



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

THE TOWN OF FORT MYERS BEACH



INVITATION TO BID

BAYSIDE PARK IMPROVEMENTS

ITB-21-16-PW

Issued: April 15, 2021

Proposals Due: May 26, 2021

2:00 p.m. EST

Prepared by:

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931



**TOWN of FORT MYERS BEACH
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PART A
INVITATION TO BID
BID # ITB-21-16-PW

The TOWN OF FORT MYERS BEACH, Florida will receive **SEALED BIDS** for **Bayside Park Improvements, ITB-21-16-PW** at Town of Fort Myers Beach, Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 on or before **May 26, 2021 @ 2:00 P.M. EST** and will be opened immediately thereafter. Any bid received by the TOWN later than the above time shall remain unopened. Project scope includes but is not limited to:

The Town of Fort Myers Beach seeks to contract with a qualified Contractor to perform improvements to the existing Bayside Park, located within Town of Fort Myers Beach right-of-way, formerly occupied by Old San Carlos Boulevard, north of First Street in the Town of Fort Myers Beach, Lee County, Florida. The improvements generally include the demolition of existing structures, hardscape, landscape, and other features and the construction of new structures, hardscape, landscape and other features.

The scope is further defined and detailed within Exhibit E found attached to the draft contract agreement affixed to this solicitation package as well as within the plans associated with this project. Contractor is responsible for reviewing all documentation associated with this project.

All work performed shall follow all Federal, State, Local, OSHA and department mandated regulations and specifications for associated work.

1. PRE-BID CONFERENCE

A Mandatory Pre-Bid Conference will be held at Bayside Park, Old San Carlos Blvd, Fort Myers Beach, Florida 33931 on **Wednesday, April 28, 2021 at 9:00 A.M.** all prospective bidders are required to attend. The project will be built in strict compliance with the plans and specifications in the Contract Documents.

2. DESCRIPTION OF WORK AND LOCATIONS

- a. The work on this contract generally consists of the following:
 - i. Selective demolition of existing infrastructure
 - ii. Maintaining existing infrastructure that is to remain
 - iii. Salvaging and repurposing of existing materials
 - iv. Construction of new structures, hardscape surfaces, landscaping, shade sails, lighting, and other appurtenances.
- b. The work shall be performed in accordance with the approved construction documents. All materials and shop drawings shall be submitted for review by the Engineer of Record.
- c. Additional work may be requested by the Town to be performed as negotiated based on pricing provided in this bid, as well as other items as deemed commensurate for the requested scope of work.
- d. The location of the project is at the north end of Old San Carlos Boulevard within the Town of Fort Myers Beach, Lee County, Florida. Please refer to plans for further location information.

The CONTRACTOR agrees to perform all the work necessary to complete all items listed below. The OWNER has the right to accept or reject any or all part of a submitted bid. This project requires the Contractor to be licensed and insured in the State of Florida. The TOWN will require a Bid Bond and a Public Construction Bond on this project.



Project documents and specifications can be viewed at the office of Town Hall, Town of Fort Myers Beach.

The official bid documents shall be obtained from: TOWN OF FORT MYERS BEACH, 2525 Estero Blvd, Fort Myers Beach, Florida 33931, (239) 765-0202, or may be downloaded from www.fmbgov.com or www.demandstar.com.

The Town of Fort Myers Beach reserves the right, in its sole judgment in the best interest of the Town of Fort Myers Beach, to waive any informalities in any bids; to make award(s) including multiple awards; to waive any non-substantive, in Town’s sole judgment, irregularity or technicality in bids received, and/or to reject any or all bids.

Task	Date
Bid Letting	Thursday April 15, 2021
Mandatory Pre-Bid Meeting	Wednesday, April 28, 2021
Bids Due	Wednesday, May 26, 2021 @ 2:00 PM
Bid Opening	Wednesday, May 26, 2021 @ 2:15 PM
Recommendation of Award – Blue Sheet	Monday, May 31, 2021
Town Council Approval	Monday, June 7, 2021
Contractor Notice to Proceed/Procurement Phase	Monday, June 7, 2021
Contractor Notice to Proceed/Construction Phase	Monday, July 5, 2021
Substantial Construction Completion	Wednesday, December 1, 2021
Final Construction Completion	Friday, December 31, 2021



PART B LEGAL NOTICE TO BIDDERS

NOTICE IS HEREBY given that sealed bids will be received by the TOWN OF FORT MYERS BEACH, 2525 Estero Boulevard, Fort Myers Beach, Florida, 33931 until **May 26, 2021 @ 2:00 P.M. EST.** Bids shall be opened at approximately 2:15 p.m. the same day in Town Hall Council Chambers, 2525 Estero Blvd., Fort Myers Beach, FL 33931.

PROJECT: Bayside Park Improvements

Any bid received by the Town after the above date and time shall remain unopened.

SCOPE OF WORK:

- a. The work on this contract generally consists of the following:
 - i. Selective demolition of existing infrastructure
 - ii. Maintaining existing infrastructure that is to remain
 - iii. Salvaging and repurposing of existing materials
 - iv. Construction of new structures, hardscape surfaces, landscaping, shade sails, lighting, and other appurtenances.
- b. The work shall be performed in accordance with the approved construction documents. All materials and shop drawings shall be submitted for review by the Engineer of Record.
- c. Additional work may be requested by the Town to be performed as negotiated based on pricing provided in this bid, as well as other items as deemed commensurate for the requested scope of work.
- d. The location of the project is at the north end of Old San Carlos Boulevard within the Town of Fort Myers Beach, Lee County, Florida. Please refer to plans for further location information.

The TOWN will require a Bid Bond and a Public Construction Bond on this project.

Project documents and specifications can be viewed at the office of Town Hall, Town of Fort Myers Beach.

The official bid documents shall be obtained from: TOWN OF FORT MYERS BEACH, 2525 Estero Blvd, Fort Myers Beach, Florida 33931, (239) 765-0202, or may be downloaded from www.fmbgov.com or www.demandstar.com.

The Town of Fort Myers Beach reserves the right, in its sole judgment in the best interest of the Town of Fort Myers Beach, to waive any informalities in any bids; to make award(s) including multiple awards; to waive any non-substantive, in Town's sole judgment, irregularity or technicality in bids received, and/or to reject any or all bids.



OBTAINING BIDDING DOCUMENTS

- 2.1. **Ordering Instructions:** The official bid Documents (project manual and drawings) shall be obtained from: TOWN OF FORT MYERS BEACH, 2525 Estero Blvd, Fort Myers Beach, Florida 33931, (239) 765-0202, the Towns website, www.fmbgov.com under the "Bids and Proposals" tab, or may be downloaded at www.demandstar.com
- 2.2. BIDDER must furnish the TOWN with a mailing address, e-mail address, phone number and facsimile number for contact purposes. It shall be the BIDDER'S sole responsibility to keep all such information current with the TOWN until the execution of a construction contract by the TOWN for this project. If the official documents are not obtained directly from the Town of Fort Myers Beach, or are modified in any manner, the bid **will not** be accepted for consideration by the TOWN.
- 2.3. Complete sets of Bid Documents must be used in preparing the Bid. The TOWN will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.
- 2.4. Bid Documents may be examined at no cost at the following locations during normal business hours:

Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931

1. SUBMITTAL OF BIDS

- 3.1 BID SUBMITTALS MUST COMPLY WITH THE FOLLOWING TO BE VALID:
 - 3.1.1. Bid must be sealed in an envelope clearly marked on the outside –

Bayside Park Improvements
ITB-21-16-PW

For proper identification, the Bidder's complete name and address shall also appear on the exterior of the Bid package.

- 3.1.2. Bid must be received by the TOWN at the address shown on page A-1, Request for Bids, prior to bid closing time.
- 3.1.3. Completed Official Bid Form (#FMB:003), bid must be properly signed and, where applicable, corporate and/or notary seals attached. **The complete printed, computerized bid schedule must be submitted with the bid at bid submission as applicable.**



- 3.2 EACH FIRM **MUST** SUBMIT ONE (1) ORIGINAL PLUS (1) FLASH DRIVE, IN ADOBE PDF FORMAT, CLEARLY MARKED AS SUCH, OF THE COMPLETE PACKAGE, PROPERLY COMPLETED AND ENCLOSED IN THE BID ENVELOPE FOR BID TO BE VALID:

FAILURE TO COMPLY AND SUBMIT MAY RESULT IN DISQUALIFICATION OF THE BID.

- 3.2.1. Signed and notarized Affidavit of Certification Immigration Laws (#FMB:100).
- 3.2.2. Contractor's Qualification Questionnaire (Form #FMB:004)
Note: A current copy of Form #FMB:004 can be placed on file with the TOWN and must be kept current every 12 months.
- 3.2.3. Non-Collusion (#FMB:021)
- 3.2.4. Materials List (#FMB:023)
- 3.2.5. Sub-Contractors List (#FMB:024)
- 3.2.6. Signed Acknowledgment of Receipt of Addenda (if any).

FAILURE TO SUBMIT ANY OF THE FOREGOING MAY RESULT IN THE BID BEING FOUND NON-RESPONSIVE.

- 3.3 THE FOLLOWING MUST BE SUBMITTED WITHIN TEN (10) CALENDAR DAYS AFTER RECEIPT OF NOTICE TO AWARD; FAILURE TO SUBMIT MAY BE GROUNDS TO RESCIND AWARD:
 - 3.3.1. Public Construction Bond, Letter of Credit, or Cash Bond (as provided in Part C).
 - 3.3.2. Certificate of Insurance (as provided in Part C)
- 3.4 The TOWN reserves the right to waive informalities in any bids; to reject any or all bids with or without cause; and/or to accept the bid that in its judgment will be in the best interest of the TOWN.
- 3.5 The TOWN shall not be responsible for any cost incurred by any bidder in the preparation of these Bid Documents.

2. TOWN PROJECT PERSONNEL

The Project Manager for this project is Town of Fort Myers Beach, Public Works Department, 2525 Estero Blvd., Fort Myers, Florida 33931, Phone (239) 765-0202, Fax (239) 765-0909.

The TOWN contact person for questions concerning Contract Procedure is Town of Fort Myers Beach, Contracts Manager, 2525 Estero Blvd., Fort Myers Beach, FL, 33931, Phone (239) 765-0202, Fax (239) 765-0909.

The TOWN'S CONSULTANT for this project is:

DRMP, INC
1404 Dean Street, Suite 101
Fort Myers, FL 33901
239 206 5093

PART C INSTRUCTIONS TO BIDDERS

1. DEFINITIONS

- 1.1. "ADDENDUM" means any additional Contract provisions, in writing signed and sealed by the CONSULTANT, if applicable, issued by the TOWN prior to the receipt of Bids, which clarify, correct, change or interpret the Bidding Documents or the Contract Documents.
- 1.2. "ALTERNATE BID" means an amount stated In the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted.
- 1.3. "BASE BID" is the sum stated in the Bid for which the Bidder offers to perform the Work described as the base, to which Work may be added or deducted for sums stated in Alternate Bid.
- 1.4. "BIDDER" is any individual, firm, partnership, joint venture, or corporation submitting a bid for this project, acting directly or through an authorized representative.
- 1.5. "BID" is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.
- 1.6. "BID BOND" is a security in the form and amount required by the TOWN pledging that the BIDDER will enter into a Contract with the TOWN on the terms stated in the Bid.
- 1.7. "BIDDING OR BID DOCUMENTS" are the Request for Bids, the Notice to Bidders, Instructions to Bidders, sample forms, Addenda issued prior to receipt of Bids, the Bid Proposal Form and the proposed Contract.
- 1.8. "CONTRACT PRICE" means the total monies payable to the CONTRACTOR under the Contract Documents.
- 1.9. "TOWN" is defined as the Town of Fort Myers Beach, Fort Myers Beach, Florida, a political subdivision of the State of Florida, its successors and assigns, also referred to as OWNER.
- 1.10. "RESPONSIBLE BIDDER" is defined as a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, relevant experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance of the contract.
- 1.11. "SUCCESSFUL BIDDER" is defined as the lowest, qualified, responsible, and responsive bidder to whom the Town Council makes a written award, based upon evaluation criteria contained herein.
- 1.12. "TRIPLICATE" is defined as one original and two copies.
- 1.13. "BIDDING DOCUMENTS" or "CONTRACT DOCUMENTS" include Request for Bids (Part A); Notice to Bidders (Part B); Instructions to Bidders (Part C); Bid Proposal (Part D); Construction Contract (Part E); Plans & Technical Specifications (Part G); all Addenda issued by the TOWN; all Change Orders or Contract Amendments; Town Purchase Order. NOTE: *Title, Subtitles, Headings, Running Headlines of Contents, and Indexes are used merely for convenience purposes*



1.14. "SAMPLE FORMS" include:

