Agreement may be terminated by the Owner or the Contractor as
37 provided in Article XIV of the General Conditions.
38

39 B. Suspension by Owner. The Work may be suspended by the Owner as provided in Article
40 XIV of the General Conditions.
41

42 3. Other Provisions.

43

1 A. Substantial Completion Defined. Substantial Completion shall be defined as provided in
2 Article I of the General Conditions. In the event a temporary certificate of occupancy or
3 completion is issued establishing Substantial Completion, the Contractor shall diligently pursue
4 the issuance of a permanent certificate of occupancy or completion.

5
6 B. Project Meetings. There shall be a project meeting, at the jobsite or other location
7 acceptable to the parties, on a regularly scheduled basis. The meeting will be attended by a
8 representative of the Contractor, and Owner's Architect/Engineer/Project Manager. These
9 representatives shall be authorized to make decisions that are not otherwise contrary to the
10 requirements of this Agreement.

11
12 C. Weather. Any rainfall, temperatures below 32 degrees Fahrenheit or winds greater than
13 25 m.p.h. which actually prevents Work on a given day, shall be considered lost time and an
14 additional day added to the Contract Time, provided no work could be done on site, and provided
15 written notice has been submitted to the Owner by the Contractor documenting same.

16
17 D. Shop Drawings; Critical Submittals. In consideration of the impact of timely review of
18 submittals and shop drawings on the overall progress of the Work, it is hereby agreed that the
19 Owner shall cause its agents and design professionals to accomplish the review of any particular
20 "critical" submittals and/or shop drawings and return same to the Contractor within fourteen (14)
21 days.

22
23 E. Applications for Payment. Applications for Payment shall be submitted once monthly at
24 regular intervals otherwise agreed by the parties, and shall include detailed documentation of all
25 costs incurred.

26
27 F. Punch List. Within 30 days after obtainment of Substantial Completion, the Owner shall
28 generate a "punch list" of all work items requiring remedial attention by the Contractor. Within 5
29 days thereafter the Architect/Engineer/Project Manager shall assign a fair value to the punch list
30 items, which sum shall be deducted from the next scheduled progress payment to the Contractor.
31 Upon satisfactory completion of the punch list items, as certified by the
32 Architect/Engineer/Project Manager, the previously-deducted sum shall be paid to Contractor.

33
34 G. Closeout documentation. Within 30 days after obtainment of Substantial Completion and
35 before final payment, Contractor shall gather and deliver to Owner all warranty documentation,
36 all manufacturer's product and warranty literature, all manuals (including parts and technical
37 manuals), all schematics and handbooks, and all as-built drawings.

38
39 H. Governing Provisions; Conflicts. In the event of any conflicts between the Contract
40 Documents attached to this Agreement and this Agreement, the Agreement shall prevail, except
41 that in the event of a conflict between this Agreement and the Specifications or as between the
42 General Conditions and the Specifications, the Specifications shall prevail.

1 I. E-Verify. The Contractor's employment of unauthorized aliens is a violation of § 274(e)
2 of the Federal Immigration and Employment Act. The Contractor shall utilize the U.S.
3 Department of Homeland Security's E-Verify system to verify the employment eligibility of all
4 new employees hired during the term of this Agreement, and shall require the same verification
5 procedure of any Subcontractors authorized by the Owner.
6

7 1. Insurance and Bonding. If and to the extent required by the Invitation for Bid documents,
8 the Contractor shall furnish insurance coverage for (but not necessarily limited to) workers'
9 compensation, commercial general liability, auto liability, excess liability, and builder's risk. The
10 Contractor shall furnish to the Owner all appropriate policies and Certificate(s) of Insurance.
11 The Contractor shall also post a Payment and Performance Bond for the Contract Sum, within
12 ten (10) days following notification of intent to award, and otherwise in accordance with the
13 Invitation for Bid documents.
14

15 2. Independent Contractor. The Contractor acknowledges that it is functioning as an
16 independent contractor in performing under the terms of this Agreement, and it is not acting as an
17 employee of the Owner.
18

19 3. Entire Agreement. This Agreement (inclusive of the Contract Documents incorporated
20 herein by reference) represents the full agreement of the parties.
21

22 4. Amendments; Waivers; Assignment.
23

24 A. Amendments. This Agreement may be amended only pursuant to an instrument in writing
25 that has been jointly executed by authorized representatives of the parties hereto.
26

27 B. Waivers. Neither this Agreement nor any portion of it may be modified or waived orally.
28 However, each party (through its governing body or properly authorized officer) shall have the
29 right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein
30 reserved or intended for the benefit or protection of such party without being deemed or
31 considered to have waived such right or condition for any other case, situation, or circumstance
32 and without being deemed or considered to have waived any other right or condition. No such
33 waiver shall be effective unless made in writing with an express and specific statement of the
34 intent of such governing body or officer to provide such waiver.
35

36 C. Assignment. The rights and obligations of either party to this Agreement may be assigned
37 to a third party only pursuant to a written amendment hereto.
38

39 5. Validity. Each of the Owner and Contractor represents and warrants to the other its
40 respective authority to enter into this Agreement.
41

42 6. Covenant To Defend. Neither the validity of this Agreement nor the validity of any
43 portion hereof may be challenged by any party hereto, and each party hereto hereby waives any

1 right to initiate any such challenge. Furthermore, if this Agreement or any portion hereof is
2 challenged by a third party in any judicial, administrative, or appellate proceeding (each party
3 hereby covenanting with the other party not to initiate, encourage, foster, promote, cooperate
4 with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at
5 their individual sole cost and expense, to defend in good faith its validity through a final judicial
6 determination or other resolution, unless all parties mutually agree in writing not to defend such
7 challenge or not to appeal any decision invalidating this Agreement or any portion thereof.
8

9 7. Disclaimer of Third-Party Beneficiaries; Successors and Assigns. This Agreement is
10 solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by
11 reason hereof accrue upon, to, or for the benefit of any third party. Nothing in this Agreement is
12 intended or shall be construed to confer upon or give any person, corporation, partnership, trust,
13 private entity, agency, or other governmental entity any right, privilege, remedy, or claim under
14 or by reason of this Agreement or any provisions or conditions hereof.
15

16 This Agreement shall be binding upon, and its benefits and advantages shall inure to, the
17 successors and assigns of the parties hereto.
18

19 8. Construction.
20

21 A. Headings and Captions. The headings and captions of articles, sections, and paragraphs
22 used in this Agreement are for convenience of reference only and are not intended to define or
23 limit their contents, nor are they to affect the construction of or be taken into consideration in
24 interpreting this Agreement.
25

26 B. Legal References. All references to statutory sections or chapters shall be construed to
27 include subsequent amendments to such provisions, and to refer to the successor provision of any
28 such provision. References to "applicable law" and "general law" shall be construed to include
29 provisions of local, state and federal law, whether established by legislative action,
30 administrative rule or regulation, or judicial decision.
31

32 9. Severability.
33

34 The provisions of this Agreement are declared by the parties hereto to be severable. In the event
35 any term or provision of this Agreement shall be held invalid by a court of competent
36 jurisdiction, such invalid term or provision should not affect the validity of any other term or
37 provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest
38 extent permitted by law as if such invalid term or provision had never been part of this
39 Agreement; provided, however, if any term or provision of this Agreement is held to be invalid
40 due to the scope or extent thereof, then, to the extent permitted by law, such term or provision
41 shall be automatically deemed modified in order that it may be enforced to the maximum scope
42 and extent permitted by law.
43

1 10. Governing Law; Venue.
2

3 This Agreement shall be governed by the laws of the State of Florida. Venue for any petition for
4 writ of certiorari or other court action allowed by this Agreement shall be in the Circuit Court of
5 the Sixth Judicial Circuit in and for Pinellas County, Florida.
6

7 11. Attorney's Fees and Costs.
8

9 In any claim dispute procedure or litigation arising from this Agreement, each party hereto shall
10 be solely responsible for paying its attorney's fees and costs regardless of the outcome.
11

12 12. Notices.
13

14 All notices, comments, consents, objections, approvals, waivers, and elections under this
15 Agreement shall be in writing and shall be given only by hand delivery for which a receipt is
16 obtained, or certified mail, prepaid with confirmation of delivery requested, or by electronic mail
17 with delivery confirmation. All such communications shall be addressed to the applicable
18 addressees set forth below or as any party may otherwise designate in the manner prescribed
19 herein.

20 To the Owner: Town of Redington Beach
21 Attn: Missy Clarke, Town Clerk
22 Address: 105 164th Avenue
23 Redington Beach, FL 33708
24 Email: townclerk@townofredingtonbeach.com
25

26 To the Contractor: G. A. Nichols Company
27 Attn: Greg Nichols, President
28 Address: 2271 Bellair Road
29 Clearwater, FL, 33764
30 Email: greg@ganichols.com
31

32 Notices, comments, consents, objections, approvals, waivers, and elections shall be deemed
33 given when received by the party for whom such communication is intended at such party's
34 address herein specified, or such other physical address or email address as such party may have
35 substituted by notice to the other.
36

37 13. Public Records Law.
38

39 The Contractor shall comply with Florida Statutes § 119.0701, and specifically shall:
40

41 A. Keep and maintain public records required by the Owner to perform the services called
42 for in this Agreement.
43

1 B. Upon request from the Owner's custodian of public records, provide the Owner with a
2 copy of the requested records or allow the records to be inspected or copied within a reasonable
3 time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as
4 otherwise provided by law.
5

6 C. Ensure that public records that are exempt or confidential and exempt from public records
7 disclosure requirements are not disclosed except as authorized by law for the duration of this
8 Agreement and following completion of this Agreement if the Contractor does not transfer the
9 records to the Owner.
10

11 D. Upon completion of this Agreement, transfer, at no cost, to the Owner all public records
12 in possession of the Contractor or keep and maintain such public records. If the Contractor
13 transfers all public records to the Owner upon completion of the Agreement, the Contractor shall
14 destroy any duplicate public records that are exempt or confidential and exempt from public
15 records disclosure requirements. If the Contractor keeps and maintains public records upon
16 completion of the Agreement, the Contractor shall meet all applicable requirements for retaining
17 public records. All records stored electronically must be provided to the Owner, upon request
18 from the Owner's custodian of public records, in a format that is compatible with the information
19 technology systems of the Owner.
20

21 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
22 CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE
23 PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S
24 CUSTODIAN OF PUBLIC RECORDS AT (727) 391-3875; OR EMAIL AT
25 townclerk@townofredingtonbeach.com.
26

27 14. Exhibits.
28

29 Exhibits to this Agreement are as follows:

- 30 Exhibit A – Plans and Specifications
- 31 Exhibit B – Certificate(s) of Insurance
- 32 Exhibit C – Performance Bond
- 33 Exhibit D – Standard Forms
- 34 Exhibit E – General Conditions
- 35 Exhibit F – Special Conditions
36

37 WHEREFORE, the parties hereto have executed this Agreement as of the date last executed
38 below.
39

40 G. A. Nichols Company

Town of Redington Beach

41
42 By: _____
43 President

By: _____
Mayor Date

ARCHITECTONICS
architects • planners

11000 N. W. 11th Ave., Suite 100
Miami, FL 33150
Tel: 305-555-1234
Fax: 305-555-1235
www.architectonics.com

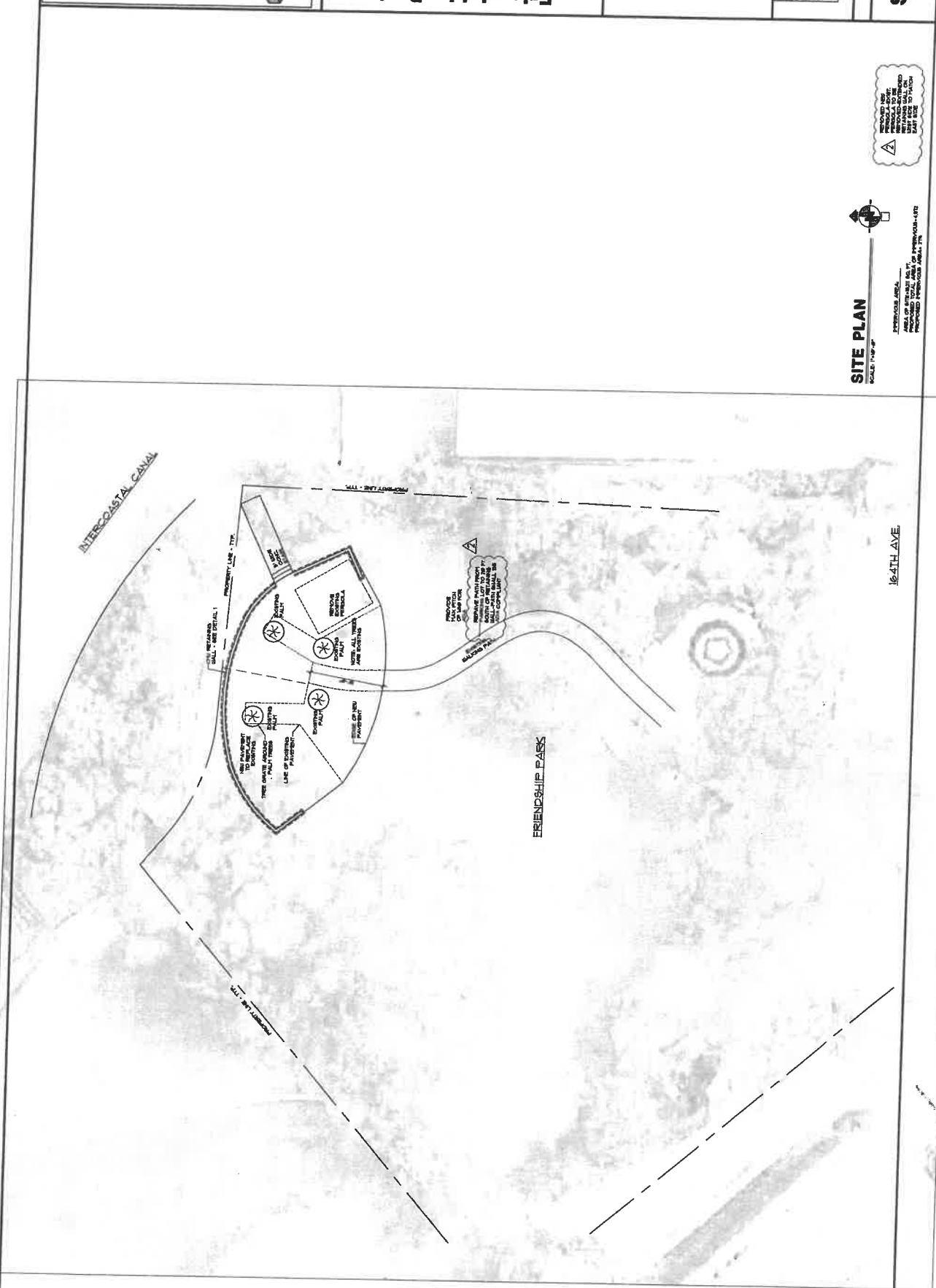
Friendship Park
180-264 164th Ave
Redington Beach, 164th Av
Florida