- No. FMB:003----- Bid Form
- No. FMB:001----- Bid Bond
- No. FMB:004----- Contractor's Qualification Questionnaire
- No. FMB:005----- Disadvantaged Business Enterprises Participation
- No. FMB:006----- Construction Contract Agreement Form
- No. FMB:007----- Public Construction Bond
- No. FMB:008----- Clean Irrevocable Letter of Credit
- No. FMB:009----- Fort Myers Beach Proposal Request
- No. FMB:010----- Field Change Order
- No. FMB:011----- Change Order
- No. FMB:012----- Field Directive Change
- No. FMB:013----- Application for Estimate & Requisition for Payment
- No. FMB:014----- Certificate of Substantial Completion
- No. FMB:015----- Warranty
- No. FMB:016----- Owner's Representative Certificate of Final Completion
- No. FMB:017----- Disadvantaged Business Enterprise / Minority Business Participation Certification
- No. FMB:018----- Contractor Performance Evaluation
- No. FMB:019----- Public Entities Crime Form
- No. FMB:021----- Non-Collusion Affidavit
- No. FMB:022----- Trench Safety Affidavit (when applicable)
- No. FMB:023----- Materials List
- No. FMB:024----- List of Sub-Contractors
- No. FMB:100----- Affidavit Certification Immigration Laws
- Certificate of Insurance (Standard Accord)

2. BIDDER EXAMINATION/INVESTIGATION OF SITE

- 2.1. Before submitting a bid, BIDDER should carefully examine the site of the proposed work and make all necessary investigations to inform itself thoroughly as to all difficulties involved in the completion of all work required pursuant to the requirements of this bid package. No claim of ignorance of conditions or difficulties that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work pursuant to this bid package as a result of failure to make the necessary examinations and investigations will be accepted as an excuse for any failure or omission on the part of the successful BIDDER to fulfill, in every detail, all of the requirements of the Contract Documents, nor will they be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.
- 2.4. BIDDER shall not be entitled to compensation beyond its bid price when required to incur expenses because of tolls, weight limits of trucks, access to the site, permanent or temporary power at the job site, delivery of materials, temporary utilities, or compliance with OSHA requirements when examination and/or investigation of the site conditions and access routes would have revealed the extra expense involved. *The above list is intended to be illustrative and not all-inclusive.*



3. PREPARATION OF BID

3.1. Each BIDDER shall submit the completed Bid Form No. FMB:003 (provided in Part D) and indicate the total lump-sum, or total unit price base bid, and any total price(s) of any alternative(s) requested as part of the bid solicitation. BIDDER must furnish all requested information in the space provided in the Bid Proposal Form (Part D). The BIDDER is solely responsible for reading and completely understanding the requirements and the specifications of the items bid.

3.2. Signatures shall be required as follows:

3.2.1. Bids by a corporation must be manually executed in the corporate name, by the President or Vice President (or other corporate officer, accompanied by corporate resolution authorizing that person to sign). The corporate seal must be affixed and attested by the secretary or assistant secretary. The corporate address and State of incorporation must be shown below the signature. Non-resident corporations shall furnish to the TOWN a duly certified copy of all required authorizations to transact business in the State of Florida along with the bid proposal.

3.2.2. Bids by a partnership must be manually executed in the partnership name and signed by a partner whose title must appear under the signature. The official address of the partnership must be shown below the signature.

3.2.3. Attorneys-in-Fact who execute bonds or other surety instruments must attach, with each bond or surety instrument, a current certified copy of their power of attorney that indicates the time period during which the power of attorney is valid.

3.2.4. All names must be typed or printed below the signature.

3.3. Bid errors shall be handled as follows:

3.3.1. Where bids have erasures or corrections, each erasure or correction must be in ink and initialed in ink by the BIDDER.

3.3.2. In the case of unit price bids, if an error occurs in the extension of an item, the unit price in words (as shown in the bid) will govern.

3.4. Any blank spaces on the Bid Proposal Form (Part D), qualifying notes, exceptions, counter offers, lack of required submittals, signatures, or failure to submit a bid on the Town's form may cause BIDDER to be declared non-responsive.

3.5. Where required by the bid package, BIDDERS must submit (with their bid proposal) cuts, sketches, descriptive literature and/or complete specifications relative to the items proposed and offered.

3.6. The BIDDER shall comply with the Florida Sales and Use Tax Law as it may apply to this Contract. The Bid amount(s) shall include any and all Florida Sales and Use Tax payment obligations required by Florida Law of the successful BIDDER and/or its Sub-Contractors or material suppliers.

3.7. Bid envelope should be marked as follows: "Sealed Bid;" bidders' name; project name; solicitation number; date and time of opening.



4. TOWN INTERPRETATION / ADDENDA

- 4.1. No interpretation or clarification of the meaning of the plans, specifications, or other contract documents will be binding if made to any BIDDER orally. Every such request must be in writing, addressed to Town of Fort Myers Beach, Attn: Contracts Manager, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, via facsimile to 239-765-0909 or via e-mail to bids@fmbgov.com and received no later than seven (7) calendar days prior to bid opening date.
- 4.2. Any interpretations, any supplemental instructions, and/or any modifications to the Bidding Documents deemed advisable by the TOWN **will be issued as a written Addendum and made available to all known BIDDERS via email, not later than five (5) calendar days (excluding Saturdays, Sundays, and Holidays), prior to the bid opening date. Questions will not be accepted during the last seven (7) days prior to bid opening date, unless otherwise specified by the TOWN. All Bidders are encouraged to contact the TOWN at least five (5) calendar days before the Bid receiving date to verify information regarding Addenda. Bidder shall acknowledge receipt of all Addenda, by number and date, in Part D, Official Bid Form. Failure to do so may result in rejection of the bid as non-responsive. Addenda information will be forwarded to BIDDER's email address upon issuance and may be posted on the TOWN'S Web Site at www.fmbgov.com. IT IS THE SOLE RESPONSIBILITY OF THE BIDDER TO ENSURE HE/SHE OBTAINS INFORMATION RELATED TO ADDENDA. All Addenda shall become part of the Contract Documents.**

5. BID SECURITY AND FORFEITURE

- 5.1. The BIDDER shall provide Bid Security in an amount not less than **five percent (5%)** (including applicable alternates) of the total amount of the bid. The Bid Security is to be submitted to the TOWN in triplicate (one original and two copies). The copies must be a photographic reproduction of the completed form set forth in the Contract Documents and be clearly marked "COPY".
- 5.2. The following types of Bid Security are acceptable:
 - 5.2.1. A Certified Check or a Cashier's Check, in a stated dollar amount of not less than five percent (5%) of Bidder's total bid, including alternates if applicable. Any Certified Checks or Cashier Checks submitted in lieu of a Bid Bond shall be drawn on a solvent bank or trust company, made payable to Town of Fort Myers Beach and shall have all necessary documentary revenue stamps attached (if required by law); or
 - 5.2.2. A bid bond may be submitted on Town of Fort Myers Beach Paper Bid Bond Form No. FMB: 001, completed and signed by all required parties, of not less than five percent (5%) of Bidder's total bid (including Alternate(s) if applicable). Contact your Surety Company to inquire if they utilize the Electronic Bid Bond form through Fort Myers Beach. The Bid Bond, whether submitted by paper or electronic format, shall be issued by a duly authorized surety authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of authority to execute the bond being submitted.
 - 5.2.3. Personal checks are not acceptable to the Town as Bid Security.



- 5.3. The Bid Security of the successful Bidder will be retained by the Town until Bidder has executed the contract, whereupon the Bid Security will be returned. The Bid Security of other Bidders whom the TOWN believes to have a reasonable chance of receiving the award may be retained by the TOWN until the effective date of the Agreement, whereupon all Bid Securities furnished by such Bidders will be returned.
- 5.4. If, within seven (7) calendar days after notification of the TOWN'S approval to award a contract, the successful BIDDER refuses or otherwise neglects to execute the required written contract, fails to furnish the required Public Construction Bond, or fails to submit the required Certificate of Insurance, then the TOWN may rescind the Notice of Award. The amount of the BIDDER'S bid security shall be forfeited and may be retained by the Town if BIDDER fails to execute the contract.
- 5.5. No claim of mistake or misunderstanding of the conditions of forfeiture of the Bid Security shall entitle the BIDDER to recover its bid security and shall not be a defense in any action for recovery of the bid security based upon BIDDER'S neglect or refusal to execute a written Contract.

6. PUBLIC CONSTRUCTION BOND

- 6.1. If required, a Public Construction Bond (on Form No. FMB:007 provided in (Part E) issued in a sum equal to one hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Fort Myers Beach and otherwise authorized to transact business in the State of Florida shall be required from the successful BIDDER. The purpose of the bond is to insure the faithful performance of the obligations imposed by the resulting contract and protect the TOWN from lawsuits for non-payment of debts incurred during the successful BIDDER'S performance under such Contract.
- 6.2. A public construction bond must be properly executed by the Surety Company and successful BIDDER when the Contract is executed by the successful BIDDER. Only the form provided with the contract documents (Form No. FMB:007 provided in Part E) will be accepted.
- 6.3. A Clean Irrevocable Letter of Credit or a Cash Bond may be accepted by the TOWN in lieu of the Public Construction Bond. Only the form provided with the contract documents (Form No. FMB:008 provided in Part E) will be accepted.

7. INSURANCE REQUIREMENTS

- 7.1. An Insurance Certificate (Standard Accord form provided in Part E) shall be required from the successful BIDDER. Such form must be properly executed and submitted by the insurance company and successful BIDDER when the contract is executed by the successful BIDDER. Such certificate of insurance must have a minimum thirty (30) days' notice of cancellation, state that the coverage is primary, shall be in the types and amounts stated in Part E (Supplementary Conditions) of the Contract Documents, and shall include the Town of Fort Myers Beach as an additional insured.



8. SUBMISSION OF BIDS

- 8.1. SUBMIT THE ORIGINAL BID AND PDF COPY, IN A SEALED ENVELOPE, EITHER MAILED OR HAND CARRIED, TO THE ADDRESS/LOCATION SHOWN IN THE "REQUEST FOR BIDS", PAGE A-1, PRIOR TO THE BID CLOSING TIME.
- 8.2. The proper delivery of the bid to the Town of Fort Myers Beach is solely and strictly the responsibility of the BIDDER. The Town of Fort Myers Beach shall not be responsible for delays caused by the United States Postal Service or any other occurrence. Bids submitted by certified or registered mail, not received by advertised date and time of Bid Opening, will not be honored.
- 8.3. Bids must be submitted on the forms provided. The TOWN reserves the right to modify the Bid Proposal by electronic/facsimile notice provided such notice is received prior to the time and date set for the bid opening.
- 8.4. Bids received after the time set for the bid opening will not be considered. Late bid proposals will remain unopened with the notation: *"This bid was received after the delivery time designated for the receipt of bids."*

9. WITHDRAWAL, TRANSFER OR MODIFICATION OF BIDS

- 9.1. Bids may be withdrawn by written, faxed or telegraphic requests that are received by TOWN prior to the time fixed for the opening of bid proposals.
- 9.2. BIDDER may not withdraw its bid after the appointed bid opening time.
- 9.3. Bid modifications received after the time set for bid opening will not be considered. Modifications, in writing, received prior to the bid opening will be accepted.
- 9.4. BIDDER may not assign or otherwise transfer its bid prior to or after the bid opening time.

10. BID OPENING

- 10.1. At the time and place fixed for the opening of bids every bid properly delivered within the time fixed for receiving bids will be opened and the bidder's name publicly read aloud, irrespective of any irregularities that may be found therein. BIDDERS and other persons interested may be present, in person or by representative. In accordance with CS/HB 7223, an abstract of the amounts of the base bids and major alternates (if any) will be made available, upon request, to BIDDERS the earlier of thirty (30) days after the opening of bids or when a Notice of Intent to Award is issued. At that time, a Bid tabulation will be posted on the TOWN's website at www.fmbgov.com.

11. AWARD OF CONTRACT / REJECTION OF BIDS

- 11.1 The contract will be awarded to the lowest responsive and responsible BIDDER whose bid, conforming to the Invitation to Bid, is most advantageous to the TOWN, price and other factors considered. The TOWN reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work, and the right to disregard all nonconforming, non-responsive, unbalanced or conditional Bids. Also, TOWN reserves the right to reject the Bid of any BIDDER if TOWN believes that it would not be in the best interest of the Project to make an award to that Bidder, whether the Bid is not responsive or the Bidder is unqualified, due to lack of relevant experience or other reasons, to perform the type of work required, or if the Bidder is of doubtful financial ability or fails to meet any other pertinent criteria established by TOWN for the Bid.



Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

- 11.2 In evaluating Bids, the TOWN will consider the qualifications and relevant experience of the Bidders in performing work on similar projects (as well as their subcontractors, suppliers, or others when such entities are required to be disclosed by Bidders), whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. The TOWN may also consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work, when such data is required to be submitted prior to the Notice of Award.
- 11.3 The TOWN may conduct such investigations as the TOWN deems necessary and appropriate to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations proposed by Bidder hereunder.
- 11.4 Nothing contained herein shall require the Town to reject bids or award a contract based upon anything other than its sole discretion as described herein. By submitting a bid, the BIDDER recognizes and accepts that the TOWN may reject the bid based upon the exercise of its sole discretion. The sole remedy of a disappointed BIDDER for the improper award of a bid by TOWN shall be recovery of bid preparation costs and TOWN shall not be liable for any lost profits or attorney's fees incurred by BIDDER as a result of an improper award.

12. EXECUTION OF WRITTEN CONTRACT

- 12.1 Within seven (7) calendar days of notice of award, the successful BIDDER will be required to sign the Agreement form (included as Part E of the Bid Documents) pursuant to the award made by the TOWN to the successful BIDDER.
- 12.2 The TOWN will issue a "Notice to Proceed" on the Project within fifteen (15) calendar days of the effective date of the Agreement as shown in the Construction Contract (Part E).

13. BID PROTEST PROCEDURE

- 13.1. Any BIDDER that has submitted a formal bid to Town of Fort Myers Beach, and who is adversely affected by an intended decision with respect to the award of the formal bid, must file with the Town's Public Works Director a written "Notice of Intent to File a Protest" in accordance with the bid protest procedure specified in Fort Myers Beach Purchasing Manual which is available for examination and/or copying at Fort Myers Beach Town Hall, 2525 Estero Blvd., Fort Myers Beach, FL 33931 (239) 765-0202

"FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY TOWN OF FORT MYERS BEACH TOWN COUNCIL SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS."



14. PUBLIC ENTITY CRIME AFFIDAVIT

- 14.1. Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the Town; may not submit a bid on a contract with the Town for the construction or repair of a public building or a public work; may not submit bids or leases of real property to the Town; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the Town, may not transact business with the Town in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list. (Form No. FMB:019).

15. DRUG FREE WORKPLACE

- 15.1. Whenever two or more proposals, which are equal with respect to price, quality, and service, are received for the procurement of contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the evaluation/award process. In order to have a drug-free workplace, a business shall comply with the requirements of Florida Statutes Section 287.087.

16. IMMIGRATION LAWS

- 16.1. The Town of Fort Myers Beach will not intentionally award Town contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e), Section 274A(e) of the Immigration and Nationality Act ("INA").
- 16.2. The Town of Fort Myers Beach shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of the contract by Town of Fort Myers Beach.

17. NON-COLLUSION AFFIDAVIT

- 17.1. Each Bidder shall complete the Non-Collusion Affidavit (Form No. FMB:021) contained within the Bid package and include it with the Bid.

18. E-VERIFICATION

- 18.1. As a condition precedent to entering into this AGREEMENT, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
- 18.2. A contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of the AGREEMENT.
- 18.3. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.



- 18.4. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
- 18.5. A contractor terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that the Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
- 18.6. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.



BIDDER SUBMITTAL CHECKLIST

THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE BIDDER IN PREPARING A COMPLETED BID SUBMITTAL

IMPORTANT: Please read carefully and follow each item.

Please check off each of the following items as the necessary action is completed:

- 1. No. FMB:003 Official Bid Form, pg. D-2, insert firm name at the bottom of the page
- 2. Signed copy of each addendum, if any.
- 3. No. FMB:003 Official Bid Form, pg. D-3, insert Project Cost and any Alternates (if required)
- 4. No. FMB:003 Official Bid Form, pg. D-5, all addenda issued, if any, have been acknowledged. (*If a replacement proposal bid form or bid schedule page was issued with any addenda, replacement page is used for submitting a bid)
- 5. No. FMB:003 Official Bid Form, pg. D-5, substantial and final completion days inserted (if required)
- 6. No. FMB:003 Official Bid Form, pg. D-6, has been properly signed with the corporate seal (if applicable). Attested to by the Secretary.
- 7. No. FMB:001 Bid Bond / Cashier's Check/Certified Check have been submitted with the bid in the amount indicated
- 8. No. FMB:003 Official Bid Form, Bid Schedules & Disk (if applicable), have been properly completed, unit price extensions and totals have been checked for accuracy
- 9. Any other submittals required in Part B, "Legal Notice to Bidders, Paragraph 3. Submittal of Bids."
- 10. Erasures or other changes made to the bid have been initialed by the person signing the bid
- 11. No. FMB:004 Contractor's Qualification Questionnaire (properly completed, signed and notarized)
- 12. No. FMB:005 Schedule D, DBE Participation form; completed and signed or good faith documentation. (when applicable)
- 13. Proof of a "Good Faith Effort" in attempting to obtain DBE's for this project. (If subcontractors will be used and no DBE's are listed on Schedule D.) (when applicable)
- 15. No. FMB:019 Public Entities Crime Form
- 16. No. FMB:021 Non-Collusion Affidavit
- 17. No. FMB:022 Trench Safety Affidavit (when applicable)
- 18. No. FMB:024 List of Sub Contractors
- 19. No. FMB:023 Material Manufacturers
- 20. No. FMB:100 Affidavit Certification Immigration Laws (Signed and notarized)
- 21. All required documents submitted (1 original and 1 PDF on disc or flashdrive)
- 22. Bid properly sealed in an envelope and marked "Sealed Bid", bidders name; project name; solicitation number; date and time of opening



PART D
FMB:003 - OFFICIAL BID FORM
(1 of 5 Pages)

FOR

Bayside Park Improvements
ITB-21-16-PW

Bids are to be submitted by

May 26, 2021 @ 2:00 P.M. EST,

to:

**TOWN OF FORT MYERS BEACH
TOWN HALL
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931**

BID OPENING:

LOCATION: Council Chambers
2525 Estero Boulevard
Fort Myers Beach, FL. 33931

May 26, 2021 @ 2:15 P.M. EST

TOWN COUNCIL FORT MYERS BEACH
LEE COUNTY, FLORIDA

BIDDER: _____
(Individual or Firm Name)



PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

May 26, 2021
(DATE)

2:00 P.M. EST
(TIME)

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN
2. The Undersigned, hereinafter called "BIDDER", having visited the site of the proposed project and having become familiar with the local conditions, nature and extent of the work, and having examined carefully the Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and having fulfilled their requirements as well as the Bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

Bayside Park improvements
ITB-21-16-PW

in full accordance with the drawings and specifications prepared in accordance with the Town's Advertisement for Bids, Instruction to Bidders, Construction Contract and all other documents related thereto on file with Town of Fort Myers Beach, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:



**SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
BAYSIDE PARK IMPROVEMENTS**

ITEMS	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	Cost
1	Mobilization (<5%)	5%	LS		
2	Performance, Payment, and Maintenance Bond Premiums and Insurance	1%	LS		
3	Field Layout and As Built (1%)	1%	LS		
	ARCHITECTURAL				
A1	Permit Fees & Inspections	1	LS		
A2	Quality Control - Lab Testing	1	LS		
A3	Site Demolition	7200	SF		
A4	Structure Demolition	160	SF		
A5	Concrete Pads	18.0	EA		
A6	Concrete Masonry	78	EA		
A7	General - Metals	1	LS		
A8	Structural Steel	490	SF		
A9	Metal Decking	490	SF		
A10	Metal Fabrications	32	LF		
A11	General Carpentry	1	LS		
A12	Rigid Insulation	490	SF		
A13	Metal Roofing	490	LS		
A14	Access Doors	2	LS		
A15	Concrete Sailing	490	SF		
A16	Painting	6,860	SF		
A17	General Electrical	1	LS		
A18	Soil Treatments	490	SF		
	LANDSCAPE				
L1	Decorative Concrete (Shell Broadcast) (allow for replacement of existing damaged)	1,100	SF		
L2	Decorative Pavers (Sand Set Clay)	1,900	SF		
L3	Artificial Turf	2,127	SF		
L4	4" Fine Aggregate	24	CY		
L5	6" Drainfield Gravel with filter fabric	35	CY		
L6	Benches	4	EA		
L7	Trash & Recycle Receptical	2	EA		
L8	Bike Rack	2	EA		
L9	Barrier Free Water Fountain	1	EA		
L10	Tree Grates	8	EA		
L11	Trench Drain Grates	200	LF		
L12	Concrete Seat Wall W/ Stone Cladding	37	LF		
L13	Pole Lights (Dual Board/Banner/Outlet)	5	EA		
L14	Controller (allow for coordination)	1	EA		
L15	Well Light (LV)	16	EA		



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

L16	Shade Sail Colmn Light (LV)	10	EA		
L17	Linear LED Seat Wall Light	37	LF		
L18	Spec. Tree Up Light	2	EA		
L19	Electrical Conduit	400	LF		
L20	Controller (allow)	1	EA		
L21	Spec. Gumbo Limbo Tree	1	EA		
L22	Coconut Palm	2	EA		
L23	Native Grasses	77	EA		
L24	Rain Garden Substrate	30	CY		
L25	Coconut Fiber Slope Mat	690	SF		
L26	Root Barrier. 24" Depth, .024" Min Thickness	150	LF		
L27	Root Barrier. 36" Depth, .024" Min Thickness	55	LF		
L28	Whole Shell Mulch 1CF Bags	160	EA		
L29	Irrigation	1	LS		
UTILITY					
U1	16" Tapping Sleeve and Valve	2	EA		
U2	16" DIP Water Main Open Cut Including 4 45 Degree Elbows	45	LF		
U3	16" DIP Caps	2	EA		
U4	Remove 16" DIP	40	LF		
U5	3/4" SCH80 PVC	120	LF		
U6	1" SCH80 PVC	5	LF		
U7	1.5" SCH80 PVC	10	LF		
U8	Backflow Preventer	2	EA		
U9	3/4" Gate Valve	1	EA		
U10	2" Conduit	100	LF		
Subtotal					
4	Demobilization (Project Closeout)	5%	LS		
5	Contingency	5%	LS		
		Total			

#1 BID ALTERNATE	Coconut Palm	6	EA		
#2 BID ALTERNATE	Replace Artificial Turf for Decorative Pavers (Sand Set Clay)	2127	SF		

3. The BIDDER hereby agrees that:

- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the bidder has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

executed within the time frames established by these documents.

- (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of breach of any of the agreements of this proposal, the bid security shall be forfeited.



PART D
FMB:003 - OFFICIAL BID FORM
(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. _____ Dated: _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated: _____ Addendum No. _____ Dated _____

5. If awarded this construction contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in _____ consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in _____ consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other bidder, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this documents. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

(Name of License Holder)

(State Certificate No.)

Business Tax Receipt No. *(Specify jurisdiction)*

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this _____ day of _____, 2020.

By: Printed

By: Signature

TITLE:

Company Name

Contact Person

Mailing Address

E-mail / Contact Person

City, State, and Zip

Telephone Number

Fax Number

ATTEST:

(Seal)

Secretary



**PART D
FMB:001 - BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we

_____ as Principal, and
(BIDDER'S Name)

_____ a Corporation licensed to do
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto TOWN OF FORT MYERS BEACH TOWN COUNCIL, LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida, in the SUM OF \$ _____ for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this _____ day of _____, 20__

WHEREAS, said Principal is herewith submitting a Bid Proposal for the construction of:

**Bayside Park Improvements
ITB-21-16-PW**

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the TOWN and provide other Insurance as may be required to the TOWN within such time period as the TOWN may allow, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said TOWN in money the difference between the amount of the Bid of said Principal and the amount for which said TOWN may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said TOWN if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal

(SEAL)

By: Witness Signature

Principal

Witness as to Surety

(SEAL)

By: Witness Signature

Surety's Name

By: As-Attorney-in-Fact, Surety

Affix Corporate Seals and attach proper Power of Attorney for Surety.



PART D

FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE

(1 of 7 Pages)

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: _____

CORPORATION - Date of Incorporation: _____ State of Florida
Incorporation: _____

If Out of State Corporation, currently authorized to do business in Florida,
give date of such authorization: _____

PARTNERSHIP - Date of Organization: _____ Nature of Partnership: General
Limited
Association

INDIVIDUAL - Name and Address of Owner _____

JOINT VENTURE - Between _____
Name Title
And _____
Name Title
Date of Agreement _____

OTHER - Explain _____

Parent Company Office Address (if any): _____

Principal Office Address: _____

Name of Project (if applicable): _____

Person to Contact: _____

Title: _____ Telephone No.: _____



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the Bidder.

- 1. How many years has your organization been in business as a _____ Contractor under your present name?

- 2. Under what other or former names has your organization operated?