Site Plan

Project No. 00-0-044C
Date July 28, 2018
Scale 1" = 40'

sp1.1

NOTES: SEE SP1.1 FOR ADDITIONAL INFORMATION.
ALL DISTANCES ARE APPROXIMATE.
ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.



SITE PLAN
SCALE: 1" = 40'

EXTERNAL AREA
AREA OF SITE PLAN IS 1.1
PROPOSED TOTAL AREA OF IMPROVEMENTS IS 1.1

Application for Payment

APPLICATION FOR PAYMENT

Project: _____

From: _____ To: _____

Request No.: _____

Purchase Order _____

County Bid No.: _____

Consultant: _____

CONTRACT PAYMENT SUMMARY

Original Contract Amount: _____

Change Order(s): _____

Change order summary:

Number	Date Approved	Additive	Deductive
SUBTOTALS:		\$ -	\$ -

Net change order subtotal (Additive less Deductive): _____

Current Contract Amount (CCA): (Original Amount + Change Order(s)) _____

	Previous Status	Total WIP
Value of the Work in Place (WIP)	\$ -	\$ -
Value of Stored Materials	\$ -	\$ -
Total Earned (\$ and % of CCA)	\$ -	\$ -
Retainage (\$ and % of CCA)	\$ -	\$ -

Net Earned (Total earned minus retainage) _____

TOTAL PREVIOUS PAYMENTS _____

-

AMOUNT DUE THIS PAYMENT (Net Earned minus Previous Payments) _____

CONTRACTOR'S AFFIDAVIT OF NOTICE

the Amount Due this Payment shown is now due.

NOTARY:

CONTRACTOR:

State of Florida, County of _____

Name of person authorized to sign Affidavit of Notice

Sworn to (or affirmed) and subscribed before me

this _____ day of _____ by

TITLE

(Name of person giving notice)

Contractor name, address and telephone no.:

(Signature of Notary Public - State of Florida)

Print, Type or Stamp Commissioned Name of
Notary Public:

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____

VERIFICATION, RECOMMENDATION, CONCURRENCES AND APPROVALS

(Signatures)

(Date)

Quantities verified by:

Consultant/Engineer:

Project Management:

Department Head:

Payment approved by:

Contract Change Order

CONTRACT CHANGE ORDER

(for Total Contract Adjusted Amount Greater than \$1,000,000)

PROJECT:

**Change
Order No.:**

**Contract
Amount
(Present
Value)**

**Project
Number:**

NO. OF ITEM

DESCRIPTION OF ITEM AND CHANGE

DECREASE

INCREASE

BY EXECUTION OF THIS CHANGE ORDER THE CONTRACTOR
AGREES THAT ALL CLAIMS FOR ADDITIONAL CONTRACT
TIME AND FEES FOR THE ITEMS IN THIS CHANGE ORDER
HAVE BEEN SATISFIED.

**TOTAL
DECREASE:**

**TOTAL
INCREASE:**

Contractor:

Address:

City / State:

Contractor

Signature:

Date:

THE NET CHANGE OF \$

ADJUSTS THE CURRENT
CONTRACT AMOUNT FROM

TO

____ CALENDAR DAYS
ARE ADDED TO THE
SCHEDULE WHICH
CHANGES
THE FINAL COMPLETION
DATE TO
[ENTER MONTH DAY, YEAR]

RECOMMENDATION, CONCURRENCES AND APPROVALS

	SIGNATURES	DATE
Consultant / Engineer:	_____	_____
Project Manager:	_____	_____

JUSTIFICATION FOR CHANGE	Change Order No:
	Project Number:
1. NECESSITY FOR CHANGE:	

2. Is change an alternate bid? (If yes, explain)	

3. Does change substantially alter the physical size of the project? (If yes, explain)	

4 Effect of this change on other 'prime' contractors?	

5 Has the Surety and insurance company been notified, if applicable?	
CONTRACTOR RESPONSIBILITY	

Administrative Contract Adjustment

ADMINISTRATIVE CONTRACT ADJUSTMENT

Contract
Adjustment
No.:

Contract Amount:

Project
Name:

Project Number:

ITEM	DESCRIPTION OF ITEM AND CHANGE	DECREASE	INCREASE
	BY EXECUTION OF THIS ADMINISTRATIVE CONTRACT ADJUSTMENT, THE CONTRACTOR AGREES THAT ALL CLAIMS FOR ADDITIONAL CONTRACT TIME AND FEES FOR THE ITEMS IN THIS ADMINISTRATIVE CONTRACT ADJUSTMENT HAVE BEEN SATISFIED.		
		TOTAL DECREASE:	TOTAL INCREASE:

Contractor:

Address:

City/State:

Contractor
Signature:

THE NET CHANGE OF

ADJUSTS THE CURRENT CONTRACT
AMOUNT FROM TO

CALENDAR DAYS ARE ADDED
TO THE SCHEDULE WHICH CHANGES
THE FINAL COMPLETION DATE FROM
TO

RECOMMENDATION, CONCURRENCES AND APPROVALS

SIGNATURES

DATE

Consultant / Engineer:

Project Manager:

JUSTIFICATION FOR CHANGE

Change Order No:

Project Number:

1. NECESSITY FOR CHANGE:

2. Does this change alter the scope of work? (If yes, explain)

3. It is the Contractor's responsibility to notify the bonding agency. Has the bonding agency been notified?

Certificate of Substantial Completion

CERTIFICATE OF SUBSTANTIAL COMPLETION (S.C.)	CHECK ONE:	
	Partial	Total
Project Title:	Date Submitted:	
Contractor Data: Name: Address: City/State/Zip:	Project No:	
	S. C. Date (Proposed)	

If the "Partial" completion box above is checked, the following description applies to the work for which substantial completion is being sought. Otherwise, the work described in the Contract including approved changes, if any, is certified to be substantially complete:
(Description of the portion of work substantially completed):

(USE CONTINUATION SHEETS IF NECESSARY)

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item does not alter the Contractor's responsibility to complete all of the contract work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by the Contractor within __days of substantial completion. The approved substantial completion date is: _____

Contractor Signature	Date	Engineer's Approval	Date
Printed Name and Title		Printed Name and Title	

The Contractor shall be responsible for security, operation, safety, maintenance, HVAC, insurance and warranties in accordance with the Contract. The County will assume the responsibility for paying the cost of electrical power from midnight of the date of Engineer's approval as indicated above.

ATTACH THE INSPECTOR'S FINAL WALKTHROUGH LIST OF DEFICIENCIES.

**FINAL RECONCILIATION, WARRANTY PERIOD DECLARATION
AND CONTRACTOR'S AFFIDAVIT**

Project Title:	Date Submitted:
Contractor Data: Name: Address: City/State/Zip:	Project No.: Warranty (months):

This Final Reconciliation is for the work performed for Owner by the named contractor, hereinafter called CONTRACTOR, pursuant to the contract _____ as amended, and acts as an addendum thereto.

It is agreed that all quantities and prices in the attached Final Pay Estimate No. _____ are correct and that the amount of \$ _____ including retainage is due CONTRACTOR, that no claims are outstanding as between the parties, and that the stated sum represents the entirety of monies owed the CONTRACTOR.

It is further agreed that the warranty period for CONTRACTOR'S work pursuant to the Agreement from _____ to _____.

As (title) _____ for CONTRACTOR, I have authority to bind CONTRACTOR and as such make this final reconciliation, declaration and affidavit purpose of inducing the Owner make final payment to CONTRACTOR for work at/upon

_____ under said contract:

CONTRACTOR has paid all social security and withholding taxes accrued in connection with this construction project.

CONTRACTOR has paid all workers' compensation and other insurance premiums in connection with this construction project.

CONTRACTOR has paid for all required permits in connection with this construction

All laborers, material, men, suppliers, subcontractors and service professionals who worked for and supplied materials, equipment and/or services to the CONTRACTOR under the Construction contract have been paid in full.

(Affiant Signature)

**STATE OF FLORIDA
COUNTY OF PINELLAS**

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and Court aforesaid to take acknowledgements, personally appeared _____, who is [

personally known to me or [] provided _____ as identification, and w
executed the foregoing Affidavit, acknowledged before me that he voluntarily executed the same a
did take an oath.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2020.

My Commission Expires:

Seal:

Signature of Notary

Printed Name

GENERAL CONDITIONS
of the
CONSTRUCTION AGREEMENT

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GENERAL CONDITIONS
ARTICLE I
DEFINITIONS

1.1 Definitions. For purposes of the Contract Documents, the following terms shall have the following meanings.

A. Acceptance: The acceptance of the Project into the Owner's operating public infrastructure.

B. Application for Payment: The form approved and accepted by the Owner, which is to be used by Contractor in requesting progress payments or final payment and which is to include such supporting documentation as is required by the Contract Documents.

C. Architect/Engineer: Auch Professional Engineer, Licensed Architect, or other Professional Project Manager as the Owner may retain to provide it assistance with the Project. As used herein, Architect/Engineer shall also include a Project Manager designated by Owner, unless Florida law requires the act only to be done by a licensed architect or engineer, in which case the term shall only refer to such professionals.

D. Change Order: A written order signed by the Owner, the Architect/Engineer and the Contractor authorizing a change in the Project Plans and/or Specifications and, if necessary, a corresponding adjustment in the Contract Sum and/or Contract Time, pursuant to Article V.

E. Compensable Delay: Any delay beyond the control and without the fault or negligence of the Contractor resulting from Owner-caused changes in the Work, differing site conditions, suspensions of the Work, or termination for convenience by Owner.

F. Contractor's Personnel: The Contractor's key personnel designated by Contractor.

G. Construction Services: The Construction Services to be provided by Contractor pursuant to Section 2.4, in accordance with the terms and provisions of the Contract Documents.

H. Construction Team: The working team established pursuant to § 2.1.B.

I. Contract Sum: The total compensation to be paid to the Contractor for Construction Services rendered pursuant to the Contract Documents, as set forth in Contractor's Bid (or Guaranteed Maximum Price Addendum), unless adjusted in accordance with the terms of the Contract Documents

J. Contract Time: The period during which all Construction Services are to be completed pursuant to the Contract Documents, to be set forth in the Project Schedule.

K. Days: Calendar days except when specified differently. When time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or legal holiday, such day will be omitted from the computation.

L. Defective: When modifying the term "Work", referring to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or that does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or that has been damaged prior to Owner's approval of final payment (unless responsibility for the protection thereof has been assumed by Owner).

M. Excusable Delay: Any delay beyond the control and without the negligence of the Contractor, the Owner, or any other contractor caused by events or circumstances such as, but not limited to, acts of God or of a public enemy, fires, floods, freight embargoes, acts of government other than Owner or epidemics. Labor disputes and above average rainfall shall give rise only to excusable delays.

N. Field Directive: A written order issued by Owner which orders minor changes in the Work not involving a change in Contract Time, to be paid from the Owner's contingency funds.

O. Final Completion Date: The date upon which the Project is fully constructed and all Work required on the Project and Project Site is fully performed as verified in writing by the Owner.

P. Float or Slack Time: The time available in the Project Schedule during which an unexpected activity can be completed without delaying substantial completion of the Work.

Q. Force Majeure: Those conditions constituting excuse from performance as described in and subject to the conditions described in Article XII.

R. Inexcusable Delay: Any delay caused by events or circumstances within the control of the Contractor, such as inadequate crewing, slow submittals, etc., which might have been avoided by the exercise of care, prudence, foresight or diligence on the part of the Contractor.