- 3. List below your organizations Officers, Owners or Partners:

NAME	_TITLE	ADDRESS	DATE ASSUMING POSITION



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
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4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

JURISDICTION	TRADE	STATE CERT. NO.	TOWN'S COMP. NO.	STATE REG. NO.	TOWN'S OCC. LIC. NO.	STATE PERMIT	EXPIRE DATE

5. List jurisdictions in which your organization's partnership or trade name is filed:

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it? YES NO
See Sheet No. _____

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers? YES NO
See Sheet No. _____

6.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five (5) years? YES NO
See Sheet No. _____

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another? YES NO
If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project? YES NO
If so, state the name of the individual, other organization, when, where and the reason therefore:



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(4 of 7 Pages)

9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified Bidder or Qualified Bidder for construction contracts? YES NO

If so, for what type of work? _____

Give details and reason: _____

10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:

(use extension sheet if necessary and reference sheet number herein: _____)

11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
11.1 Name and present position or capacity
11.2 Years of construction experience, type of work, position or capacity and cost range
Years of related construction experience, type of work, position or capacity and cost
11.3 range
11.4 Brief education and professional registrations

12. List of type of work normally provided by your own work forces:

13. Indicate type of contracting undertaken by your organization and number of years experience:

As General Contractor _____ Years _____ Type

As Sub-Contractor _____ Years _____ Type

14. Attach the prime construction contracts your organization has underway on this date _____.

The list shall include the following information: (reference sheet numbers herein: _____)

- 14.1 Project Title and Location
- 14.2 Contractor or Sub-Contractor
- 14.3 Contract Amount and Date of Contract
- 14.4 Percent of Project Constructed by Sub-Contractors
- 14.5 Percent Complete
- 14.5 Project Manager or Superintendent
- 14.6 Required Completion Date
- 14.7 Name, Address and Telephone Number of Owner
- 14.8 Designing Architect/Engineer and Address



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(5 of 7 Pages)

15. Attach a list of the no fewer than five (5) prime construction contracts involving marine construction, including seawall construction and dune walkover/handicap accessible ramps, completed in the past five (5) years by your organization.
The list shall include the following information: (reference sheet numbers herein: _____)
- 15.1 Project Title, Location, and Brief Description of Work Performed
 - 15.2 Contractor or Sub-Contractor
 - 15.3 Contract Amount and Date of Contract
 - 15.4 Percent of Project Constructed by Sub-Contractors
 - 15.5 Date Complete
 - 15.6 Project Manager or Superintendent
 - 15.7 Required Completion Date
 - 15.8 **Name, Address and Telephone Number of Owner**
 - 15.9 Designing Architect/Engineer and Address
16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed.
The list shall include the following information: (reference sheet numbers herein: _____)
- 16.1 Project Title and Location
 - 16.2 Contractor or Sub-Contractor
 - 16.3 Original Contract Amount and Date
 - 16.4 Final Contract Amount
 - 16.5 Percent of Project Constructed by Sub-Contractors
 - 16.6 Project Manager or Superintendent
 - 16.7 Required Completion Date
 - 16.8 **Name, Address and Telephone Number of Owner**
 - 16.9 Town Sponsoring Department



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(6 of 7 Pages)

17. If General Contractor, list one or more of the following subcontractors who have been associated with you on any of the projects listed above:

SUB-CONTRACTOR (Name and Address)

17.1 Carpentry _____

17.2 Structural _____

17.3 Hardware _____

17.4 Three (3) other major subcontractors:

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

19. List no less than three (3) and preferably five (5) financial references:



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(7 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?

Dated at _____ this _____ day of _____ 201

Name of Organization

BY: _____

Title of Person Signing

(if Corporation Affix Corporate Seal)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____,
20____, by means of () physical presence or () online notarization, personally appeared _____
_____ as _____ of _____,
() who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:



TOWN of FORT MYERS BEACH
PART D

BID NO. ITB-21-16-PW

FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

NOTE: This form must be signed by the person who will sign, or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE /MINORITY /WOMEN (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE /MINORITY /WOMEN (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE /MINORITY /WOMEN (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE /MINORITY /WOMEN (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ _____

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: _____ %

CONTRACTOR NAME

SIGNATURE

DATE



PART D
FMB:019 – PUBLIC ENTITIES CRIME FORM
(1 of 2 Pages)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

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

1. This sworn statement is submitted to _____
(Print name of public entity)
 by _____
(Print individual's name and title)
 for _____
(Print name of entity submitting sworn statement)
 whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is ___ - _____
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: ___ - ___ - _____.)

2. I understand that a “public entity crime” as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that “convicted” or “conviction” as defined in Paragraph 287.133 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an “affiliate” as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
 - A. A predecessor or successor of a person convicted of a public entity crime; or

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person.



TOWN of FORT MYERS BEACH
PART D
FMB:019 – PUBLIC ENTITIES CRIME FORM
(2 of 2 Pages)

BID NO. ITB-21-16-PW

B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

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

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

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

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

(Signature)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by means of () physical presence or () online notarization, personally appeared _____ as _____ of _____,

() who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:



PART D
FMB:021 – NON-COLLUSION AFFIDAVIT

State of _____)

County of _____)

_____ being first duly sworn, deposes and says that:

- 1) He/she is the _____, (Owner, Partner, Officer, Representative or Agent) of _____, the Bidder that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By: _____

(Printed Name)

ACKNOWLEDGEMENT

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by means

of () physical presence or () online notarization, personally appeared _____ as

_____ of _____,

() who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:



PART D
FMB:022 – TRENCH SAFETY AFFIDAVIT
(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

Bidder acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The Bidder further identifies the costs as follows:

Trench Safety Item: _____
(Description)

(Cost written in words)

TOTAL \$ _____

FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE

COMPANY NAME: _____

DATE: _____

BY: _____
(Signature)

(Print Name)



**PART D
FMB:023 – MATERIALS MANUFACTURERS LIST**

The Bidder is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, Bidder shall furnish the manufacturer named in the TOWN’S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

The bidder lists the following manufacturers of the major equipment (LIST)

<u>MATERIAL</u>	<u>MANUFACTURER</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

Signed _____

Name of Bidder _____



**PART D
FMB:024 - LIST OF SUB-CONTRACTORS**

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any bidder who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the bidder/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

The bidder identifies the following firm as the proposed installation subcontractor of the:

Name of Firm: _____

Address and Phone: _____

Contact Person: _____

<u>Other Subcontractor and Address</u>	<u>Specialty</u>
1. _____ _____	_____
2. _____ _____	_____
3. _____ _____	_____

Signed _____

Name of Bidder _____



PART D
FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT

BID NO: ITB-21-16-PW

PROJECT NAME: Bayside Park Improvements

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

(Signature) (Title) (Date)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20_____, by means

of () physical presence or () online notarization, personally appeared _____ as

_____ of _____,

() who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME**



PART E
FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM
(1 of 6 Pages)

CONSTRUCTION CONTRACT AGREEMENT

Contract No. _____

Council Award Date: _____

AGREEMENT

THIS CONTRACT is made this _____ day of _____ by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "TOWN," and _____, a corporation, hereinafter called "CONTRACTOR."

WITNESSETH: For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall commence and complete all work for Bayside Park improvements ITB-21-16-PW in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services is attached marked Exhibit "A".

ARTICLE 2. CONTRACT SUM

2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of:

said amount being the **Total Base Bid Amount** as listed on the CONTRACTOR's Official Bid Proposal Form that was submitted for this project.

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety percent (90%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.



- 3.1.1 At the discretion of the Project Manager and final authorization by the Public Works Director, once the project reaches 50% completion, the retainage shall be reduced to five percent (5%) of the total contract amount, provided the project is on schedule. At any time the project falls behind schedule, the TOWN retains the exclusive right to revert back to the original contract terms by withholding 10% retainage until the project is back on schedule or the project is completed.
- 3.2. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

The Term “**Contract Documents**” shall include this Contract; addenda; CONTRACTOR’s Bid, except to the extent it conflicts with any other contractual provision; the Notice to Proceed, the Public Payment and Performance Bond(s); the Bid Package prepared and issued by the TOWN; the General Conditions; the Specifications and Drawings; any Special Conditions; all Written Amendments; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. Substantial completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.3. Final completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for final completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

The TOWN shall have the right to deduct all damages due from the final payment



request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial Completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.



ARTICLE 7. GENERAL CONDITIONS

7.1 RESPONSIBILITY OF THE CONTRACTOR.

7.1.1 PROSECUTION OF THE WORK.

The CONTRACTOR shall be responsible for the good condition of the Work until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Information shown on the Drawings as to the location of the existing utilities has been prepared from the most reliable data available to the TOWN. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of existing utilities. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from CONTRACTOR's activities. The location of all overhead utilities shall be verified and the TOWN notified on any conflict which might occur. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required.

Caution shall be exercised by the CONTRACTOR in grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground facility broken or dislocated during construction for which sufficient underground information has been shown on the plans.

ARTICLE 8. TERMINATION FOR CONVENIENCE

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

ARTICLE 9. PROJECT RECORDS

The CONTRACTOR shall maintain auditable records concerning the project adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the TOWN reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made, ten (10) years for capital improvements to real property, and shall be readily available to TOWN personnel with reasonable notice, and to other persons in accordance with the Florida Public Records Law.



IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, AMY@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.



- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be conducted in Lee County, Florida. In the event of any litigation and/or binding arbitration arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 10.10. TOWN reserves unto itself sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Pursuant to existing laws and procedures in the State of Florida, and if approved and authorized by the TOWN's Council, any dispute arising out of or relating to any of the contract documents or this Agreement shall be submitted to binding arbitration in Lee County, Florida, before a single lawyer arbitrator having at least ten (10) years' experience in similar matters, and who is mutually acceptable to the parties, or approved as selected by the Lee County Court Mediation/ Arbitration Office. The parties shall equally divide the expenses of such arbitration, and the prevailing party in such arbitration shall be entitled to award of reasonable attorney fees and costs (exclusive of the actual cost of arbitration to be shared equally by the parties) incurred in the preparation for arbitration of such dispute and further such prevailing party shall also be entitled to reasonable attorney fees and costs incurred in any proceedings to enforce or compel its arbitration rights or obtain order(s) confirming such arbitration or award or any attorney fees or cost incurred in proceeding thereafter to enforce such rights in addition to the above and foregoing rights.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.



In witness whereof, TOWN and CONTRACTOR have signed this agreement. One counterpart has been retained by the Town Clerk, one to the Project Sponsoring Department, and one part each has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

(Secretary)

(Correct Name of Business)

(Corporate Seal)

BY: _____
(Title)

Date: _____

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: _____
Town Clerk

BY: _____
Town Manager

Date: _____

Date: _____

APPROVED AS TO FORM

BY: _____
Town Attorney



EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____, **2020**
BETWEEN THE TOWN AND _____, PROVIDER.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

Bayside Park Improvements

ATTACHMENT "A" – GENERAL CONDITIONS

ARTICLE 1. PRELIMINARY MATTERS

Titles, Article Headings, Section Headings, Indexes and Table of Contents are given for the sake of clarity; ease of reading and as a guide for ease of reference to specific topics within the General Conditions.

Administration

1.1 The TOWN reserves the right to make final decisions considering any TOWN Consultant's recommendations or interpretations of the Contract Documents. The TOWN's Consultant does not have authority to obligate or commit the TOWN to fund additional expenditures or approve extensions of time over the approved Contract time or price.

Copies of Documents

1.2 The TOWN shall furnish to the CONTRACTOR the number of copies of the Contract Documents specified in the Supplementary Conditions as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction which shall be paid by the CONTRACTOR.

Before Starting Construction

1.3 Before undertaking each phase of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the CONTRACTOR may discover or other information known to the CONTRACTOR and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the OWNER'S REPRESENTATIVE, the CONTRACTOR shall assume responsibility for such performance and shall share in costs associated with correction; however, the CONTRACTOR shall not be liable to the TOWN for failure to report any conflict, error or discrepancy in the Contract Documents, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

1.4 Within ten (10) calendar days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), the CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE for review and approval:

1.4.1 an estimated progress schedule indicating the starting and completion dates of the various



stages of the Work:

1.4.1.1 long lead item(s) shall be identified and scheduled accordingly.

1.4.2 a preliminary schedule of Shop Drawing submission; and

1.4.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction on Form No. FMB:011. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission; and specify times for Application for Payment.

1.4.4 a plan of work for maintenance of traffic, when the Contract Documents require maintenance of traffic.

1.4.5 for informational purposes, a proposed listing of subcontractors to be used for the project,

Pre-Construction Conference

1.5 Within fifteen (15) calendar days after the Effective Date of the Agreement, but before the CONTRACTOR starts the Work at the site, a conference attended by the CONTRACTOR, the OWNER'S REPRESENTATIVE, the TOWN, and Others as appropriate, will be held to discuss the items referred to in paragraph 1.4, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to the Work.

ARTICLE 2. DEFINITIONS

The following definition of terms is provided to establish a common understanding between the parties as to the intended usage, application and interpretation of such terms.

AGREEMENT means the written agreement between the TOWN and the CONTRACTOR covering the Work to be performed; the Agreement is a part of the Contract Documents.

CHANGE ORDERS are written orders to the CONTRACTOR signed by the TOWN, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract price or the Contract Time. The Contract Price and the Contract Time may be changed only by a written Change Order. A Change Order signed by the CONTRACTOR indicates his agreement therewith, including the adjustment in the Contract Price or the Contract Time.

COMPLETION (FINAL) means acceptance of the Project by the TOWN as evidenced by its signature upon a final payment Certification Form FMB:014, and approval thereof by the Town of Fort Myers Beach Town Council or their designee. The final payment Certification shall be signed only after the TOWN has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been complied with.

COMPLETION (SUBSTANTIAL) shall mean an acceptance of the Work by the TOWN when construction is sufficiently complete in accordance with the Contract Documents so the TOWN can occupy or utilize the Work or designated portion thereof for the intended use. A certificate of occupancy, issued by the Building Official, is required concurrent with or prior to issuance of the Certificate of Substantial Completion.



CONSTRUCTION is the erection, fabrication, assembly, remodeling, renovation, addition, modification, repair or demolition of any building or structure or any appurtenances connected or attached to such buildings or structures. The term includes but is not limited to the repair, replacement modification or construction of buildings, roads, bridges, sidewalks, traffic devices, parking lots, drainage, underground and overhead utilities.

CONSULTANT is a person or entity lawfully licensed to practice Architecture or Engineering or another profession and registered in the State of Florida, identified as such in the Construction Contract, and is referred to throughout the Contract Documents as if singular in number and masculine in genre. The term includes the CONSULTANT's authorized representative.

CONTRACT DOCUMENTS consist of the Construction Contract, General and Special Conditions of the Contract, the Plans, the Project Manual, the Bid documents, Addenda issued prior to execution of the Contract, all written modifications issued after execution of the Contract, all provisions required by law to be inserted in this Contract whether actually inserted or not, and a Purchase Order issued by the TOWN.

A Modification is:

- (1) A written Amendment to the Contract or
- (2) A Change Order or
- (3) A written interpretation necessary for the proper execution or progress of the Work issued by the OWNER'S Representative or
- (4) A Field Change Order or
- (5) A Field Directive Change.

CONTRACT PRICE means the total monies payable to the CONTRACTOR under the Contract Documents.

CONTRACT TIME means the number of Calendar days stated in the Agreement for the purpose of establishing Substantial Completion and Final Completion dates.

CONTRACTOR is the person, firm, joint venture, or corporation with whom the TOWN has contracted and who has the primary responsibility for performance of the work.

DAYS - The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. A calendar day constitutes twenty-four (24) hours measured from midnight to the next midnight.

DEFECTIVE - An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the OWNER'S REPRESENTATIVE recommendation of final payment (unless responsibility for the protection thereof has been assumed by the TOWN at Substantial Completion in accordance with paragraph 14.5 or 14.6).

EFFECTIVE DATE OF THE AGREEMENT IS THE DATE INDICATED IN THE Agreement on which it becomes effective, but if not such date is indicated, it means the date on which the Agreement is signed by the last of the two parties.

FIELD CHANGE ORDER is a written change order requested by the OWNER'S Representative, accepted by the CONTRACTOR, and approved by the PROJECT MANAGER for minor changes in the Work, not involving adjustments in the Contract Sum or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.



FIELD DIRECTIVE CHANGE - A written directive to the CONTRACT, issued on or after the effective date of the Agreement 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 as provided in paragraph 5.2 or 5.3, or to emergencies under paragraph 7.20. A Field Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field 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 Price or the Contract Time as provided in Articles 11 and 12.

FINAL ACCEPTANCE means acceptance of the Work by the TOWN upon the expiration of the warranty period as stated in the Contract Documents.

MATERIALS – Includes, but is not limited to, anything used in the process of constructing, demolishing, renovating or remodeling of any building, structure, road, bridge, recreational facility, transportation element and utility or any addition thereto utilized for this project.

NOTICE means written notice. Notice shall be served upon the CONTRACTOR either personally or by leaving the said Notice at his residence, or addressed to the CONTRACTOR at the place of business stated in the Bid Proposal and deposited in the United States Mail.

NOTICE TO PROCEED is a written instrument issued by the TOWN to the CONTRACTOR, authorizing the CONTRACTOR to commence Work on the Project. The NOTICE TO PROCEED shall include the effective date of Commencement.

NOTICE OF AWARD means the written Notice given by the TOWN to the successful Bidder.

NOTICE OF TERMINATION is a written instrument issued in accordance with the Contract Documents as stated in Section 15.2, by the TOWN to the CONTRACTOR or by the CONTRACTOR to the TOWN notifying the receiving party that the Contract is being terminated. The NOTICE shall clearly identify the effective date the Contract is to be terminated.

OWNER'S REPRESENTATIVE is the CONSULTANT contracted by the TOWN for Professional Services during the construction phase of this project or a qualified person authorized as his official representative, or in the absence of such a contract, the project Manager will be considered the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE is not authorized to issue change orders to the contract sum, contract time or scope of work without express approval of the TOWN.

PLANS AND/OR DRAWINGS are a graphic representation of the arrangement of the materials or parts of the construction of the project and are a portion of the Contract Documents.

PROJECT shall mean the entire improvement contracted for by the Town.

PROJECT MANAGER is an employee or representative of the Town Department which requested the Contract and is a designee authorized by or for that Department who is the representative of the Town Council in matters concerning this project. The project manager will act as the OWNER'S

REPRESENTATIVE in the absence of a Town contract with a CONSULTANT. The PROJECT MANAGER is not authorized to issue changes to the Contract Sum, Contract Time, or Scope of Work without express approval by the Department Director, Town Manager, or Town Council.

The PROJECT MANAGER, within the authority conferred by the Town Council, acting as the TOWN'S designated representative shall initiate written Change Orders, and notification to the CONTRACTOR



of any and all changes approved by the TOWN in the CONTRACTOR'S (1) compensation (2) time and/or schedule of service delivery; (3) any Amendment (s) or other change(s) relative to the WORK and ADDITIONAL SERVICES pursuant to this Contract, or AMENDMENTS, or CHANGE ORDERS pertaining thereto. Following TOWN approval, the Project Manager shall coordinate completion of any such documents. The PROJECT MANAGER or designee shall be responsible for acting on the TOWN'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements, or any AMENDMENT(S), or CHANGE ORDER(S) issued there under.

PROJECT MANUAL means the General Conditions, Supplementary General Conditions, Technical Specifications, and the Bidding Documents.

PROJECT /RESIDENT INSPECTOR - The authorized representative of the TOWN who is assigned to the project as an observer to observe the work and report back to the TOWN and CONSULTANT.

PUBLIC WORKS DIRECTOR means the person employed by the TOWN COUNCIL to serve and act on the TOWN'S behalf as the DIRECTOR of the TOWN'S Public Works Office. The PUBLIC WORKS DIRECTOR (or designee), within the authority conferred by the Town of Fort Myers Beach Town Council, acting as the TOWN'S designated representative, shall issue written Addenda and notify all interested Bidders.

SPECIFICATIONS are written documents organized into divisions, sections, and articles which provide detailed instructions to the CONTRACTOR pertaining, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade and operational data of all components to be provided by the CONTRACTOR and incorporated into the Project.

SUBCONTRACTOR is a person, firm, partnership, corporation, or entity who has a direct contract with the CONTRACTOR to perform any of the Work at the site. The term Subcontractor does not include those whose sole purpose is that of a supplier of materials. A supplier of materials shall be classified as a Subcontractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Subcontractor means a Subcontractor or its authorized representative.

SUB-Subcontractor is a person, firm, partnership, corporation, or entity who has a direct or indirect Contract with a Subcontractor to perform any of the Work at the site. The term Sub-Subcontractor means a Sub-Subcontractor or its authorized representative.

SUPPLIER - A manufacturer, fabricator, distributor, materialmen or vendor.

SURETY is the surety company or individual that is bound by Contract bond with and for the CONTRACTOR who is primarily liable and is responsible for CONTRACTOR'S acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

TOWN means the Town of Fort Myers Beach, Fort Myers Beach, Florida, a political subdivision of the State of Florida, its successors and assigns, also referred to as OWNER.

UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.



WORK is the construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 3. STARTING THE WORK

3.1 Written Notice to Proceed is contingent upon and will be issued subsequent to the CONTRACTOR fully satisfying the TOWN'S insurance and Bond submittal requirements. Until the CONTRACTOR receives the TOWN'S written Notice to Proceed, the CONTRACTOR is advised that the TOWN will not be liable for any expenses which the CONTRACTOR may incur before the contract is executed and the written Notice to Proceed is issued.

3.2 The Contract time shall begin to run on the date specified in the "Notice to Proceed".

3.3 The CONTRACTOR is required, before commencing the Work, to record in the public records and deliver to the TOWN the Public Construction Bond issued by a surety insurer authorized to do business in the State of Florida as Surety. The Bond shall be in substantially the form specified by State law (Section 255.05, Fla. Stat.), must state the name and principal business address of both the principal and the Surety and must contain a description of the project sufficient to identify it. A copy of the bond shall be posted in a conspicuous place at the project site.

3.4 The TOWN will forward to the CONTRACTOR a Notice of Commencement with instructions to post in a conspicuous spot on the project site.

ARTICLE 4. INTERPRETATION, INTENT, AMENDING AND REUSE OF CONTRACT DOCUMENTS.

4.1 It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

4.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall immediately call it to the attention of the OWNER'S REPRESENTATIVE in writing before proceeding with the Work affected thereby.

4.3 Any Work that may be reasonably inferred from the specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for.

4.4 Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

4.5 In resolving conflicts, errors, and discrepancies, the order of precedence of the Contract Documents is as follows:

1. Change Order
2. Standard Form of Agreement
3. Addenda
4. Supplementary Conditions
5. General Conditions
6. Specifications
7. Drawings
8. Figure Dimensions
9. Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)



The Town may, at its sole discretion, in resolving conflicts, errors or discrepancies, opt to require that the more stringent requirement or that which the Town considers to be in its best interest shall apply, the order of precedence indicated in this paragraph 4.5 notwithstanding.

AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:

4.6 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 4.6.1 a formal Written Amendment,
- 4.6.2 a Change Order (pursuant to Article 10).
- 4.6.3 a Field Directive Change (pursuant to Article 10).

As indicated in paragraphs 11.2 and 12.1, the Contract Price and the Contract Time may only be changed by a Change Order or Written Amendment.

4.7 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations of the Work may be authorized, in one or more of the following ways:

- 4.7.1 a field Change Order (pursuant to paragraph 9.3),
- 4.7.2 The OWNER'S REPRESENTATIVE's approval of a Shop Drawing or sample (pursuant to paragraphs 7.23 and 7.30), or
- 4.7.3 The OWNER'S REPRESENTATIVE's written interpretation or clarification (pursuant to paragraph 9.2).

REUSE OF DOCUMENTS:

4.8 Neither the CONTRACTOR nor any SUBCONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the TOWN shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the TOWN or their CONSULTANT and the specific written verification or adaptation by the CONSULTANT.

ARTICLE 5. AVAILABILITY OF LANDS: PHYSICAL CONDITION: REFERENCE POINTS

Availability of Lands

5.1 The TOWN will furnish, as indicated in the Contract Documents and not later than the date when needed by the CONTRACTOR, the lands upon which the Work is to be done, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained by the TOWN unless otherwise specified in the Contract Documents. If the CONTRACTOR believes that any delay in the TOWN'S furnishing these lands or easements entitles him to an extension of the Contract Time, he may make a claim therefor as provided in Article 10. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise. The OWNER'S REPRESENTATIVE will, upon request, furnish to the CONTRACTOR copies of all available boundary and topographic surveys as required and sub-surface tests.

Physical Conditions

5.2 Explorations and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. These reports are not part of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon the non-technical data, interpretations or opinions contained therein, for the completeness or accuracy thereof for the CONTRACTOR'S purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and in paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site. The technical data which will be made available only at the CONTRACTOR'S request may not be sufficient for construction purposes. Additional investigations may be necessary for the purposes of carrying out the construction project.

5.3 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 5.9) which are at or contiguous to the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings but not for the completeness thereof for the purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

5.4 Unless otherwise stated, the CONTRACTOR shall be fully responsible for the removal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. By submission of a bid, the CONTRACTOR assumes full responsibility for the expenses associated with such removal. There shall not be an increase in time or price associated with such removal.

5.5 Report of Differing Conditions: If the CONTRACTOR believes that

5.5.1 any technical data on which the CONTRACTOR is entitled to rely as provided in paragraph 5.2 and 5.3 is inaccurate, or

5.5.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.

The CONTRACTOR shall, promptly after becoming aware thereof and before performing any work in connection therewith (except in an emergency as permitted by paragraph 7.20) notify the OWNER'S REPRESENTATIVE in writing about the inaccuracy or difference.