S. Non-prejudicial Delay: Any delay impacting a portion of the Work within the available total Float or Slack Time and not necessarily preventing Substantial Completion of the Work within the Contract Time.

T. Notice to Proceed: Written notice by Owner (after execution of Contract) to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work.

U. Owner: The Town of Redington Beach, a Florida municipal corporation.

V. Owner's Project Representative: The individual designated by Owner to perform those functions set forth in Section 7.8.

W. Payment and Performance Bond: The Payment and Performance Bond security posted pursuant to Section 2.4.Y to guarantee payment and performance by the Contractor of its obligations hereunder.

X. Permitting Authority: Any applicable governmental authority acting in its governmental and regulatory capacity which is required to issue or grant any permit, certificate, license or other approval which is required as a condition precedent to the commencement or approved of the Work, or any part thereof, including the building permit.

Y. Prejudicial Delay: Any excusable or compensable delay impacting the Work and exceeding the total float available in the Project Schedule, thus preventing completion of the Work within the Contract Time unless the Work is accelerated.

Z. Pre-operation Testing: All field inspections, installation checks, water tests, performance tests and necessary corrections required of Contractor to demonstrate that individual components of the Work have been properly constructed and do operate in accordance with the Contract Documents for their intended purposes.

AA. Procurement Ordinance: Those portions of the Redington Beach Code of Laws and individual Resolutions of the Board of Commissioners governing procurement, as amended from time to time.

BB. Progress Report: A report to Owner that includes all information required pursuant to the Contract Documents and submitted in accordance with Section 2.4.EE, hereof.

CC. Project: The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner and by separate contractors. For the purposes of the Contract Documents, the term Project shall include all areas of proposed improvements and all areas which may reasonably be judged to have an impact on the Project.

DD. Project Costs: The costs incurred by the Contractor to plan, construct and equip the Project and included within, and paid as a component of, the Contract Sum.

EE. Project Manager: Subject to the prior written consent of Owner, the individual designated to receive notices on behalf of the Contractor, or such other individual designated by the Contractor, from time to time, pursuant to written notice in accordance with the Contract Documents. The Project Manager may also be assigned by Owner to make decisions in the absence of an assigned Architect/Engineer.

FF. Project Plans and Specifications: The one hundred percent (100%) construction drawings and specifications prepared by the Architect/Engineer, and any changes, supplements, amendments or additions thereto approved by the Owner, which shall also include any construction drawings and final specifications required for the repair or construction of the Project, as provided herein.

GG. Project Schedule: The schedule and sequence of events for the commencement, progression and completion of the Project, developed pursuant to Section 2.3., as such schedule may be amended as provided herein.

HH. Project Site: The site depicted in the Project Plans and Specifications, inclusive of all rights of way, temporary construction easements or licensed or leased sovereign lands.

II. Punch List Completion Date: The date upon which all previously incomplete or unsatisfactory items, as identified by the Contractor, the Architect/Engineer and/or the Owner are completed in a competent and workmanlike manner, consistent with standards for Work of this type and with good building practices in the State of Florida.

JJ. Subcontractor: Any individual (other than a direct employee of the Contractor) or organization retained by Contractor to plan, construct or equip the Project pursuant to Article IV.

KK. Substantial Completion and Substantially Complete: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy or completion and other permits, approvals, licenses, and other documents from any governmental authority which are necessary for the beneficial occupancy of the Project or any designated portion thereof.

LL. Substantial Completion Date: The date on which the Project or designated portion thereof is deemed to be Substantially Complete, as evidenced by receipt of (i) the Architect/Engineer's certificate of Substantial Completion, (ii) written Acceptance of the Project by the Owner, and (iii) approvals of any other authority as may be necessary or otherwise required.

MM. Substitute: Materials or equipment offered by the Contractor as an alternative to that set forth in the Project Plans and Specifications, where (i) the Project Plans and Specifications do not authorize an "approved equal", or (ii) the Owner, in its reasonable discretion, determines that a pre-authorized "approved equal" will result in a substantial change to the Work because of cost, quality or other difference in comparison to the materials or equipment specified.

NN. Unit Price Work: Work to be paid for on the basis of unit prices.

OO. Work: The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

PP. Work Directive Change: A written directive to Contractor, issued on or after the effective date of the Agreement pursuant to Section 5.8 and signed by the Owner's Project Representative, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or responding to emergencies.

ARTICLE II

RELATIONSHIP AND RESPONSIBILITIES

21 Relationship between Contractor and Owner. The Contractor accepts the relationship of trust and confidence established with Owner pursuant to the Contract Documents. The Contractor shall furnish its best skill and judgment and cooperate with Owner and Owner's Project Representative in furthering the interests of the Owner. The Contractor agrees to provide the professional services required to complete the Project consistent with the Owner's direction and the terms of the Contract Documents. All services provided hereunder by Contractor, either directly or through Subcontractors, shall be provided in accordance with sound construction practices and applicable professional construction standards.

A. Purpose. The purpose of the Contract Documents is to provide for the provision of construction services for the Project on the Project Site by the Contractor, and construction of the Project by the Contractor in accordance with the Project Plans and Specifications. The further purpose of the Contract Documents is to define and delineate the responsibilities and obligations of the parties to the Contract Documents and to express the desire of all such parties to cooperate to accomplish the purposes and expectations of the Contract Documents.

B. Construction Team. The Contractor, Owner and Architect/Engineer and/or Project Manager shall be called the "Construction Team" and shall work together as a team commencing upon full execution of the Contract Documents through Substantial Completion. As provided in Section 2.2, the Contractor and Architect/Engineer/Project Manager shall work jointly through completion and shall be available thereafter should additional services be required. The Contractor shall provide leadership to the Construction Team on all matters relating to construction. The Contractor understands, acknowledges and agrees that the Architect/Engineer/Project Manager shall provide leadership to the Construction Team on all matters relating to design.

C. Owner's Reliance on Bid (or Guaranteed Maximum Price Addendum). The Contractor acknowledges that the representations, statements, information and pricing contained in its Bid (or Guaranteed Maximum Price Addendum if applicable) have been relied upon by the Owner and have resulted in the award of this Project to the Contractor.

22 General Contractor Responsibilities. In addition to the other responsibilities set forth herein, the Contractor shall have the following responsibilities pursuant to the Contract Documents:

A. Personnel. The Contractor represents that it has secured, or shall secure, all personnel necessary to perform the Work, none of whom shall be employees of the Owner. Primary liaison between the Contractor and the Owner shall be through the Owner's Project Representative and Contractor's Project Manager. All of the services required herein shall be performed by the Contractor or under the Contractor's supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

B. Cooperation with Architect/Engineer. The Contractor's services shall be provided in conjunction with the services of the Architect/Engineer/Project Manager. In the performance of professional services, the Contractor acknowledges that time is critical for Project delivery. The Contractor acknowledges that timely construction utilizing the services of an Architect/Engineer and a Contractor requires maximum cooperation between all parties.

C. Timely Performance. The Contractor shall perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work, in accordance with the Project Schedule. Verification of estimated Project Schedule goals will be made as requested by the Owner.

D. Duty to Defend Work. In the event of any dispute between the Owner and any Permitting Authority that relates to the quality, completeness or professional workmanship of the Contractor's services or Work, the Contractor shall, at its sole cost and expense, cooperate with the Owner to defend the quality and workmanship of the Contractor's services and Work.

E. Trade and Industry Terminology. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or at the time of execution of the Guaranteed Maximum Price Addendum), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner or Contractor, or any of their agents or employees from those set forth in the Contract Documents. Computed dimensions shall govern over scaled dimensions.

23 Project Schedule. The Contractor, within ten (10) days after being awarded the Agreement, shall prepare and submit for the Owner's and Architect/Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of Work.

A. The Project Schedule shall show a breakdown of all tasks to be performed, and their relationship in achieving the completion of each phase of Work, subject to review of Owner and Architect/Engineer and approval or rejection by Owner. The Project Schedule shall show, at a minimum, the approximate dates on which each segment of the Work is expected to be started and finished, the proposed traffic flows during each month, the

anticipated earnings by the Contractor for each month and the approximate number of crews and equipment to be used. The Project Schedule shall include all phases of procurement, approval of shop drawings, proposed Change Orders in progress, schedules for Change Orders, and performance testing requirements. The Project Schedule shall include a construction commencement date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and whether conditions.

- B. The Project Schedule shall serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be used to verify Contractor performance and to allow the Owner's Project Representative to monitor the Contractor's efforts.
- C. The Project Schedule may be adjusted by the Contractor pursuant to Article V. The Owner shall have the right to reschedule Work provided such rescheduling is in accord with the remainder of terms of the Contract Documents.
- D. The Contractor shall prepare a submittal schedule, promptly after being awarded the Agreement and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect/Engineer/Project Manager's approval. The Architect/Engineer/ Project Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect/Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
- E. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect/Engineer.

24 Construction Services. The Contractor shall provide the following Construction Services:

A. Construction of Project. The Contractor shall work from the receipt of a Notice to Proceed through the Substantial Completion of the Project in accordance with the terms of the Contract Documents to manage the construction of the Project. The Construction Services provided by the Contractor to construct the Project shall include without limitation (1) all services necessary and commensurate with established construction standards, and (2) all services described in the Invitation for Bid (or Request for Proposal) and the Bid (or Guaranteed Maximum Price Addendum if applicable).

B. Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the effective date of the Agreement. Contractor shall start to perform the Work on the date specified in the Notice to Proceed, but no Work shall be done at the site prior to the issuance of the Notice to Proceed.

C. Quality of Work. If at any time the labor used or to be used appears to the Owner as insufficient or improper for securing the quality of Work required or the required rate of progress, the Owner may order the Contractor to increase its efficiency or to improve the character of its Work, and the Contractor shall conform to such an order. Any such order shall not entitle Contractor to any additional compensation or any increase in Contract Time. The failure of the Owner to demand any increase of such efficiency or any improvement shall not release the Contractor from its obligation to secure the quality of Work or the rate of progress necessary to complete the Work within the limits imposed by the Contract Documents. The Owner may require the Contractor to remove such personnel as the Owner deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment on the Project is deemed to be contrary to the Owner's interest. The Contractor shall provide good quality workmanship and shall promptly correct construction defects without additional compensation. Acceptance of the Work by the Owner shall not relieve the Contractor of the responsibility for subsequent correction of any construction defects.

D. Materials. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Architect/Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instruction of the applicable supplier except as otherwise provided in the Contract Documents.

E. Accountability for Work. The Contractor shall be solely accountable for its Work, including plans review and complete submittals. The Contractor shall be solely responsible for means, methods, techniques, sequences and procedures of construction. If a specific means, method, technique, sequence or procedure of construction is required by the Contract Documents, the Contractor may utilize an alternative means, method, technique, sequence or procedure acceptable to the Architect/Engineer if the Contractor submits sufficient information to allow the Architect/Engineer to determine that the alternative is equivalent to that required by the Contract Documents.

F. Contract Sum. The Contractor shall construct the Project so that the Project can be built for a cost not to exceed the Contract Sum.

G. Governing Specifications. The Project shall be constructed in accordance with applicable Owner design standards and guidelines. In the absence of specified Owner design standards or guidelines, the Architect/Engineer shall use, and the Contractor shall comply with, the most recent version of all applicable design standards. In general, the Project shall be constructed by the Contractor in accordance with applicable industry standards. The Contractor shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications or other mandates relevant to the Project or the services to be performed.

H. Adherence to Project Schedule. The development and equipping of the Project shall be undertaken and completed in accordance with the Project Schedule, and within the Contract Time described therein.

I. Superintendent. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

(1) The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner through the Architect/Engineer the name and qualifications of the proposed superintendent. The Architect/Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect/Engineer has reasonable objection to the proposed superintendent or (2) that the Architect/Engineer requires additional time to review. Failure of the Architect/Engineer to reply within 14 days shall constitute notice of no reasonable objection.

(2) The Contractor shall not employ a proposed superintendent to whom the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not be unreasonably withheld or delayed.

J. Work Hours. Contractor shall provide competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and Contractor shall not permit overtime work or the performance of Work on a Saturday, Sunday or legal holiday without Owner's written consent given after prior notice to Architect/Engineer (at least seventy-two (72) hours in advance).

K. Overtime-Related Costs. Contractor shall pay for all additional Architect/Engineering charges, inspection costs and Owner staff time for any overtime work which may be authorized. Such additional charges shall be a subsidiary obligation of Contractor and no extra payment shall be made by Owner because such overtime work. At Owner's option, such overtime costs may be deducted from Contractor's monthly payment request or Contractor's retainage prior to release of final payment.

L. Insurance, Overhead and Utilities. Unless otherwise specified, Contractor shall furnish and assume full responsibility for all bonds, insurance, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

M. Cleanliness. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project Site.

Contractor shall restore to original conditions all property not designated for alteration by the Contract Documents. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and Owner shall be entitled to reimbursement or associated expenses from Contractor.

N. Loading. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

O. Safety and Protection. Contractor shall comply with OSHA and Florida Department of Commerce Safety Regulations and any local safety regulations. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:

- (1) All employees on the Work and other persons and organizations who may be affected thereby;
- (2) All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and
- (3) Other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement during construction.

Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss, and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for the protection required by public authority or local conditions. Contractor shall provide reasonable maintenance of traffic for the public and preservation of the Owner's business, taking into full consideration all local conditions. Contractor's duties and responsibilities for safety and protection with regard to the Work shall continue until such time as all the Work is completed.