5.6 OWNER'S REPRESENTATIVE Review: The OWNER'S REPRESENTATIVE will promptly review the pertinent conditions, determine the necessity or obtaining additional explorations or tests with respect thereto and advise the TOWN in writing (with a copy to the CONTRACTOR) of the OWNER'S REPRESENTATIVE'S findings and conclusions.

5.7 Possible Contract Documents Change: If the OWNER'S REPRESENTATIVE and the TOWN conclude that there is a material error in the Contract Documents and a change in the Contract Documents is required, a Field Directive Change, a Field Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

5.8 Possible Price and Time Adjustments: In each case of a material error in the Contract Documents, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.



Physical Conditions - Underground Facilities

5.9 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to the TOWN or the CONSULTANT by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

5.9.1 The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 7.17 and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

5.10 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 7.20) identify the owner of such Underground Facility and give written notice thereof to that owner and to the OWNER'S REPRESENTATIVE. The

OWNER'S REPRESENTATIVE will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and with the TOWN'S approval, the Contract Documents will be amended or supplemented to the extent necessary. During such time, the CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 7.17. The CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

Reference Points

5.11 The CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the TOWN. The CONTRACTOR shall report to the OWNER'S REPRESENTATIVE whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

ARTICLE 6. BONDS AND INSURANCE

Public Construction Bond

6.1 The CONTRACTOR will execute the Public Construction Bond as security for the faithful performance and payment of all his obligations under the Contract Documents. This Bond shall be in amounts at least equal to the Contract Price and in such form and with such securities as are acceptable to the TOWN. Prior to execution of the Contract Documents, the TOWN may require the CONTRACTOR to furnish such other bonds, in such form and with such sureties as it may require. If such bonds are required by written instructions given prior to opening of Bids, the Premiums shall be paid by the CONTRACTOR. If the Contract is increased by a Change Order, it shall be the CONTRACTOR'S responsibility to insure that the Public Construction Bond is amended accordingly



and a copy of the amendment forwarded to CONTRACTS MANAGEMENT.

6.2 If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the CONTRACTOR shall within five (5) calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to the TOWN.

6.2.1 If the CONTRACTOR cannot obtain another bond and surety within (5) calendar days, the TOWN will accept, and the CONTRACTOR shall submit, an irrevocable letter of credit drawn on a Lee County, Florida bank until the replacement bond and surety can be obtained.

Qualifications of Surety Companies

6.3 In order to be acceptable to the TOWN, a surety company issuing Bid Guaranty Bonds or 100% Public Construction Bonds, called for in these specifications, shall meet and comply with the following minimum standards:

6.3.1 General

6.3.1.1 All Sureties for the Town of Fort Myers Beach projects must be authorized to do business in the State of Florida and shall comply with the provisions of Florida Statute Section 255.05.

6.3.1.2 Attorneys-in-Fact who sign bid bonds or Public Construction Bonds for Town of Fort Myers Beach projects must file with such bond a certified copy of their Power of Attorney that authorizes the agent to sign such bond.

6.3.1.3 Agents of surety companies must list their name, address, and telephone number on all bonds.

6.3.1.4 All bonds provided to the Town of Fort Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment and shall include a waiver of alteration to any terms in the Contract, extensions of time and/or forbearance on the part of the TOWN.

6.3.1.4.1 The amount of the bond shall automatically be reduced from 100% of the contract price to an amount specified in the Supplemental Conditions. If not set forth in the Supplemental conditions, this amount shall be automatically reduced to 40% upon final completion and acceptance by the TOWN.

6.3.2 To be acceptable to the OWNER as Surety on projects not in excess of \$500,000.00, Surety shall comply with these minimum provisions of State Statute 287.0935 as follows:

6.3.2.1 Surety must have twice the minimum surplus and capital required by Florida Insurance Code at the time of bid solicitation.

6.3.2.2 Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9404-9308.

6.3.3 Sureties on projects in excess of \$500,000.00 shall comply with the above minimum provisions as well as being rated thru A.M. Best shall comply with the following provisions:

6.3.3.1 The Surety shall be rated as "A-" or better as to General Policyholders Rating and Class VII or better as to financial category by the most current Best's Key Rating Guide, published by



A.M. Best Company.

6.3.3.2 Surety must have fulfilled all of its obligations on all other bonds previously given to the TOWN.

6.3.3.3 Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

Letter of Credit

6.4 At any time during the life of a letter of credit, should the rating of financial institution fall below both of the minimum ratings as indicated in the Contract Documents, or should the financial institution become insolvent, the CONTRACTOR must, within five (5) calendar days after notification by the TOWN:

6.4.1 replace the existing letter of credit with a replacement letter of credit from a financial institution with either of the minimum ratings as specified in the Contract Documents, or

6.4.2 have the existing letter of credit confirmed by a financial institution with either of the minimum ratings as specified in the Contract Documents.

6.5 At the TOWN'S option, the letter of credit may be replaced by a Public Construction Bond in accordance with the TOWN'S then-existing bond policies.

6.6 Failure to comply with this provision may result in any or all of the following actions by the TOWN:

6.6.1 suspension of the CONTRACTOR'S right to pull building permits and schedule inspections;

6.6.2 a stop work order; and/or

6.6.3 revocation of the Land Development Permit.

Financial Institutions/Letters of Credit

6.7 In order to be acceptable to the TOWN, a financial institution issuing 100% Letters of Credit, called for in these specifications, shall meet and comply with the following minimum standards:

6.7.1 General

6.7.1.1 The face of the letter of credit must be in a format utilizing Town of Fort Myers Beach Standard Form FMB:006 and indicate the following:

6.7.1.1.1 the letter of credit must be "clean" and "irrevocable";

6.7.1.1.2 it must contain an exact expiration date. All letters of credit provided to the Town of Fort Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment;

6.7.1.1.3 statement of the purpose or project for which the letter of credit is issued;

6.7.1.1.4 a specific amount of the letter of credit, in U.S. dollars, which amount shall be equal to or greater than the amount of the Contract;



6.7.1.1.5 the method of disbursement of draws against the letter of credit;

6.7.1.1.6 the street address where draws against the letter of credit may be made; and

6.7.1.1.7 provide for venue in Lee County, Florida.

6.7.1.2 Verification of the status or certification of any financial institution may be made with:

Department of Insurance and Treasurer
Bureau of Collateral Securities
200 East Gaines Street
Tallahassee, FL 32377-0345
Phone (850) 922-3167

or

Town of Fort Myers Beach Risk Management
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Phone (239) 765-0202

6.7.2 At the time of issuance of the letter of credit, the financial institution must have a minimum "peer group" rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.

6.7.3 Letters of Credit from financial institutions which do not meet either of the minimum ratings indicated in 6.7.2 above must be confirmed by a financial institution with either of the minimum ratings indicated in 6.7.2 above.

6.7.4 All financial institutions which issue or confirm any Letter of Credit must be authorized by the Secretary of State to do business in the State of Florida, shall show proof of same upon request by TOWN staff, and agree to venue in Lee County, Florida.

6.8 These actions shall be in effect until a satisfactory replacement bond or letter of credit is accepted by the TOWN. The CONTRACTOR agreement shall provide for replacement or confirmation in accordance with this policy.

Contractor's Liability Insurance

6.9 The Contractor shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of the Agreement, whether such services, work and operations are performed by the Contractor, its employees, or by any Sub-Contractor(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

6.10 The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.



6.11 The Contractor, throughout the time the Agreement is in effect, shall require and ensure that any and all of its Sub-Contractors and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

6.12 The Contractor shall obtain, have and maintain during the entire period of the Agreement, all such insurance policies as are set forth and required herein.

6.13 In the event that the Contractor engages Sub-Contractors to assist the Contractor in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Contractor shall cover all of the services or work to be provided or performed by all of the Subcontractors engaged by the Contractor. However, in the event the services or work of Sub-Contractors is not covered by the Contractor's insurance policy or policies, it shall be the responsibility of the Contractor to ensure that all Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability as required and set forth in this Article.

6.14 The insurance coverages to be obtained by the Contractor or by Sub-Contractors as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability is understood and agreed to cover any and all of the services or work set forth in the Agreement. In the event the Town shall execute and issue written Change Order(s) authorizing the Contractor to provide or perform services or work in addition to those set forth in the Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Contractor, the compensation established for the Change Order(s) shall include consideration of any increased premium cost incurred by the Contractor to obtain same.

Contractor Required to File Insurance Certificate(s)

6.15 The Contractor shall submit to the Town's RISK MANAGEMENT DIVISION all required insurance certificates for review and approval. After approval by the RISK MANAGER, the Town will execute the Agreement and issue a written Notice to Proceed. The Contractor may then commence any service or work pursuant to the Agreement. All such Insurance Certificates shall be attached to the Agreement and be incorporated by reference thereto.

6.16 All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

6.17 Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

6.18 Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

6.19 Each Certificate of Insurance shall specifically include all of the following:

6.19.1 The name and type of policy and coverages provided; and

6.19.2 The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

6.19.3 The date of expiration of coverage; and



6.19.4 The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Commercial General Liability Insurance and for Workers' Compensation Insurance); and

6.19.5 A specific reference to the Agreement and the Project to which it pertains. (This requirement may be excepted for Commercial General Liability Insurance).

6.20 The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

6.21 A statement indicating any services or work included in or required under the Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Contractor's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

6.22 Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

6.23 If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of the Agreement, the Contractor shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Contractor to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate the Agreement.

6.24 If any of the required insurance coverage(s) expire on the date indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Contractor shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Contractor's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Contractor shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Contractor. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Insurance Coverages Required

6.25 The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

6.25.1 WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

6.25.1.1 Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is



greater.

6.25.1.2 Notice of Cancellation and/or Restriction - the policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

6.25.2 COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

6.25.2.1 Minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.2.2 Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

6.25.2.3 This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property damage, XCU Coverage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. Town of Fort Myers Beach, its officers and employees shall be included as an Additional Insured.

6.25.2.4 Such additional requirements as may be set forth in the Agreement.

6.25.3 BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

6.25.3.1 Minimum limits of \$3,000,000 per person and \$3,000,000 per accident for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.3.2 Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

6.25.3.3 Such additional requirements as are set forth in the Agreement above.

6.25.4 ALL RISK BUILDERS RISK OR INSTALLATION FLOATER (If Applicable)

All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), buildings(s), or structure(s). Any deductible is the responsibility of the CONTRACTOR. The TOWN shall be named as an additional insured.

6.25.5 SUBCONTRACTORS

It shall be the responsibility of the CONTRACTOR to ensure that all subcontractors carry Automobile Liability, General Liability and Workers' Compensation in compliance with statutory limits.

6.26 The CONTRACTOR agrees that the requested insurance coverages are not intended to and shall not, in any manner, limit or reduce the liabilities and obligations assumed by the CONTRACTOR, its agents, employees, subcontractors, etc.

**ARTICLE 7. CONTRACTOR'S RESPONSIBILITIES****Supervision and Superintendence**

7.1 The CONTRACTOR will supervise and direct the Work efficiently. CONTRACTOR will be solely responsible for the means, methods, techniques, sequences, safety, and procedure of construction, unless otherwise specified. The CONTRACTOR will be responsible to see that the finished Work complies with the Contract Documents.

7.2 The CONTRACTOR will keep on the site at all times when work is being performed, a competent, resident superintendent who shall not be replaced without prior written notice to the OWNER'S REPRESENTATIVE. The superintendent will be the CONTRACTOR'S representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be binding as if given to the CONTRACTOR.

Labor Material and Equipment

7.3 The CONTRACTOR will provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents and will at all times maintain good discipline and order at the site.

7.4 The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, heat, light, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work unless otherwise specified.

7.5 All materials and equipment will be new except as otherwise provided in the Contract Documents. If required by the OWNER'S REPRESENTATIVE, the CONTRACTOR will furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

7.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricator or processors except as otherwise provided in the Contract Documents.

7.7 In instances where applicable due to the nature of the bid, all material, equipment, etc., as proposed and offered by CONTRACTOR must meet and conform to all O.S.H.A. requirements; the CONTRACTOR'S signature upon the bid proposal form (Part D) being by this reference considered a certification of such fact.

Adjusting the Progress Schedule

7.8 The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE, for acceptance, any adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and, in addition, will comply with any provisions of the Contract Documents applicable thereto. The TOWN reserves the right to reject any progress schedule from the CONTRACTOR which, in its judgment, does not appear to devote sufficient resources or manpower to enable the timely completion of the project. If the Town requests that the progress schedule be adjusted, the CONTRACTOR shall do so and perform the work according to the adjusted schedule at no additional cost to the TOWN.

Substitute Materials or Equipment

7.9 If it is indicated in the specifications that the CONTRACTOR may furnish or use a substitute that



is equal to any material or equipment specified, and if the CONTRACTOR wishes to furnish or use a proposed substitute, he will, within thirty (30) calendar days after the award of the Contract, make written application to the OWNER'S REPRESENTATIVE for approval of such a substitute, certifying in writing that the proposed substitute will perform adequately the requirements imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the TOWN who shall be the sole judge of quality. Whether or not the TOWN accepts a proposed substitute, the CONTRACTOR shall reimburse the TOWN for any charges or cost for evaluating any proposed substitute.

Concerning Subcontractors

7.10 The CONTRACTOR will be fully responsible for all acts and omissions of his SUBCONTRACTORS and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the

Contract Documents shall create any contractual relationship between any SUBCONTRACTOR and the TOWN. The TOWN may, upon request, furnish to any SUBCONTRACTOR, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done.

7.10.1 The divisions and sections of the specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among SUBCONTRACTORS or delineating the Work to be performed by any specific trade.

7.10.2 The CONTRACTOR agrees to specifically bind every SUBCONTRACTOR to the applicable terms and conditions of these Contract Documents for the benefit of the TOWN.

7.10.3 All Work performed for the CONTRACTOR by a SUBCONTRACTOR shall be pursuant to an appropriate written agreement between the CONTRACTOR and the SUBCONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the TOWN as trustee.

Patent Fees and Royalties

7.11 The costs involved in fees, royalties, or claims for any patented invention, article, process or method that may be used upon, or in a manner connected with the work under the contract, shall be paid by the CONTRACTOR. The CONTRACTOR and its sureties, together with its officers, agents, and employees, shall protect and hold the TOWN harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent. Before final payment is made on the account of this Contract, the CONTRACTOR shall, if requested by the TOWN, furnish acceptable proof of a proper release from all such fees or claims.

7.11.1 Should the CONTRACTOR, its agents, employee, or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under this contract, the CONTRACTOR shall promptly pay such royalties and secure the requisite licenses; or, subject to acceptance by the TOWN, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the contract. Descriptive information of these substitutions shall be submitted to the OWNER'S REPRESENTATIVE for determination of general conformance to the design concept and the construction contract. Should the TOWN elect to use the substitution, the CONTRACTOR agrees to pay such royalties and secure such valid licenses as may be requisite for the TOWN, its



officers, agents, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

Permits

7.12 Unless otherwise specified herein, the CONTRACTOR will secure and pay for all permits, impact fees, and licenses and will pay all governmental charges and inspections' fees necessary for the prosecution of the Work which are applicable at the time of the bid. The CONTRACTOR will also pay all public utility charges and connection fees except as provided for in the Contract Documents. Permits and licenses of regulatory agencies which are necessary to be maintained after completion of the guarantee period shall be secured and paid for by the TOWN.

7.12.1 Pursuant to the requirements of F.S. 218.80, the following Town permits and fees are required to be obtained by the contractor.

Building Permit

Fees Paid by Town of Fort Myers Beach

This is a disclosure of permits and fees required by the Town of Fort Myers Beach for this project and does not relieve the CONTRACTOR of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.

7.13 The CONTRACTOR will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at a variance therewith, CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the OWNER'S REPRESENTATIVE, CONTRACTOR will bear all cost arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

Licenses

7.14 The CONTRACTOR must be properly licensed and have the proper business tax receipt, within the jurisdiction where the project is to be constructed, to perform the work specified in the Scope of Work at the time of bid submittal.

Use of Premises

7.15 The CONTRACTOR will confine its equipment, the storage of materials and equipment, and the operations of its workmen to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

Record Drawings

7.16 The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order, and annotated to show all changes made during the construction process or addition and exact location of underground or otherwise concealed components such as, but not limited to, plumbing, air conditioning, electric, and conduit which were not installed exactly as shown on the contract drawings. These shall be available to the OWNER'S REPRESENTATIVE and shall be verified by the OWNER'S REPRESENTATIVE at 30%, 60%, and 100% completion of the Project. The CONTRACTOR shall submit to the OWNER'S



REPRESENTATIVE one (1) complete dated set of all changes made during Construction entitled "Record Drawings". Submittals shall be made in accordance with the above and shall be submitted at the time of substantial completion.

Safety and Protection

7.17 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:

7.17.1 All employees on the Project and other persons who may be affected thereby;

7.17.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

7.17.3 Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

7.18 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. CONTRACTOR will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection and, in addition, CONTRACTOR will comply with all applicable recommendations of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc.; "Roadway and Traffic Design Standards" latest edition published by the Florida Department of Transportation, specifically Index 600-650; and Occupational Safety and Health Administration published by the United States Department of Labor. CONTRACTOR will notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in 7.17.2 and 7.17.3 caused directly or indirectly, in whole or in part by the

CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable will be remedied by the CONTRACTOR; except any damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the TOWN, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the CONTRACTOR.

7.19 The CONTRACTOR will designate a member of his organization whose responsibility will be to plan for the prevention of accidents at the site. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE.

Emergencies

7.20 In the event of emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the TOWN, is obligated to act at its discretion to prevent threatened damage, injury or loss. CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the TOWN and the OWNER'S REPRESENTATIVE determine that a change to the Contract Documents is required because of the action taken in response to an emergency, a Field Directive Change or Change Order shall thereupon be issued covering the changes and deviations involved.



Shop Drawings and Samples

7.21 After checking and verifying all field measurements, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies (or at the option of the OWNER'S REPRESENTATIVE, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER'S REPRESENTATIVE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OWNER'S REPRESENTATIVE to review the information as required.

7.22 The CONTRACTOR will also submit to the OWNER'S REPRESENTATIVE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

7.22.1 At the time of each submission, the CONTRACTOR will, in writing, call the OWNER'S REPRESENTATIVE'S attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

7.23 The OWNER'S REPRESENTATIVE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the OWNER'S REPRESENTATIVE and will return the required number of corrected copies of Shop Drawings and re-submit new samples until approved. All cost incurred by the TOWN for the review of a shop drawing in excess of two (2) reviews shall be the CONTRACTORS responsibility. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER'S REPRESENTATIVE that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or CONTRACTOR assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

7.24 No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the OWNER'S REPRESENTATIVE. Any related Work performed prior to review and approval by the TOWN of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER'S REPRESENTATIVE.

7.25 The OWNER'S REPRESENTATIVE's approval of Shop Drawings or samples shall not relieve the CONTRACTOR from its responsibility for any deviations from the requirements of the Contract Documents, unless the CONTRACTOR has in writing called the OWNER'S REPRESENTATIVE's attention to such deviation at the time of submission and the TOWN and the OWNER'S REPRESENTATIVE have given written approval to the specific deviation; nor shall any approval by the OWNER'S REPRESENTATIVE relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.



Indemnification

7.26 The CONTRACTOR shall indemnify and hold harmless the TOWN, its officers, agents, and employees from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.

7.27 The CONTRACTOR shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CONTRACTOR agrees to repair, restore or rebuild any damages CONTRACTOR causes to any property of the TOWN. CONTRACTOR shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CONTRACTOR shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. CONTRACTOR shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

7.28 The CONTRACTOR will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work CONTRACTOR will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the TOWN. The CONTRACTOR will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

7.28.1 Storm Preparation – The CONTRACTOR shall case all construction activities and prepare the project site when a storm event is anticipated to affect the locality. The CONTRACTOR shall respond immediately to the notice given by the TOWN for such preparation. Site preparation shall consist of but not limited to the following

- a. Remove all construction signs
- b. Portable latrines should be removed from the site. If the latrines cannot be removed from the site, they must be laid down on their right side (looking from the front) to prevent waste from leaking out.
- c. The construction site must be clear of all loose tools, lumber, metal, aluminum and any other miscellaneous items that could create a hazard during strong wind conditions and/or storm surges. All other construction materials shall be adequately secured on-site.
- d. All chains, poles and weights used to block off construction sites, vacant lots and parking lots shall be removed as to not create a hazard during strong wind conditions and/or storm surges.
- e. Silt fence posts shall be secured in the ground ten inches (10") as to reduce the potential hazard of the post being uprooted, the silt fence meshing must be a minimum of four inches (4") below ground properly back filled. Other erosion control devices shall be adequately secured so as to not wash out or become a hazard.

7.28.2 If the CONTRACTOR fails to secure the site as provided in the Contract Documents, the TOWN may do so and the cost thereof shall be deducted from the final retainage due the CONTRACTOR.



Continuing the Work

7.29 The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the TOWN. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 13.7 (The TOWN May Stop Work) or as the CONTRACTOR and the TOWN may otherwise agree in writing.

Anti-Discrimination

7.30 The CONTRACTOR for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:

7.30.1 In the furnishing of services to the TOWN hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the grounds of race, religion, color, age, sex, national origin, handicap or marital status.

7.30.2 The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The CONTRACTOR will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

7.30.3 CONTRACTOR agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

7.30.4 CONTRACTOR will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the CONTRACTOR shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN to be pertinent to ascertain compliance. The CONTRACTOR shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the TOWN its efforts made toward obtaining said information. The CONTRACTOR shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this CONTRACT.

7.30.5 In the event of breach of any of the above anti-discrimination covenants, the TOWN shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the CONTRACTOR or canceling, terminating or suspending this CONTRACT, in whole or in part.

Additionally, the CONTRACTOR may be declared ineligible for further TOWN contracts by rule, regulation or order of the Town of Fort Myers Beach, or as otherwise provided by law.

7.30.6 The CONTRACTOR will send to each labor union, or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the CONTRACTOR'S commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.



7.30.7 The CONTRACTOR will include the provisions of paragraphs 7.30.1 through 7.30.6 in every sub-contract under this contract to insure its provisions will be binding upon each Subcontractor. The CONTRACTOR will take such action with respect to any Subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

Misplaced Material

7.31 Should the CONTRACTOR, during the progress of the Work, lose, dump, throw overboard, sink, or misplace any material, plant, or equipment, which in the opinion of the TOWN may be dangerous to, or obstruct navigation, the CONTRACTOR shall recover and remove the same with the utmost dispatch. The CONTRACTOR shall give immediate notice, with description and location of such obstructions, to the U.S. Coast Guard, TOWN and when required, shall mark or buoy such obstructions until the same are removed. In the event of refusal, neglect, or delay in compliance with the above requirements, such obstructions may be removed by the TOWN, and the cost of such removal may be deducted from any money due or to become due to the CONTRACTOR or may be recovered under his bond.

ARTICLE 8. WORK BY OTHERS

8.1 The TOWN may perform additional Work related to the Project by itself, or it may let other direct contracts which shall contain General Conditions similar to these.

8.2 The CONTRACTOR will afford the other Contractors who are parties to such direct contracts (or the TOWN, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the CONTRACTOR will coordinate and cooperate with the applicable entity responsible for this portion of the work.

8.3 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners at their expense, unless otherwise provided in the Contract. It is understood and agreed that the CONTRACTOR has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconveniences, or damage sustained to it due to any interference from the said utility appurtenances or the operation of moving them. If any part of the CONTRACTOR'S work depends (for proper execution) upon the Work of any such other Contractor (or the TOWN), the CONTRACTOR will inspect and promptly report to the OWNER'S REPRESENTATIVE in writing, any defects, deficiencies or delays in such Work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to report shall constitute an acceptance of the Work, except as to defects, deficiencies and delays which may appear in the other Work after the execution of his Work.

8.4 The CONTRACTOR will do all cutting, fitting and patching of its Work, which is consistent with the Contract Documents that may be required to make its several parts come together properly and enable it to receive or be received by such other Work. The CONTRACTOR will not endanger any Work of others by cutting, excavating or otherwise altering such other Work and will only cut or alter such other work with the written consent of the OWNER'S REPRESENTATIVE.

8.5 If the performance of additional Work by other Contractors or the TOWN is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional Work.



ARTICLE 9. OWNER'S REPRESENTATIVE STATUS DURING CONSTRUCTION

Town's Representatives

9.1 The TOWN shall issue all communications to the CONTRACTOR.

Clarifications and Interpretations

9.2 The TOWN will issue, with reasonable promptness, such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the TOWN may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, the CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work

9.3 The OWNER'S REPRESENTATIVE may authorize, with prior approval from the TOWN, minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order on form FMB:010 and the CONTRACTOR shall perform the Work involved promptly. If the CONTRACTOR believes that a Field Change Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

ARTICLE 10. CHANGES IN WORK

10.1 Without invalidating the Agreement, the TOWN may unilaterally and at any time or from time to time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order on form FMB:009 or Field Directive Change on form FMB:010, the CONTRACTOR will proceed with the Work involved.

10.1.1 All such Work shall be executed under the applicable conditions of the Contract Documents.

10.1.2 If any Change Order or Field Directive Change causes an increase or decrease in the Contract Price or any extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12.

10.2 Additional Work performed by the CONTRACTOR without written authorization of a change in the form of an approved Change Order will not entitle CONTRACTOR to an increase in the Contract Price or any extension of the Contract Time, except in the case of an emergency as provided in Article 7.20.