P. Emergencies. In emergencies affecting the safety or protection of persons or the Work or property at the Project Site or adjacent thereto, Contractor, without special instruction or authorization from Architect/Engineer or Owner, shall act to prevent threatened damage, injury or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner determines that a change in the Project is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variation.

Q. Substitutes. For Substitutes not included with the Bid (or Guaranteed Maximum Price Addendum), but submitted after the effective date of the Agreement (or Guaranteed Maximum Price Addendum), Contractor shall make written application to Architect/Engineer for acceptance thereof, certifying that the proposed Substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of

equal substance to that specified and be suited to the same use as that specified. The application will also contain an itemized estimate of all costs and delays or schedule impacts that will result directly or indirectly from review, acceptance and provision of such Substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by the Architect/Engineer in evaluating the proposed Substitute. Architect/Engineer may require Contractor to furnish at Contractor's expense, additional data about the proposed Substitute. In rendering a decision, Owner, Architect/Engineer and Contractor shall have access to any available Float Time in the Project Schedule. If Substitute materials or equipment not included as part of the Bid (or Guaranteed Maximum Price Addendum), but proposed after the effective date of the Agreement, are accepted and are less costly than the originally specified materials or equipment, then the net difference in cost shall be credited to the Owner and an appropriate Change Order executed to adjust the Contract Sum.

- (1) Architect/Engineer will be allowed a reasonable time within which to evaluate each proposed Substitute. Architect/Engineer will be the sole judge of acceptability and no Substitute will be ordered, installed or utilized without Architect/Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved shop drawing. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any Substitute.
- (2) Contractor shall reimburse Owner for the charges of Architect/Engineer and Architect/Engineer's Consultants for evaluating each proposed Substitute submitted after the effective date of the Agreement and all costs resulting from any delays in the Work while the Substitute was undergoing review.

R. Surveys and Stakes. The Contractor shall furnish, free of charge, all labor, stakes, surveys, batter boards for structures, grade lines and other materials and supplies and shall set construction stakes and batter boards for establishing lines, position of structures, slopes and other controlling points necessary for the proper prosecution of the Work. Where rights-of-way, easements, property lines or any other conditions which make the lay-out of the Project or parts of the Project critical are involved, the Contractor shall employ a competent surveyor who is registered in the State of Florida for lay-out and staking. These stakes and marks shall constitute the field control by and in accord with which the Contractor shall govern and execute the Work. The Contractor shall be held responsible for the preservation of all stakes and marks and if for any reason any of the stakes or marks or batter boards become destroyed or disturbed, they shall be immediately and accurately replaced by the Contractor.

S. Suitability of Project Site. The Contractor has, by careful examination, satisfied itself as to the nature and location of the Work and all other matters which can in any way affect the Work, including, but not limited to details pertaining to borings, as shown on the drawings. Such boring information is not guaranteed to be more than a general indication of the materials likely to be found adjacent to holes bored at the Project Site, approximately at the locations indicated. The Contractor has examined boring data, where available, made its own interpretation of the subsurface conditions and other preliminary data, and has based its Bid (or

Guaranteed Maximum Price Addendum) on its own opinion of the conditions likely to be encountered. Except as specifically provided in Sections 2.4.U., 5.4 and 5.5, no extra compensation or extension of time will be considered for any Project Site conditions that existed at the time of bidding (or at the time of execution of the Guaranteed Maximum Price Addendum). No verbal agreement or conversation with any officer, agent or employee of the Owner, before or after the execution of the Agreement, shall affect or modify any of the terms or obligations herein contained.

T. Project Specification Errors. If the Contractor, during the Work, finds that the drawings, specifications or other Contract Documents cannot be followed, the Contractor shall immediately inform the Owner in writing, and the Owner shall promptly check the accuracy of the information. Any Work done after such discovery, until any necessary changes are authorized, will be done at the Contractor's sole risk of non-payment and delay.

U. Remediation of Contamination: Owner and Contractor recognize that remediation of subsurface conditions may be necessary due to potential hazardous materials contamination. Because the presence or extent of any contamination is not known, Contractor shall include no cost in the Contract Sum, and no time in the Project Schedule, for cost or delays that might result from any necessary remediation. The Project Schedule will provide a period of time between demolition activities and the start of the next activity to commence any remediation if needed. Contractor shall use all reasonable efforts in scheduling the Project to minimize the likelihood that remediation delays construction. Any hazardous materials remediation Work which Contractor agrees to perform shall be done pursuant to a Change Order or amendment consistent with the following:

- (1) The dates of Substantial Completion shall be equitably adjusted based on delays, if any, incurred in connection with remediation efforts.
- (2) Contractor, and any Subcontractors which have mobilized on the Project Site, shall be paid for demonstrated costs of overhead operations at the Project Site during any period of delay of more than seven (7) days, except to the extent that Work proceeds concurrently with remediation. The categories of costs to be reimbursed are limited to those reasonably incurred at the jobsite during the delay period (such as trailers or offices, telephones, faxes, and the like); equipment dedicated to the Project and located at the Project Site; salaries and associated costs of personnel dedicated to the Project to the extent that they do not perform work on other projects; and other jobsite costs that are reasonable and which are incurred during the delay period. Subcontractors and suppliers which have not mobilized are limited to the costs set forth in Section 2.4.U(3).
- (3) Contractor and any Subcontractor or supplier on the Project who is eligible for compensation shall be paid any demonstrated costs of escalation in materials or labor, and reasonable costs of off-site storage of materials identified to the Project, arising because of any delay of more than seven (7) days. Such Contractor, Subcontractors and suppliers are obligated to take all reasonable steps to mitigate escalation costs, such as through early purchase of materials.

- (4) Contractor, for itself and all Subcontractors and suppliers on the Project, hereby agrees that the extension of time for delays under Section 2.4.U(1), and payment of the costs identified in Sections 2.4.U(2) and/or Section 2.4.U(3), are the sole remedies for costs and delays described in this Section, and waives all claims and demands for extended home office overhead (including, but not limited to, "Eichleay" claims), lost profit or lost opportunities, and any special, indirect, or consequential damages arising as a result of delays described in this Section. The Contract Sum shall be adjusted to reflect payment of allowable costs.
- (5) If any delay described in this section causes the time or cost for the Project to exceed the Contract Time or the Contract Sum, then the Owner may terminate the Agreement pursuant to Section 14.2.
- (6) Contractor and any Subcontractor or supplier seeking additional costs under this Section 2.4.U. shall promptly submit estimates or any costs as requested by Owner, and detailed back-up for all costs when payment is sought or whenever reasonably requested by Owner. All costs are auditable, at Owner's discretion. Bid, estimate and pricing information reasonably related to any request for additional compensation will be provided promptly upon request.
- (7) Contractor shall include provisions in its subcontracts and purchase orders consistent with this Section.

V. Interfacing.

- (1) The Contractor shall take such measures as are necessary to ensure proper construction and delivery of the Project, including but not limited to providing that all procurement of long-lead items, the separate construction Subcontractors, and the general conditions items are performed without duplication or overlap to maintain completion of all Work on schedule. Particular attention shall be given to provide that each Subcontractor bid package clearly identifies the Work included in that particular separate subcontract, its scheduling for start and completion, and its relationship to other separate contractors.
- (2) Without assuming any design responsibilities of the Architect/Engineer, the Contractor shall include in the Progress Reports required under this Section 2.4 comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Architect/Engineer may arrange for necessary corrections.

W. Job Site Facilities. The Contractor shall arrange for all job site facilities required and necessary to enable the Contractor and Architect/Engineer to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the Project Site.

X. Weather Protection. The Contractor shall provide temporary enclosures of building areas to assure orderly progress of the Work during periods when extreme weather conditions are likely to be experienced. The Contractor shall also be responsible for providing weather protection for Work in progress and for materials stored on the Project Site. A contingency plan shall be prepared upon request of the Owner for weather conditions that may affect the construction.

Y. Payment and Performance Bond. Prior to the construction commencement date, the Contractor shall obtain, for the benefit of and directed to the Owner, a Payment and Performance Bond satisfying the requirements of Section 255.05, Florida Statutes, covering the faithful performance by the Contractor of its obligations under the Contract Documents, including but not limited to the construction of the Project on the Project Site and the payment of all obligations arising thereunder, including all payments to Subcontractors, laborers, and materialmen. The surety selected by the Contractor to provide the Payment and Performance Bond shall be approved by the Owner prior to the issuance of such Bond, which approval shall not be unreasonably withheld or delayed provided that the surety is rated A or better by Best's Key Guide, latest edition. For Changes in the Work that result in an increase in the Contract Sum, Owner reserves the right to require the Contractor to secure and deliver additive riders to the Payment and Performance Bond.

Z. Construction Phase; Building Permit; Code Inspections. Unless otherwise provided, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

(1) Building Permit. The Owner and Architect/Engineer shall provide such information to any Permitting Authority as is necessary to obtain approval from the Permitting Authority to commence construction prior to beginning construction. The Contractor shall pull any required building permit, and shall be responsible for delivering and posting the building permit at the Project Site prior to the commencement of construction. The cost of the building permit is included in the Contract Sum. The Owner and Architect/Engineer shall fully cooperate with the Contractor when and where necessary.

(2) Code Inspections. The Project requires detailed code compliance inspection during construction in disciplines determined by any Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, general building and fire. The Contractor shall notify the appropriate inspector(s) and the Architect/Engineer, no less than 24 hours in advance, when the Work is ready for inspection and before the Work is covered up. All inspections shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of Work found defective and subsequently repaired shall not be included as Project Costs and shall be

borne by the Contractor or as provided in the contract between Contractor and Subcontractor.

- (3) Contractor's Personnel. The Contractor shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the Contractor to coordinate, inspect, and provide general direction of the Work and progress of the Subcontractors. At all times during the performance of the Work, the Owner shall have the right to demand replacement of Contractor Personnel to whom the Owner has reasonable objection, without liability to the Contractor.
- (4) Lines of Authority. To provide general direction of the Work, Contractor shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of any Permitting Authority, the Subcontractors, and the Architect/Engineer. The Owner and Architect/Engineer may attend meetings between the Contractor and his Subcontractors; however, such attendance is optional and shall not diminish either the authority or responsibility of the Contractor to administer the subcontracts.

AA. Quality Control. The Contractor shall develop and maintain a program, acceptable to the Owner and Architect/Engineer, to assure quality control of the construction. The Contractor shall be responsible for and supervise the Work of all Subcontractors, providing instructions to each when their Work does not conform to the requirements of the Project Plans and Specifications, and the Contractor shall continue to coordinate the Work of each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. Should a disagreement occur between the Contractor and the Architect/Engineer over the acceptability of the Work, the Owner, at its sole discretion and in addition to any other remedies provided herein, shall have the right to determine the acceptability, provided that such determination is consistent with standards for construction projects of this type and generally accepted industry standards for workmanship in the State of Florida.

BB. Management of Subcontractors. All Subcontractors shall be compensated in accordance with Article IV. The Contractor shall solely control the Subcontractors. The Contractor shall negotiate all Change Orders and Field Orders with all affected Subcontractors and shall review the costs and advise the Owner and Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest. When there is an imminent threat to health and safety, and Owner's Project Representative concurrence is impractical, the Contractor shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The Contractor shall also carefully review all shop drawings and then forward the same to the Architect/Engineer for review and actions. The Architect/Engineer will transmit them back to the Contractor, who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The Contractor shall maintain a suspense control system to promote expeditious handling. The Contractor shall request the Architect/Engineer to make interpretations of the drawings or specifications requested of him by the Subcontractors and shall maintain a business system to promote timely response. The Contractor shall inform the Architect/Engineer which shop drawings or requests for clarification have the greatest urgency, to enable the Architect/Engineer to prioritize requests coming from the Contractor. The Contractor shall advise the Owner and Architect/Engineer when timely response is not occurring on any of the above.

CC. Job Requirements.

- (1) The Contractor shall provide each of the following as a part of its services hereunder:
 - (a) Maintain a log of daily activities, including manpower records, equipment on site, weather, delays, major decisions, etc;
 - (b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel;
 - (c) Establish and enforce job rules governing parking, clean-up, use of facilities, and worker discipline;
 - (d) Provide labor relations management and equal opportunity employment for a harmonious, productive Project;
 - (e) Provide and administer a safety program for the Project and monitor for subcontractor compliance without relieving them of responsibilities to perform Work in accordance with best acceptable practice;
 - (f) Provide a quality control program as provided under Section 2.4.C above;
 - (g) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces;
 - (h) Provide for travel to and from its home office to the Project Site and to those other places within Pinellas County as required by the Project;
 - (i) Verify that tests, equipment, and system start-ups and operating and maintenance instructions are conducted as required and in the presence of the required personnel and provide adequate records of same to the Architect/Engineer;
 - (j) Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and sample submissions, reproductions of original Contract Documents including all addenda, change orders, field orders, additional drawings issued after execution of the Agreement, Owner/Architect/Engineer's clarifications and interpretations of the Contract Documents,

progress reports, as-built drawings, and other project related documents;

- (k) Keep a diary or log book, recording hours on the job site, weather conditions, data relative to questions of extras or deductions; list of visiting officials and representatives or manufacturers, fabricators, suppliers and distributors; daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures, and provide copies of same to Owner/Architect/Engineer;
 - (l) Record names, addresses and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment;
 - (m) Furnish Owner/Architect/Engineer periodic reports, as required, of progress of the Work and Contractor's compliance with the approved progress schedule and schedule of shop drawing submissions;
 - (n) Consult with Owner/Architect/Engineer in advance of scheduling major tests, inspections or start of important phases of the Work;
 - (o) Verify, during the course of the Work, that certificates, maintenance and operations manuals and other data required to be assembled and furnished are applicable to the items actually installed, and deliver same to Owner/Architect/Engineer for review prior to final Acceptance of the Work; and
 - (p) Cooperate with Owner in the administration of grants.
- (2) The Contractor shall provide personnel and equipment, or shall arrange for separate Subcontractors to provide each of the following as a Project Cost:
- (a) Services of independent testing laboratories, and provide the necessary testing of materials to ensure conformance to contract requirements; and
 - (b) Printing and distribution of all required bidding documents and shop drawings, including the sets required by Permitting Authority inspectors.

DD. As-Built Drawings. The Contractor shall continuously review as-built drawings and mark up progress prints to provide as much accuracy as possible. Prior to, and as a requirement for authorizing final payment to the Contractor due hereunder, the Contractor shall provide to the Owner an original set of marked-up, as-built Project Plans and Specifications and an electronic format of those records showing the location and dimensions of the Project as constructed, which documents shall be certified as being correct by the Contractor and the Architect/Engineer. Final as-built drawings shall be signed and sealed by a registered Florida surveyor.

EE. Progress Reports. The Contractor shall forward to the Owner, as soon as practicable after the first day of each month, a summary report of the progress of the various parts of the Work, to include those parts of the Work in fabrication and in the field, stating the existing status, estimated time of completion and cause of delay, if any. Together with the summary report, the Contractor shall submit any necessary revisions to the original schedule for the Owner's review and approval. In addition, more detailed schedules may be required by the Owner for daily traffic control.

FF. Contractor's Warranty. The Contractor warrants to the Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- (1) Contractor shall use its best efforts and due diligence to ensure that during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the Contract Documents perform all required warranty Work in a timely manner and at the sole cost and expense of such warranty providers. Any such cost or expense not paid by the warranty providers shall be paid by the Contractor, to include any costs and attorney's fees incurred in warranty-related litigation between Contractor and any Subcontractors.
- (2) The Contractor shall secure guarantees and warranties of Subcontractors, equipment suppliers and materialmen, and assemble and deliver same to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation. The Contractor shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by subcontracts.
- (3) At the Owner's request, the Contractor shall conduct, jointly with the Owner and the Architect/Engineer, no more than two (2) warranty inspections within three (3) years after the Substantial Completion Date.

GG. Apprentices. If Contractor employs apprentices, their performance of Work shall be governed by and shall comply with the provisions of Chapter 446, Florida Statutes.

HH. Schedule of Values. Unit prices shall be established for this Agreement by the submission of a schedule of values within ten (10) days of receipt of the Notice to Proceed. The schedule shall include quantities and prices of items equaling the Contract Sum and will subdivide the Work into components in sufficient detail to serve as the basis for progress payments during construction. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work. Upon request of the County, the Contractor shall support the values with data which will substantiate their correctness.

II. Other Contracts. The Owner reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and promptly connect and coordinate the Work with theirs.

ARTICLE III COMPENSATION

3.1 Compensation. The Contract Sum constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at Contractor's expense without change in the Contract Sum.

A. Adjustments. The Contract Sum may only be changed by Change Order or by a written amendment. Any claim for an increase or decrease in the Contract Sum shall be based on written notice delivered by the party making the claim to the other party. Notice of the amount of the claim with supporting data shall be delivered within fifteen (15) days from the beginning of such occurrence and shall be accompanied by claimant's written statement that the amount claimed covers all amounts to which the claimant is entitled as a result of the occurrence of said event. Failure to deliver a claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.

B. Valuation. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Sum shall be determined in one of the following ways (at Owner's discretion):

- (1) In the case of Unit Price Work, in accordance with Section 3.1.C, below; or
- (2) By mutual acceptance of a lump sum; or
- (3) On the basis of the cost of the Work, plus a negotiated Contractor's fee for overhead and profit. Contractor shall submit an itemized cost breakdown together with supporting data.

C. Unit Price Work. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment pursuant to a requested Change Order under the following conditions:

- (1) If the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Sum and the variation in the quantity of the particular item of Unit Price Work performed by Contractor differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and
- (2) If there is no corresponding adjustment with respect to any other item of Work; and
 - (i) If Contractor believes that it has incurred additional expense as a result thereof; or
 - (ii) If Owner believes that the quantity variation entitles it to an adjustment in the unit price; or
 - (iii) If the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

3.2 Schedule of Compensation. All payments for services and material under the Contract Documents shall be made in accordance with the following provisions.

A. Periodic Payments for Services. The Contractor shall be entitled to receive payment for Construction Services rendered pursuant to Section 2.4 in periodic payments which shall reflect a fair apportionment of cost and schedule of values of services furnished prior to payment, subject to the provisions of this Section.

B. Payment for Materials and Equipment. In addition to the periodic payments authorized hereunder, payments may be made for material and equipment not incorporated in the Work but delivered and suitably stored at the Project Site, or another location, subject to prior approval and acceptance by the Owner on each occasion.

C. Credit toward Contract Sum. All payments for Construction Services made hereunder shall be credited toward the payment of the Contract Sum as Contractor's sole compensation for the construction of the Project.

3.3 Invoice and Payment. All payments for services and materials under the Contract Documents shall be invoiced and paid in accordance with the following provisions.

A. Invoices. The Contractor shall submit to the Owner periodic invoices for payment, in a form acceptable to the Owner, which shall include a sworn statement certifying that, to the best of the Contractor's knowledge, information and belief, the construction has progressed to the point indicated, the quality and the Work covered by the invoice is in accord with the Project Plans and Specifications, and the Contractor is entitled to payment in the amount requested, along with the cost reports required pursuant to Article II, showing in detail all monies paid out, Project Costs accumulated, or Project Cost incurred during the previous period. This data shall be attached to the invoice.

B. Additional Information; Processing of Invoices. Should an invoiced amount appear to exceed the Work effort believed to be completed, the Owner may, prior to processing of the invoice for payment, require the Contractor to submit satisfactory evidence to support the invoice. All progress reports and invoices shall be delivered to the attention of the Owner's Project Representative. Invoices not properly prepared (mathematical errors, billing not reflecting actual Work done, no signature, etc.) shall be returned to the Contractor for correction.

C. Architect/Engineer's Approval. Payment for Work completed shall be subject to the Architect/Engineer/Project Manager approving the payment requested by the Contractor and certifying the amount thereof that has been properly incurred and is then due and payable to the Contractor, and identifying with specificity any amount that has not been properly incurred and that should not be paid.

D. Warrants of Contractor with Respect to Payments. The Contractor warrants that (1) upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the Contractor, whichever occurs first; (2) Work, materials and equipment covered by previous partial payment requests shall be free and clear of liens, claims, security interests, or encumbrances; and (3) no Work, materials or equipment covered by a partial payment request which has been acquired by the Contractor or any other person performing Work at the Project Site, or furnishing materials or equipment for the Project, shall be subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or any other person.

E. All Compensation Included. Contractor's compensation includes full payment for services set forth in the Contract Documents, including but not limited to overhead, profit, salaries or other compensation of Contractor's officers, partners and/or employees, general operating expenses incurred by Contractor and relating to this Project, including the cost of management, supervision and data processing staff, job office equipment and supplies, and other similar items.

ARTICLE IV SUBCONTRACTORS

41 Subcontracts. Unless expressly authorized by Owner, Contractor is prohibited from utilizing subcontractors on this Project to perform the Work. At Contractor's request, Owner will consider approval of the use of a subcontractor. At the Owner's request, the Contractor shall provide Owner's Project Representative with copies of all proposed and final subcontracts, including the general and supplementary conditions thereof.

A. Subcontracts Generally. All subcontracts shall: (1) require each Subcontractor to be bound to Contractor to the same extent Contractor is bound to Owner by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor, (2) provide for the assignment of the subcontracts from Contractor to Owner at the election of Owner, upon termination of Contractor, (3) provide that Owner will be an additional indemnified party of the subcontract, (4) provide that Owner will be an additional insured on all insurance policies required to be provided by the Subcontractor,

except workers' compensation, (5) assign all warranties directly to Owner, and (6) identify Owner as an intended third-party beneficiary of the subcontract.

(1) A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(2) A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

B. No Damages for Delay. Except when otherwise expressly agreed to by Owner in writing, all subcontracts shall provide:

"LIMITATION OF REMEDIES – NO DAMAGES FOR DELAY.

The Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect/Engineer or attributable to the Owner or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim."

Each subcontract shall require that any claims by the Subcontractor for delay must be submitted to the Contractor within the time and in the manner in which the Contractor must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

C. Subcontractual Relations. The Contractor shall require each Subcontractor to assume all the obligations and responsibilities which the Contractor owes the Owner pursuant to the Contract Documents, by the parties to the extent of the Work to be performed by the Subcontractor. Said obligations shall be made in writing and shall preserve and protect the rights of the Owner and Architect/Engineer, with respect to the Work to be performed by the Subcontractor, so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its sub-subcontractors.

D. Insurance; Acts and Omissions. Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Contractor by the Owner. The Contractor shall be responsible to the Owner for the acts and omissions of its employees, agents, Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.

42 Relationship and Responsibilities. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in the Contract Documents or in any Contract Document does or shall create any contractual relation between the Owner or

Architect/Engineer and any Subcontractor. Specifically, the Contractor is not acting as an agent of the Owner with respect to any Subcontractor. The utilization of any Subcontractor shall not relieve Contractor from any liability or responsibility to Owner, or obligate Owner to the payment of any compensation to the Subcontractor or additional compensation to the Contractor.

43 Payments to Subcontractors; Monthly Statements. The Contractor shall be responsible for paying all Subcontractors from the payments made by the Owner to Contractor pursuant to Article III, subject to the following provisions:

A. Payment. The Contractor shall, no later than ten (10) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, pay to each Subcontractor the amount to which the Subcontractor is entitled in accordance with the terms of the Contractor's contract with such Subcontractor. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to Subcontractors for any reason, as solely determined by Contractor, the Contractor shall promptly restore such monies to the Owner, adjusting subsequent pay requests and Project bookkeeping as required.

B. Final Payment of Subcontractors. The final payment of retainage to Subcontractors shall not be made until the Project has been inspected by the Architect/Engineer or other person designated by the Owner for that purpose, and until both the Architect/Engineer and the Contractor have issued a written certificate that the Project has been constructed in accordance with the Project Plans and Specifications and approved Change Orders. Before issuance of final payment to any Subcontractor without any retainage, the Subcontractor shall submit satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted, and instruction for the Owner's operating and maintenance personnel is complete. Final payment may be made to certain select Subcontractors whose Work is satisfactorily completed prior to the completion of the Project, but only upon approval of the Owner's Project Representative.

44 Responsibility for Subcontractors. As provided in Section 2.4.BB, Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect Contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions.

45 Contingent Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

- (1) assignment is effective only after termination of the Contract by the Owner for cause pursuant to Article XIV and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Upon such assignment to the Owner, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE V CHANGES IN WORK

5.1 General. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Work Directive Change or order for a minor change in the Work, subject to the limitations stated in this Article V and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among the Owner, Contractor and Architect/Engineer; a Work Directive Change requires agreement by the Owner and Architect/Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect/Engineer alone. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Work Directive Change or order for a minor change in the Work.

5.2 Minor Changes in the Work. The Owner or Architect/Engineer shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such change will be effected by written order signed by the Architect/Engineer and shall be binding on the Owner and Contractor. The Contractor shall abide by and perform such minor changes. Such changes shall be effected by a Field Directive or a Work Directive Change. Documentation of changes shall be determined by the Construction Team, and displayed monthly in the Progress Reports. Because such changes shall not affect the Contract Sum to be paid to the Contractor, they shall not require a Change Order pursuant to Section 5.6.

5.3 Emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any increase in the Contract Sum or extension of time claimed by the Contractor because of emergency Work shall be determined as provided in Section 5.6. However, whenever practicable, the Contractor shall obtain verbal concurrence of the Owner's Project Representative and Architect/Engineer where the act will or may affect the Contract Sum or Contract Time.

5.4 Concealed Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect/Engineer before conditions are

disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if the Architect/Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect/Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If the Contractor disputes the Architect/Engineer's determination or recommendation, the Contractor may proceed as provided in Article VIII. If the Owner disputes the Architect/Engineer's determination or recommendation, the Owner may appeal directly to the Purchasing Official and shall thereafter follow the process set forth in Section 8.5.

55 Hazardous Materials. In the event the Contractor encounters on the Project Site material reasonably believed to be hazardous, petroleum or petroleum related products, or other hazardous or toxic substances, except as provided in Section 2.4.U, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect/Engineer in writing. The Work in the affected area shall not thereafter be resumed except by Change Order or written amendment, if in fact the material or substance has not been rendered harmless. The Work in the affected area shall be resumed when the Project Site has been rendered harmless, in accordance with the final determination by the Architect/Engineer or other appropriate professional employed by Owner. The Contractor shall not be required to perform without its consent any Work relating to hazardous materials, petroleum or petroleum related products, or other hazardous or toxic substances. In the event the Contractor encounters on the Project Site materials believed in good faith to be hazardous or contaminated material, and the presence of such hazardous or contaminated material was not known and planned for at the time the Contractor submitted its Bid (or Guaranteed Maximum Price proposal), and it is necessary for the Contractor to stop Work in the area affected and delays Work for more than a seven (7) day period, adjustments to the Contract Sum and/or Contract Time shall be made in accordance with this Article V.

5.6 Change Orders; Adjustments to Contract Sum.

A. Change Orders Generally. The increase or decrease in the Contract Sum resulting from a change authorized pursuant to the Contract Documents shall be determined:

- (1) By mutual acceptance of a lump sum amount properly itemized and supported by sufficient substantiating data, to permit evaluation by the Architect/Engineer and Owner; or
- (2) By unit prices stated in the Agreement or subsequently agreed upon; or
- (3) By any other method mutually agreeable to Owner and Contractor.

If Owner and Contractor are unable to agree upon increases or decreases in the Contract Sum and the Architect/Engineer certifies that the work needs to be commenced prior to any such agreement, the Contractor, provided it receives a written Change Order signed by or on behalf of the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures of those performing the Work attributed to the change.

However, in the event a Change Order is issued under these conditions, the Owner, through the Architect/Engineer, will establish an estimated cost of the Work and the Contractor shall not perform any Work whose cost exceeds that estimated without prior written approval by the Owner. In such case, the Contractor shall keep and present in such form as the Owner may prescribe an itemized accounting, together with appropriate supporting data of the increase in overall costs of the Project. The amount of any decrease in the Contract Sum to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in costs will be the amount of the actual net decrease.

5.7 Owner-Initiated Changes. Without invalidating the Agreement and without notice to any Surety, Owner may, at any time, order additions, deletions or revisions in the Work. These will be authorized by a written amendment, a Field Directive, a Change Order, or a Work Directive Change, as the case may be. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). A Work Directive Change may not change the Contract Sum or the Contract Time; but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

5.8 Unauthorized Work. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents.

5.9 Defective Work. Owner and Contractor shall execute appropriate Change Orders (or written amendments) covering changes in the Work which are ordered by Owner, or which may be required because of acceptance of defective Work, without adjustment to the Contract Sum.

5.10 Estimates for Changes. At any time, Architect/Engineer may request a quotation from Contractor for a proposed change in the Work. Within twenty-one (21) calendar days after receipt, Contractor shall submit a written and detailed proposal for an increase or decrease in the Contract Sum or Contract Time for the proposed change. Architect/Engineer shall have twenty-one (21) calendar days after receipt of the detailed proposal to respond in writing. The proposal shall include an itemized estimate of all costs and time for performance that will result directly or indirectly from the proposed change. Unless otherwise directed, itemized estimates shall be in sufficient detail to reasonably permit an analysis by Architect/Engineer of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed or impacted. Notwithstanding the request for quotation, Contractor shall carry on the Work and maintain the progress schedule. Delays in the submittal of the written and detailed proposal will be considered non-prejudicial.

5.11 Form of Proposed Changes. The form of all submittals, notices, Change Orders and other documents permitted or required to be used or transmitted under the Contract Documents shall be determined by the Owner. Standard Owner forms shall be utilized where provided.

5.12 Changes to Contract Time. The Contract Time may only be changed pursuant to a Change Order or a written amendment to the Contract Documents. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days from detection or beginning of such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled to because of the occurrence of said event. The Contract time will be extended in an amount equal to time lost due to delays beyond the control of Contractor. Such delays shall include, but not be limited to, acts or neglect by Owner or others performing additional Work; or to fires, floods, epidemics, abnormal weather conditions or acts of God. Failure to deliver a written notice of claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.

ARTICLE VI ROLE OF ARCHITECT/ENGINEER

6.1 General.

A. Retaining. The Owner shall retain an Architect/Engineer (whether an individual or an entity) lawfully licensed to practice in Florida. That person or entity is identified as the Architect/Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number. If the Project does not require the retention of a licensed architect or engineer, Owner may designate a Project Manager to perform the administration and oversight duties assigned to the Architect/Engineer to the extent such duties do not require a licensed professional. As used herein, reference to Architect/Engineer shall include Project Manager, where a Project Manager is designated by the Owner.

B. Duties. Duties, responsibilities and limitations of authority of the Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect/Engineer. Consent shall not be unreasonably withheld.

C. Termination. If the employment of the Architect/Engineer is terminated, the Owner shall employ a successor Architect/Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect/Engineer.

6.2 Administration. The Architect/Engineer will provide administration of the Agreement as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect/Engineer approves the final Application for Payment. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

A. Site Visits. The Architect/Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work complete, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Unless specifically instructed by Owner, the

Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect/Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

B. **Reporting.** Based on the site visits, the Architect/Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect/Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect/Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

6.3 Interpretation of Project Plans and Specifications. The Architect/Engineer will be the interpreter of the requirements of the Project Plans and Specifications. Upon receipt of comments or objections by Contractor or Owner, the Architect/Engineer will make decisions on all claims, disputes, or other matters pertaining to the interpretation of the Project Plans and Specifications.

6.4 Rejection of Non-Conforming Work. Upon consultation with Owner, the Architect/Engineer shall have the authority to reject Work which does not conform to the Project Plans and Specifications.

6.5 Correction of Work. The Contractor shall promptly correct all Work rejected by the Architect/Engineer for being defective or as failing to conform to the Project Plans and Specifications, whether observed before or after the Substantial Completion Date and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for Architect/Engineer's additional services made necessary thereby.

6.6 Timely Performance of Architect/Engineer. The Contractor shall identify which requests for information or response from the Architect/Engineer have the greatest urgency and those items which require prioritizing in response by the Architect/Engineer. The Contractor shall also identify the preferred time period for response and shall request a response time which is reasonably and demonstrably related to the needs of the Project and Contractor. If Architect/Engineer claims that Contractor's expectations for a response are unreasonable, Owner shall require Architect/Engineer to communicate such claim to Contractor in writing together with the specific time necessary to respond and the date upon which such response will be made. If Contractor believes that Architect/Engineer is not providing timely services or responses, Contractor shall notify Owner of same in writing not less than two (2) weeks before Contractor believes performance or response time from Architect/Engineer is required without risk of delaying the Project.

ARTICLE VII OWNER'S RIGHTS AND RESPONSIBILITIES

71 Project Site; Title. The Owner shall provide the lands upon which the Work under the Contract Documents is to be done, except that the Contractor shall provide all necessary additional land required for the erection of temporary construction facilities and storage of his materials, together with right of access to same. The Owner hereby represents to the Contractor that it currently has and will maintain up through and including the Substantial Completion Date, good title to all of the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during construction.

72 Project Plans and Specifications; Architect/Engineer. The parties hereto acknowledge and agree that Owner has previously entered into an agreement with Architect/Engineer. Pursuant to the terms of such agreement, the Architect/Engineer, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications, and other documents setting forth in detail the requirements for the construction of the Project. All such Project Plans and Specifications shall be provided either by Owner or the Architect/Engineer, and Contractor shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the Architect/Engineer and all preliminary drawings prepared in connection therewith. The Contractor will be furnished a reproducible set of all drawings and specifications reasonably necessary for the performance of Contractor's services hereunder and otherwise ready for printing. The Contractor shall be notified of any written modification in the agreement between Owner and Architect/Engineer.

73 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content and with such specificity as may be required by the Architect/Engineer and Contractor to perform their services. To the extent deemed necessary by Owner and Architect/Engineer, and solely at Owner's expense, Owner may engage the services of a geotechnical consultant to perform test borings and other underground soils testing as may be deemed necessary by the Architect/Engineer or the Contractor. Contractor shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided; subject, however, to the provisions of Section 2.4.S hereof. Owner shall provide Contractor, as soon as reasonably possible following the execution of the Contract Documents, all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements, and legal descriptions then in its possession or control. Upon receipt of all surveys, soils tests, and other Project Site information, Contractor shall promptly advise Owner of any inadequacies in such information and of the need for any additional surveys, soils or subsoil tests. In performing this Work, Contractor shall use the standard of care of experienced contractors and will use its best efforts timely to identify all problems or omissions. Owner shall not be responsible for any delay or damages to the Contractor for any visible or disclosed site conditions or disclosed deficiencies in the Project Site which should have been identified by Contractor and corrected by Owner prior to the execution of the Contract Documents.

74 Information; Communication; Coordination. The Owner's Project Representative shall examine any documents or requests for information submitted by the Contractor and shall advise Contractor of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the Contractor's services. Contractor shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project Cost, Contractor's compensation, approving or changing the Contract Sum shall only be effective when approved by Owner in the form of a written Change Order or amendment to the Contract Documents. Owner reserves the right to designate a different Owner's Project Representative provided Contractor is notified in writing of any such change. Owner and Architect/Engineer may communicate with Subcontractors, materialmen, laborers, or suppliers engaged to perform services on the Project, but only for informational purposes. Neither the Owner nor the Architect/Engineer shall attempt to direct the Work of or otherwise interfere with any Subcontractor, materialman, laborer, or supplier, or otherwise interfere with the Work of the Contractor. Owner shall furnish the data required of Owner under the Contract Documents promptly.

75 Governmental Body. The Contractor recognizes that the Owner is a governmental body with certain procedural requirements to be satisfied. The Contractor has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency.

76 Pre-Completion Acceptance. The Owner shall have the right to take possession of and use any completed portions of the Work, although the time for completing the entire Work or such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

7.7 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

- (1) The Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors and owners of their respective instruments of service, including the Project Plans and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the instruments of service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be constructed as publication in derogation of the Architect/Engineer's or Architect/Engineer's consultants' reserved rights.
- (2) The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the drawings and specifications provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Project Plans and Specifications or other instruments of service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the

drawings or specifications on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect/Engineer and the Architect/Engineer's consultants.

78 Owner's Project Representative. Owner's Project Representative is Owner's Agent, who will act as directed by and under the supervision of the Owner, and who will confer with Owner/Architect/Engineer regarding his/her/its actions. Owner's Project Representative's dealings in matters pertaining to the on-site Work shall, in general, be only with the Owner/Architect/Engineer and Contractor and dealings with Subcontractors shall only be through or with the full knowledge of Contractor.

A. Responsibilities. Except as otherwise instructed in writing by Owner, the Owner's Project Representative will:

- (1) Attend preconstruction conferences; arrange a schedule of progress meetings and other job conferences as required in consultation with Owner/Architect/Engineer and notify those expected to attend in advance; and attend meetings and maintain and circulate copies of minutes thereof;
- (2) Serve as Owner/Architect/Engineer's liaison with Contractor, working principally through Contractor's superintendent, to assist in understanding the intent of the Contract Documents. As requested by Owner/Architect/Engineer, assist in obtaining additional details or information when required at the job site for proper execution of the Work;
- (3) Report to Owner/Architect/Engineer whenever he believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents;
- (4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the project; record the outcome of these inspections and report to Owner/Architect/Engineer;
- (5) Review applications for payment with Contractor for compliance with the established procedure for their submission and forward them with recommendations to Owner/Architect/Engineer; and
- (6) Perform those duties as set forth elsewhere within the Contract Documents.

B. Limitations. Except upon written instructions of Owner, Owner's Project Representative shall not:

- (1) Authorize any deviation from the Contract Documents or approve any substitute materials or equipment;

- (2) Exceed limitations on Owner/Architect/Engineer's authority as set forth in the Contract Documents;
- (3) Undertake any of the responsibilities of Contractor, Subcontractors or Contractor's superintendent, or expedite the Work;
- (4) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (5) Advise on or issue directions as to safety precautions and programs in connection with the Work;
- (6) Authorize Owner to occupy the project in whole or in part; or
- (7) Participate in specialized field or laboratory tests.

ARTICLE VIII RESOLUTION OF DISAGREEMENTS; CLAIMS FOR COMPENSATION

8.1 Owner to Decide Disputes. The Owner shall reasonably decide all questions and disputes (with the exception of matters pertaining to the interpretation of the Project Plans and Specifications which shall be resolved by the Architect/Engineer pursuant to Section 6.3) that may arise in the execution and fulfillment of the services provided for under the Contract Documents, in accordance with the Owner's procurement rules.

8.2 Finality. The decision of the Owner upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to the Contract Documents, subject to judicial review as provided in Section 8.5 below.

8.3 No Damages for Delay. If at any time Contractor is delayed in the performance of Contractor's responsibilities under the Contract Documents as the result of a default or failure to perform in a timely manner by Owner or Owner's agents or employees, Contractor shall not be entitled to any damages except for compensation specifically authorized in Article III. Contractor's sole remedy will be a right to extend the time for performance. Nothing herein shall preclude Contractor from any available remedy against any responsible party other than Owner. Contractor shall be responsible for liquidated damages for delay if otherwise provided for in the Contract Documents.

8.4 Permitted Claims Procedure. Where authorized or permitted under the Contract Documents, all claims for additional compensation by Contractor, extensions of time affecting the Substantial Completion Date, for payment by the Owner of costs, damages or losses due to casualty, Force Majeure, Project Site conditions or otherwise, shall be governed by the following:

- (1) All claims must be submitted as a request for Change Order in the manner as provided in Article V.
- (2) The Contractor must submit a notice of claim to Owner's Project Representative and to the Architect/Engineer within fifteen (15) days of when the Contractor was or should have been aware of the fact that an occurrence was likely to cause delay or increased costs. Failure to submit a claim within the requisite 15-day period shall constitute a waiver of the right to pursue said claim.
- (3) Within twenty (20) days of submitting its notice of claim, the Contractor shall submit to the Owner's Project Representative its request for Change Order, which shall include a written statement of all details of the claim, including a description of the Work affected.
- (4) After receipt of a request for Change Order, the Owner's Project Representative, in consultation with the Architect/Engineer, shall deliver to the Contractor, within twenty (20) days after receipt of request, its written response to the claim.
- (5) In the event the Owner and Contractor are unable to agree on the terms of a Change Order, the Owner shall have the option to instruct the Contractor to proceed with the Work. In that event, the Owner shall pay for those parts of the Work, the scope and price of which are not in dispute. The balance of the disputed items in the order to proceed will be resolved after completion of the Work, based upon completed actual cost.
- (6) The rendering of a decision by Owner with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Owner or Contractor of such right or remedies as either may otherwise have under the Contract Documents or by laws or regulations in respect of any such claim, dispute or other matter.

8.5 Contract Claims and Disputes. After completion of the process set forth in Section 8.4 above, any unresolved dispute under this Agreement shall be decided by the Mayor. The decision of the Mayor shall be the final and conclusive Owner decision subject to exclusive judicial review in circuit court as may be authorized by law.

8.6 Claims for Consequential Damages. The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article XIV. Nothing contained in this Section 8.6 shall be deemed to preclude assessment of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE IX INDEMNITY

9.1 Indemnity.

A. Indemnification Generally. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.1.

B. Claims by Employees. In claims against any person or entity indemnified under this Section 9.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.1.A. shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 **Duty to Defend.** The Contractor shall defend the Owner in any action, lawsuit mediation or arbitration arising from the alleged negligence, recklessness or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work. So long as Contractor, through its own counsel, performs its obligation to defend the Owner pursuant to this Section, Contractor shall not be required to pay the Owner's costs associated with the Owner's participation in the defense.

ARTICLE X

ACCOUNTING RECORDS; OWNERSHIP OF DOCUMENTS

10.1 Accounting Records. Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.

10.2 Inspection and Audit. The Contractor's records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the Owner's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of its payees during the performance of the Work. These records shall include, but not be limited to, accounting records, written policies and procedures, Subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Contract Documents. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract Documents. For such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of the Contract Documents, for the duration of Work, and until three (3) years after the date of final payment by the Owner to the Contractor pursuant to the Contract Documents.

10.3 Access. The Owner's agent or authorized representative shall have access to the Contractor's facilities and all necessary records to conduct audits in compliance with this Article. The Owner's agent or authorized representative shall give the Contractor reasonable advance notice of intended inspections, examinations, and/or audits.

10.4 Ownership of Documents. Upon obtainment of Substantial Completion or termination of the Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports, transcripts and other technical data, other than working papers, prepared or developed by the Contractor shall be delivered to and become the property of the Owner. The Contractor at its own expense may retain copies for its files and internal use.

ARTICLE XI

PUBLIC CONTRACT LAWS

11.1 Equal Opportunity Employment.

A. Employment. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, disability or age, and will take affirmative action to ensure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, including apprenticeship and on-the-job training.

B. Participation. No person shall, on the grounds of race, creed, sex, color, national origin, disability or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of the Agreement.

11.2 Immigration Reform and Control Act of 1986. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. § 1324, *et seq.*, and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement.

11.3 No Conflict of Interest. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

A. No Interest in Business Activity. By accepting award of this Agreement, the Contractor, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including without limitation as described in the Contractor's own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers, suppliers, distributors, or contractors who will be eligible to supply material and equipment for the Project for which the Contractor is furnishing its services required hereunder.

B. No Appearance of Conflict. The Contractor shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the services provided pursuant to the Agreement. The Contractor has provided the Affidavit of No Conflict as a material inducement for Owner entering the Agreement. If, in the sole discretion of the Mayor or designee, a conflict of interest is deemed to exist or arise during the term of this Agreement, Mayor or designee may cancel this Agreement, effective upon the date so stated in a written notice of cancellation, without penalty to the Owner.

11.4 Truth in Negotiations. By execution of the Contract Documents, the Contractor certifies to truth-in-negotiations and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original Contract Sum and any additions thereto shall be adjusted to exclude any significant sums where the Owner determines the Contract Sum was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year after final payment to the Contractor.

11.5 Public Entity Crimes. The Contractor is directed to the Florida Public Entity Crimes Act, Section 287.133, Florida Statutes, specifically section 2(a), and the Owner's requirement that the Contractor comply with it in all respects prior to and during the term of the Agreement.

11.6 Scrutinized Companies. Florida Statutes § 215.473 created the Scrutinized Companies with Activities in Sudan (SCAS) list and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector (SCAIPES) list. Pursuant to Florida Statutes § 287.135, as of July 1, 2012, a company that, at the time of submitting a response for a new contract or renewal of a contract, is on either the SCAS or SCAIPES list, is ineligible for and may not submit a response for or enter into or renew a contract with the Town for goods and services of \$1million or more. To the extent the Town requires certification of eligibility, it shall be provided on the form promulgated by the Town and shall be submitted with the solicitation response or prior to commencement of the Work.

ARTICLE XII FORCE MAJEURE, FIRE OR OTHER CASUALTY

12.1 Force Majeure.

A. Unavoidable Delays. Delays in any performance by any party contemplated or required hereunder due to fire, flood, sinkhole, earthquake or hurricane, acts of God, unavailability of materials, equipment or fuel, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, archaeological excavation, lack of or failure of transportation facilities, or any law, order, proclamation, regulation, or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any Work or obligation pursuant to the Contract Documents for any of the events of Force Majeure stated in this Section 12.1, the date for performance required or contemplated by the Contract Documents shall be extended by the number of calendar days such party is actually delayed.

B. Concurrent Contractor Delays. If a delay is caused for any reason provided in 12.1.A. or because of an extension of time provided by Change Order, and during the same time period a delay is caused by Contractor, the date for performance shall be extended as provided in 12.1.A. but only to the extent the time is or was concurrent.

C. Notice; Mitigation. The party seeking excuse for nonperformance based on Force Majeure shall give written notice to the Owner, if with respect to the Contractor, or to the Contractor if with respect to the Owner, specifying its actual or anticipated duration. Each party seeking excuse from nonperformance based on Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses to overcome any loss of time that has resulted.

(3) **Casualty; Actions by Owner and Contractor.** During the construction period, if the Project or any part thereof shall have been damaged or destroyed, in whole or in part, the Contractor shall promptly make proof of loss; and Owner and Contractor shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The Contractor shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses, and other charges, including normal and ordinary compensation to the Contractor, necessary for reconstruction of the Project substantially in accordance with the Project Plans and Specifications. Within fifteen (15) days following satisfaction of the express conditions described in subsections (1), (2) and below, the Contractor covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the Project to substantially the same size, floor area, cubic content, and general appearance as prior to such loss or damage:

- (1) Receipt by the Owner or the trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction, and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;
- (2) Written agreement executed by the Contractor and the Owner, by amendment to the Contract Documents or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required adjustment to the Contract Sum; and
- (3) Final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required building permit.

12.2 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the Project, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage, and such plans and specifications conform to the applicable laws, ordinances, codes, and regulations. The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the Contractor as a result of such loss or damage shall be used for payment of the costs, expenses, and other charges of the reconstruction or repair of the Project.

12.3 Notice of Loss or Damage. The Contractor shall promptly give the Owner written notice of any significant damage or destruction to the Project, defined as loss or damage which it is contemplated by Contractor will increase the Contract Sum or extend the Substantial Completion Date, stating the date on which such damage or destruction occurred, the then expectations of Contractor as to the effect of such damage or destruction on the use of the Project, and the then proposed schedule, if any, for repair or reconstruction of the Project. Loss or damage which the Contractor determines will not affect the Contract Sum or Substantial Completion Date will be reported to Owner and Architect/Engineer immediately, and associated corrective actions will be undertaken without delay.

ARTICLE XIII
REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Representations and Warranties of Contractor. The Contractor represents and warrants to the Owner each of the following.

A. The Contractor is a construction company, organized under the laws of the State of Florida, authorized to transact business in the State of Florida, with [REDACTED] as the primary qualifying agent. Contractor has all requisite power and authority to carry on its business as now conducted, to own or hold its properties, and to enter into and perform its obligations hereunder and under each instrument to which it is or will be a party, and is in good standing in the State of Florida.

B. Each Contract Document to which the Contractor is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

C. There are no pending or, to the knowledge of the Contractor, threatened actions or proceedings before any court or administrative agency, within or without the State of Florida, against the Contractor or any partner, officer, or agent of the Contractor which question the validity of any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder, or materially adversely affect the financial condition of the Contractor.

D. The Contractor has filed or caused to be filed all federal, state, local, or foreign tax returns, if any, which were required to be filed by the Contractor, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against the Contractor.

E. Neither Contractor nor any agent or person employed or retained by Contractor has acted fraudulently or in bad faith or in violation of any statute or law in the procurement of this Agreement.

F. The Contractor shall timely fulfill or cause to be fulfilled all of the terms and conditions expressed herein which are within the control of the Contractor or which are the responsibility of the Contractor to fulfill. The Contractor shall be solely responsible for the means and methods of construction.

G. It is recognized that neither the Architect/Engineer, the Contractor, nor the Owner has control over the cost of labor, materials, or equipment, over a Subcontractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions.

H. During the term of the Contract Documents, and the period of time that the Contractor's obligations under the Contract Documents are in effect, Contractor shall cause, create or keep in effect those instruments, documents, certificates, and events contemplated by the Contract Documents that are applicable to, and the responsibility of, the Contractor.

I. The Contractor shall assist and cooperate with the Owner and shall accomplish the construction of the Project in accordance with the Contract Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, or orders that are or will be applicable thereto.

J. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective, and that Owner, representatives of Owner, governmental agencies with jurisdictional interests will have access to the Work at reasonable time for their observation, inspecting and testing. Contractor shall give Architect/Engineer timely notice of readiness of the Work for all required approvals and shall assume full responsibility, including costs, in obtaining required tests, inspections, and approval certifications and/or acceptance, unless otherwise stated by Owner.

K. If any Work (including Work of others) that is to be inspected, tested, or approved is covered without written concurrence of Architect/Engineer, it must, if requested by Architect/Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Architect/Engineer timely notice of Contractor's intention to cover the same and Architect/Engineer has not acted with reasonable promptness in response to such notice. Neither observations by Architect/Engineer nor inspections, tests, or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

L. If the Work is defective, or Contractor fails to supply sufficient skilled workers, or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof and terminate payments to the Contractor until the cause for such order has been eliminated. Contractor shall bear all direct, indirect and consequential costs for satisfactory reconstruction or removal and replacement with non- defective Work, including, but not limited to fees and charges of Architect/Engineers, attorneys and other professionals and any additional expenses experienced by Owner due to delays to other Contractors performing additional Work and an appropriate deductive change order shall be issued. Contractor shall further bear the responsibility for maintaining the schedule and shall not be entitled to an extension of the Contract Time or the recovery of delay damages due to correcting or removing defective Work.

M. If Contractor fails within seven (7) days after written notice to correct defective Work, or fails to perform the Work in accordance with the Contract Documents, or fails to comply with any other provision of the Contract Documents, Owner may correct and remedy any such deficiency to the extent necessary to complete corrective and remedial action. Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work, Contractor's tools, construction equipment and machinery at the site or for which Owner has paid Contractor but which are stored elsewhere. All direct and indirect costs of Owner in exercising such rights and remedies will be charged against Contractor in an amount approved as to reasonableness by Architect/Engineer and a Change Order will be issued incorporating the necessary revisions.

N. If within three (3) years after the Substantial Completion Date or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective,

Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such defective Work or if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instruction, Owner may have the defective Work corrected/removed and all direct, indirect and consequential costs of such removal and replacement will be paid by Contractor. Failing payment by the Contractor and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall have the right to bring a direct action in the Circuit Court to recover such costs.

13.2 Representations of the Owner. To the extent permitted by law, the Owner represents to the Contractor that each of the following statements is presently true and accurate:

- A. The Owner is a validly existing Florida municipal corporation.
- B. The Owner has all requisite corporate or governmental power and authority to carry on its business as now conducted and to perform its obligations under the Contract Documents and each Contract Document contemplated hereunder to which it is or will be a party.
- C. The Contract Documents and each Contract Document contemplated hereby to which the Owner is or will be a party has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, the Owner, and neither the execution and delivery thereof nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other person or party, except such as have been duly obtained or as are specifically noted herein; (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Owner; or (c) contravenes or results in any breach of, default under, or result in the creation of any lien or encumbrance upon the Owner under any indenture, mortgage, deed of trust, bank loan, or credit agreement, the charter, ordinances, resolutions, or any other agreement or instrument to which the Owner is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Owner outstanding on the date of the Contract Documents.
- D. The Contract Documents and each document contemplated hereby to which the Owner is or will be a party constitutes, or when entered into will constitute, a legal, valid, and binding obligation of the Owner enforceable against the Owner in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws from time to time in effect which affect creditors' rights generally, and subject to usual equitable principles in the event that equitable remedies are involved.
- E. There are no pending or, to the knowledge of the Owner, threatened actions or proceedings before any court or administrative agency against the Owner which question the validity of the Contract Documents or any document contemplated hereunder, or which are likely in any case or in the aggregate to materially adversely affect the consummation of the transactions contemplated hereunder or the financial or corporate condition of the Owner.
- F. The Owner shall use due diligence to timely fulfill or cause to be fulfilled all of the conditions expressed in the Contract Documents which are within the control of the Owner or which are the responsibility of the Owner to fulfill.
- G. During the pendency of the Work and while the obligations of the Owner

under the Contract Documents shall be in effect, the Owner shall cause to occur and to continue to be in effect and take such action as may be necessary to enforce those instruments, documents, certificates and events contemplated by the Contract Documents that are applicable to and the responsibility of the Owner.

H. The Owner shall assist and cooperate with the Contractor in accomplishing the construction of the Project in accordance with the Contract Documents and the Project Plans and Specifications, and will not knowingly violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto or, to the extent permitted by law, enact or adopt any resolution, rule, regulation, or order, or approve or enter into any contract or agreement, including issuing any bonds, notes, or other forms of indebtedness, that will result in the Contract Documents or any part thereof, or any other instrument contemplated by and material to the timely and effective performance of a party's obligations hereunder, to be in violation thereof.

ARTICLE XIV TERMINATION AND SUSPENSION

14.1 Termination for Cause by Owner. This Agreement may be terminated by Owner upon written notice to the Contractor should Contractor fail substantially to perform a material obligation in accordance with the terms of the Contract Documents through no fault of the Owner. In the event Owner terminates for cause and it is later determined by a court of competent jurisdiction that such termination for cause was not justified, then in such event such termination for cause shall automatically be converted to a termination without cause pursuant to Section 14.2.

A. Nonperformance. If the Contractor fails to timely perform any of its obligations under the Contract Documents, including any obligation the Contractor assumes to perform Work with its own forces, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity that falls thirty (30) days or more behind schedule) which has been adopted by the Construction Team, or it fails to make prompt payment to Subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of the Agreement the Owner may, after seven (7) days written notice, during which period the Contractor fails to perform such obligation, make good such deficiencies and perform such actions. The Contract Sum shall be reduced by the cost to the Owner of making good such deficiencies, and the Contractor's compensation shall be reduced by an amount required to manage the making good of such deficiencies. Provided, however, nothing contained herein shall limit or preclude Owner from pursuing additional damages from Contractor because of its breach.

B. Insolvency. If the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed because its insolvency, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and its surety, if any, fourteen (14) days written notice, and during which period the Contractor fails to cure the violation, terminate the Agreement. In such case, the Contractor shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages

arising because of failure of Contractor to perform as provided in the Contract Documents, as well as reasonable termination expenses, and costs and damages incurred by the Owner may be deducted from any payments left owing the Contractor.

C. Illegality. Owner may terminate the Agreement if Contractor disregards laws or regulations of any public body having jurisdiction.

D. Rights of Owner. The Owner may, after giving Contractor (and the Surety, if there is one) seven (7) days written notice, terminate the services of Contractor for cause; exclude Contractor from the Project Site and take possession of the Work and of all Contractor's tools, construction equipment and machinery at the Project Site and use the same to the full extent they could be used (without liability to Contractor for trespass or conversion); incorporate in the Work all materials and equipment stored at the Project Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment beyond an amount equal to the value of material and equipment not incorporated in the Work, but delivered and suitably stored, less the aggregate of payments previously made. If the direct and indirect costs of completing the Work exceed the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be verified by Owner in writing; but in finishing the Work, Owner shall not be required to obtain the lowest quote for the Work performed. Contractor's obligations to pay the difference between such costs and such unpaid balance shall survive termination of the Agreement. In such event and notwithstanding any other provisions of the Contract Documents to the contrary, Owner shall be entitled to bring a direct action in the Circuit Court to recover such costs.

14.2 Termination without Cause by Owner. The Owner, through its County Administrator or designee, shall have the right to terminate the Agreement, in whole or in part, without cause upon sixty (60) calendar days' written notice to the Contractor. In the event of such termination for convenience, the Owner shall compensate Contractor for payments due through the date of termination, and one subsequent payment to cover costs of Work performed through the date of termination, subject to the terms and conditions of Section 3.1. The Contractor shall not be entitled to any other further recovery against the Owner, including, but not limited to, anticipated fees or profit on Work not required to be performed, or consequential damages or costs resulting from such termination.

A. Release of Contractor. As a condition of Owner's termination rights provided for in this subsection, Contractor shall be released and discharged from all obligations arising by, through, or under the terms of the Contract Documents, and the Payment and Performance Bond shall be released. Owner shall assume and become responsible for the reasonable value of Work performed by Subcontractors prior to termination plus reasonable direct close-out costs, but in no event shall Subcontractors be entitled to unabsorbed overhead, anticipatory profits, or damages for early termination.

B. Waiver of Protest. Contractor hereby waives any right to protest the exercise by Owner of its rights under this Section that may apply under the Owner's procurement rules.

14.3 Suspension without Cause. Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by written notice to Contractor, which will fix the date on which Work will be resumed. Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved claim therefor.

14.4 Termination Based Upon Abandonment, Casualty or Force Majeure. If, after the construction commencement date (i) Contractor abandons the Project (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the Project, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the Project, and no recommencement of same within one hundred twenty (120) days following the date of cessation), or (ii) the Project is stopped for a period of thirty (30) consecutive days due to an instance of Force Majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within one hundred twenty (120) days (excluding the time required to assess the damage and complete the steps contemplated under Section 12.2), the Owner shall have the right to terminate the Agreement and pay the Contractor its compensation earned or accrued to date.

14.5 Vacation of Project Site; Delivery of Documents. Upon termination by Owner pursuant to Section 14.2 or 14.4, Contractor shall withdraw its employees and its equipment, if any, from the Project Site on the effective date of the termination as specified in the notice of termination (which effective date shall not be less than two (2) working days after the date of delivery of the notice), regardless of any claim the Contractor may or may not have against the Owner. Upon termination, the Contractor shall deliver to the Owner all original papers, records, documents, drawings, models and other material set forth and described in the Contract Documents.

(14) **Termination by the Contractor.** If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment or fails to pay Contractor any sum finally determined to be due; then Contractor may, upon fourteen days written notice to Owner terminate the Agreement and recover from Owner payment for all Work executed, any expense sustained plus reasonable termination expenses. In lieu of terminating the Agreement, if Owner has failed to act on any Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon fourteen (14) days written notice to Owner stop the Work until payment of all amounts then due.

TOWN OF REDINGTON BEACH

G. A. NICHOLS COMPANY

FRIENDSHIP PARK CONSTRUCTION AGREEMENT

SUPPLEMENTAL CONDITIONS

The following Supplemental Condition shall apply to the Construction Agreement for Stipulated Sum:

1. All concrete for the project shall be purchased by the Town using its tax-exempt status. The contractor shall reduce the cost of the project to the Town by the amount paid by the Town for concrete. The contractor shall select the concrete supplier.



FLORIDA SURETY BONDS, INC.

620 N. Wymore Road, Suite 200
Maitland, FL 32751
407-786-7770
Fax 407-786-7766

888-786-BOND (2663)
Fax 888-718-BOND (2663)

www.FloridaSuretyBonds.com

May 15, 2020

Town of Redington Beach
105 164th Avenue
Redington Beach, FL 33708

RE: AUTHORITY TO DATE BONDS AND POWERS OF ATTORNEY

Principal: G.A. Nichols Company

Bond No: 1001044692

Project: ITB 2019-01, Friendship Park Improvements (Demo Slab, Install Retaining Wall & New Slab)

Dear Sir or Madam:

Please be advised that as Surety on the above referenced bond, executed on your behalf for this project, we hereby authorize you to insert the contract date onto the contract bonds and powers of attorney.

Once dated, please email to me at Gloria@floridasuretybonds.com or fax a copy of the bonds to our office at (407) 786-7766.

Sincerely,
U.S. Specialty Insurance Company

Susan L. Reich
Attorney-In-Fact and
FL Licensed Resident Agent

Performance Bond

Executed in 3 Counterpart(s)
Bond No. 1001044692

CONTRACTOR:

(Name, legal status and address)

G.A. Nichols Company
5775 126th Avenue North
Clearwater, FL 33760

OWNER: Ph: (727) 561-0509

(Name, legal status and address)

Town of Redington Beach

105 164th Avenue

Redington Beach, FL 33708

Ph: (727) 391-3875

CONSTRUCTION CONTRACT

Date:

Amount: (\$ 44,118.00)

Description: ITB 2019-01, Friendship Park Improvements (Demo Slab,
(Name and location) Install Retaining Wall & New Slab), 164th Avenue, Redington
Beach, FL

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: (\$ 44,118.00)

Modifications to this Bond: None X See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

G.A. Nichols Company

SURETY

Company: (Corporate Seal)

U.S. Specialty Insurance Company

Signature: _____
Name

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: Susan L. Reich

Name Susan L. Reich

and Title: Attorney-in-Fact and FL Lic. Resident Agent

Inquiries: (407) 786-7770

(FOR INFORMATION ONLY— Name, address and telephone)

AGENT or BROKER:

Florida Surety Bonds, Inc.
620 N. Wymore Road, Suite 200
Maitland, FL 32751
Phone: (407) 786-7770

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Architectonics Studio
2600 Dr. MLK Jr. Street N., Suite 600
St. Petersburg, FL 33704
727-323-5676

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

1. the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
2. the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
3. the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 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 a 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 as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
2. Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven 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 Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



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§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor 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. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .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 Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 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.

§ 11 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 and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.



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§ 16 Modifications to this bond are as follows:

THIS BOND IS GIVEN TO COMPLY WITH SECTION 255.05 OR SECTION 713.23 FLORIDA STATUTES, AND ANY ACTION INSTITUTED BY A CLAIMANT UNDER THIS BOND FOR PAYMENT MUST BE IN ACCORDANCE WITH THE NOTICE AND TIME LIMITATION PROVISIONS IN SECTION 255.05(2) OR SECTION 713.23 FLORIDA STATUTES

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address:

Signature: _____

Name and Title:

Address:



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Payment Bond

Executed in 3 Counterpart(s)
Bond No. 1001044692

CONTRACTOR:

(Name, legal status and address)

G.A. Nichols Company
5775 126th Avenue North
Clearwater, FL 33760

OWNER: Ph: (727) 561-0509

(Name, legal status and address)

Town of Redington Beach
105 164th Avenue
Redington Beach, FL 33708
Ph: (727) 391-3875

SURETY:

(Name, legal status and principal place of business)

U.S. Specialty Insurance Company
13403 Northwest Freeway
Houston, TX 77040

Ph: (713) 462-1000

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date:

Amount: (\$ 44,118.00)

Description: ITB 2019-01, Friendship Park Improvements (Demo Slab,
(Name and location) Install Retaining Wall & New Slab), 164th Avenue, Redington Beach, FL

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: (\$ 44,118.00)

Modifications to this Bond: None ☒ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

G.A. Nichols Company

Signature: _____

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: (Corporate Seal)

U.S. Specialty Insurance Company

Signature: Susan L. Reich

Name Susan L. Reich

and Title: Attorney-in-Fact and FL Lic. Resident Agent

Inquiries: (407) 786-7770

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Florida Surety Bonds, Inc.
620 N. Wymore Road, Suite 200
Maitland, FL 32751
Phone: (407) 786-7770

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party)

Architectonics Studio
2600 Dr. MLK Jr. Street N., Suite 600
St. Petersburg, FL 33704
727-323-5676



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 1.3) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
2. have sent a Claim to the Surety (at the address described in Section 1.3).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 1.3).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



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§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 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.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

1. the name of the Claimant;
2. the name of the person for whom the labor was done, or materials or equipment furnished;
3. a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
4. a brief description of the labor, materials or equipment furnished;
5. the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
7. the total amount of previous payments received by the Claimant; and
8. the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.



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§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

THIS BOND IS GIVEN TO COMPLY WITH SECTION 255.05 OR SECTION 713.23 FLORIDA STATUTES, AND ANY ACTION INSTITUTED BY A CLAIMANT UNDER THIS BOND FOR PAYMENT MUST BE IN ACCORDANCE WITH THE NOTICE AND TIME LIMITATION PROVISIONS IN SECTION 255.05(2) OR SECTION 713.23 FLORIDA STATUTES.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

Signature: _____

Name and Title: _____

Address: _____



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**TOKIOMARINE
HCC**

POWER OF ATTORNEY

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Jeffrey W. Reich, Susan L. Reich, Kim E. Niv, Teresa L. Durham, Gloria A. Richards, Robert P. O'Linn,
Sarah K. O'Linn or Cheryl Foley of Maitland, Florida

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed *****Twenty Five Million***** Dollars (**25,000,000.00**). This Power of Attorney shall expire without further action on April 23rd, 2022. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1st day of June, 2018.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

State of California

County of Los Angeles



By: 

Daniel P. Aguilar, Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

On this 1st day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this day of _____,

Corporate Seals

Bond No. 1001044098

Agency No. 11520




Kio Lo, Assistant Secretary