10.3 It is the CONTRACTOR'S responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the OWNER'S REPRESENTATIVE, by the CONTRACTOR, within ten (10) calendar days of the initiation of the change.

10.4 If additions in the work requested by the TOWN involve addition of a new subcontract or of



additional scope of work such that the Town considers it in its best interests, the CONTRACTOR shall:

10.4.1 Obtain cost proposals from multiple potential subcontractors, suppliers or vendors, at Contractor's sole expense, if so required by the Town, in order to help ensure competitive pricing.

10.4.2 Obtain TOWN's prior written approval of any proposed Subcontractor, including Sub-subcontractors, to be utilized who are not already included on the approved list of Subcontractors.

ARTICLE 11. CHANGE IN CONTRACT PRICE

11.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order on form FMB:009. Any claim for an increase or decrease in the Contract Price shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless TOWN allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with paragraph 11.2. All claims for adjustment in the Contract Price shall be reviewed by the OWNER'S REPRESENTATIVE. Any change in the Contract Price shall be incorporated in a Change Order and approved by the TOWN. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

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

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

11.3.2 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

11.3.3 By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

11.3.4 If none of the above methods is agreed upon, the value shall be determined by the TOWN on the basis of cost of the Work and a percentage for overhead and profit. Cost shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved.

In such cases the CONTRACTOR will submit, in the form prescribed by the TOWN, an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CONTRACTOR to the TOWN for any such change which results in a net decrease in cost, will be the amount of the actual net decrease as determined by the TOWN. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net decrease, if any.



Cash Allowances

11.4 It is understood that the CONTRACTOR has included in the Contract Price any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or SUBCONTRACTORS and for such sums within the limit of the allowances as the TOWN may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. The CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for cost and profit on account of cash allowances. No demand for an additional sum for overhead or profit in connection therewith will be allowed.

Unit Price Work

11.5 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.

11.6 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item.

11.7 The unit price of an item of Unit Price Work shall be subject to revaluation and adjustment under the following conditions:

11.7.1 if the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the CONTRACTOR differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and

11.7.2 if there is no corresponding adjustment with respect to any other item of Work; and

11.7.3 if the CONTRACTOR believes that it has incurred additional expense as a result thereof; or

11.7.4 if the TOWN believes that the quantity variation entitles it to an adjustment in the unit price, either the TOWN or the CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

ARTICLE 12. CHANGE IN CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order on form FMB:009. Any claim for an extension in the Contract Time shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the OWNER'S REPRESENTATIVE allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis of a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and



could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CONTRACTOR under this provision shall be allowed unless the CONTRACTOR has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time shall be determined by the OWNER'S REPRESENTATIVE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2 The TOWN shall not be responsible for any delay in the completion of the project where the delay is beyond the control or without fault or negligence on behalf of the TOWN. The TOWN shall not be held accountable for extra compensation or an extension of time due to default by the CONTRACTOR, subcontractors, or suppliers in the furnishing of labor or materials for the project, or having to replace defective materials.

12.3 The CONTRACTOR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the TOWN, provided the CONTRACTOR gives notice to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CONTRACTOR'S sole remedy shall be an extension of Contract Time.

12.4 No extension of Contract Time or increases in Contract Price shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the TOWN in its sole discretion or (4) for any delay which is caused by the CONTRACTOR having to replace defective material or equipment or (5) delays attributable to the lack of performance by Subcontractors regardless of the reasons.

12.5 All time limits stated in the Contract Documents are of the essence of the Agreement.

ARTICLE 13. WARRANTY GUARANTEE / ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee

13.1 The CONTRACTOR warrants and guarantees to the TOWN that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents and any inspections, test or approvals referred to in this Article for a period of twelve months following final completion and acceptance by the Town. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article. Contractor is to assign any and all warranties or guarantees on equipment, materials, etc. to the TOWN.

Test and Inspections

13.2 If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the OWNER'S REPRESENTATIVE timely notice of readiness therefore. The CONTRACTOR will furnish the OWNER'S REPRESENTATIVE with the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. If any such Work required to be



inspected, tested or approved is covered without written approval of the OWNER'S REPRESENTATIVE, it shall, if requested by the OWNER'S REPRESENTATIVE, be uncovered for observation at the CONTRACTOR'S expense. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided.

13.3 Neither observations by the OWNER'S REPRESENTATIVE, nor inspections, tests or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

Close Out Procedure

13.4 General Operating/Maintenance Instructions & Manuals

13.4.1 The CONTRACTOR shall organize maintenance operating manual information into four (4) suitable sets of manageable size, and bind into individual binders properly identified and indexed (thumb-tabbed). Emergency instructions, spare parts listing, warranties, wiring diagrams, recommended "turn around" cycles, inspection procedures, shop drawings, product data, and similar acceptable information shall be included. The CONTRACTOR shall bind each manual of each set in a heavy duty, 3-ring vinyl covered binder, and include pocket folders for folded sheet information. Mark identification on both front and spine of each binder.

13.4.2 CONTRACTOR shall arrange for each installer of work requiring continuing maintenance (by the OWNER) or operation, to meet with the OWNER'S personnel, at the project site, to provide basic instructions needed for proper operation and maintenance of the entire work. CONTRACTOR shall include instructions by manufacturer's representatives where installers are not expert in the required procedures. CONTRACTOR shall review maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuels, identification system, control sequences, hazards, cleaning and similar procedures and facilities. For operational equipment, CONTRACTOR shall demonstrate start-up, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and similar operations. CONTRACTOR shall review maintenance and operations in relation to applicable guarantees, warranties, agreements to maintain, bonds, and similar continuing commitments.

Access to the Work

13.5 The TOWN and the OWNER'S REPRESENTATIVE shall at all times have access to the Work. The CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering the Work

13.6 If any work has been covered which the OWNER'S REPRESENTATIVE has not specifically requested to observe prior to its being covered, or if the OWNER'S REPRESENTATIVE considers it necessary or advisable that covered Work be inspected or tested by others, the CONTRACTOR, at the OWNER'S REPRESENTATIVE'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER'S REPRESENTATIVE may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CONTRACTOR will bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if he makes a claim therefore as provided in Article 11 and 12.



Town May Stop the Work

13.7 If the Work is defective, if the CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or if the CONTRACTOR fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, the TOWN may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated: however, this right of the TOWN to stop the work shall not give rise to any duty on the part of the TOWN to exercise this right for the benefit of the CONTRACTOR or any other party.

Correction or Removal of Defective Work

13.8 If required by the OWNER'S REPRESENTATIVE prior to approval of final payment, the CONTRACTOR will, promptly, without cost to the TOWN and as specified by the OWNER'S REPRESENTATIVE, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If the CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within ten (10) calendar days, all as specified in a written notice from the OWNER'S REPRESENTATIVE, the OWNER'S REPRESENTATIVE may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement shall be paid by the CONTRACTOR. The CONTRACTOR will also bear the expense of making good all Work of others destroyed or damaged by his correction, removal or replacement of his defective Work.

One (1) Year Correction Period

13.9 If, after the approval of the final payment and prior to the expiration of one (1) year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the CONTRACTOR will promptly, without cost to the TOWN, and in accordance with the OWNER'S REPRESENTATIVE'S written instructions, either correct such defective Work or, if it has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If, within seven (7) calendar days, the CONTRACTOR does not comply with the terms of such instructions, the Bonding Company shall be notified of default and requested to make repairs or replacement, the TOWN may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CONTRACTOR. This shall be in addition to, and not in substitution for, the warranty requirement set forth elsewhere in these Contract Documents.

Acceptance of Defective Work

13.10 If, instead of requiring correction or removal and replacement of defective Work, the TOWN prefers to accept it, the TOWN may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the appropriate revisions to the Contract Documents including an appropriate reduction in the Contract Price. If the acceptance occurs after approval of the final payment, an appropriate amount shall be paid by the CONTRACTOR to the TOWN.

Neglected Work By Contractor

13.11 If the CONTRACTOR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the TOWN may, after three (3) calendar days written notice to the CONTRACTOR and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the CONTRACTOR.



A Change Order shall be issued incorporating the appropriate revision to the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the TOWN.

ARTICLE 14. PAYMENT AND COMPLETION

Schedule of Values

14.1 Within ten (10) calendar days after the effective date of the Agreement, the CONTRACTOR will submit a schedule of values of the Work including quantities and unit prices totaling to the Contract Price. This schedule shall be satisfactory in form and substance to the TOWN and shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedule of values by the OWNER'S REPRESENTATIVE, it shall be incorporated into the Estimate and Requisition for Payment form No. FMB:011 prescribed by the TOWN. Unit Price Contracts shall have the bid proposal prices incorporated into the Estimate and Requisition for Payment.

Application for Progress Payment

14.2 Not more often than once a month, nor less often than specified in the approved payment schedule 1.4.3, and on a date established at the Project Pre-Construction Conference, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for review the Estimate and Requisition for Payment form No. FMB:011 filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and supported by such data as the OWNER'S REPRESENTATIVE may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER'S REPRESENTATIVE, as will establish the TOWN'S title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage specified in the Contract Documents. Such retainage shall be paid and will be issued in the final payment after acceptance by the TOWN of the Work.

Contractor's Warranty of Title

14.3 The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the TOWN prior to the next making of application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

Approval of Payments

14.4 The OWNER'S REPRESENTATIVE will, within fifteen (15) calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the TOWN or return the Application to the CONTRACTOR indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of each approved application for payment, either indicate their approval of payment and pay the



CONTRACTOR the amount approved or return the application to the CONTRACTOR through the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.4.1 The OWNER'S REPRESENTATIVE's approval of any payment requested in an Application for Payment shall constitute a representation by the OWNER'S REPRESENTATIVE to the TOWN, based on the OWNER'S REPRESENTATIVE'S on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CONTRACTOR is entitled to payment of the amount approved.

14.4.2 The OWNER'S REPRESENTATIVE'S approval of final payment shall constitute an additional representation by the OWNER'S REPRESENTATIVE to the TOWN that the conditions precedent to the CONTRACTOR'S being entitled to final payment as set forth in this Article 14 have been fulfilled.

14.4.3 The OWNER'S REPRESENTATIVE may refuse to approve the whole or any part of any payment if the OWNER'S REPRESENTATIVE is unable to make such representations to the TOWN. OWNER'S REPRESENTATIVE may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the TOWN from loss because:

14.4.3.1 The Work is defective;

14.4.3.2 A portion of such payment is the subject of a dispute or claim that has been filed.

14.4.3.3 The Contract Price has been reduced because of Modifications;

14.4.3.4 The TOWN has been required to correct defective Work or complete the Work in accordance with Article 13, or

14.4.3.5 Of unsatisfactory prosecution of the Work, including failure to clean up as required by Article 7.

Substantial Completion

14.5 Prior to final payment, the CONTRACTOR shall, in writing to the OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of the Project to determine the status of completion. If the TOWN does not consider the Project substantially complete, it will notify the CONTRACTOR in writing giving the reasons therefore. If the TOWN considers the Project substantially complete, a Certificate of Substantial Completion (Form No. FMB:012) will be issued. This certificate shall fix the date of Substantial Completion and the responsibilities between the TOWN and the CONTRACTOR for maintenance, heat and utilities. The Certificate of Substantial Completion will also include a punch list of items to be completed or corrected, said time to be within the Contract Time. The TOWN shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion but the TOWN will allow the CONTRACTOR reasonable access to complete items on the punch list.

Partial Utilization

14.6 Prior to final payment, the OWNER'S REPRESENTATIVE may request the CONTRACTOR to



permit the use of a specified part of the Project which the TOWN believes it may use without significant interference with construction of the other parts of the Project. If the CONTRACTOR agrees, he will certify to the OWNER'S REPRESENTATIVE that said part of the Project is substantially complete and request the OWNER'S REPRESENTATIVE to issue a Certificate of Substantial Completion for that part of the Project. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of that part of the Project to determine its status of completion. If the TOWN considers that part of the Project to be substantially complete, the OWNER'S REPRESENTATIVE will deliver to the CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment and fixing the responsibility between the TOWN and the CONTRACTOR for maintenance, heat and utilities as to that part of the Project. The TOWN shall have the right to exclude the CONTRACTOR from any part of the Project which is so certified to be substantially complete but the TOWN will allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

Final Inspection

14.7 Upon written notice from the CONTRACTOR that the Project is complete, the OWNER'S REPRESENTATIVE will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of any particulars which this inspection reveals that the Work is defective. The CONTRACTOR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

Final Inspection for Payment

14.8 After the CONTRACTOR has completed any such corrections to the satisfaction of the OWNER'S REPRESENTATIVE and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CONTRACTOR and all SUBCONTRACTORS which performed services for the CONTRACTOR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

Approval of Final Payment

14.9 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, it will, within fifteen (15) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the TOWN. Otherwise, it will return the Application to the CONTRACTOR, indicating in writing its reason for refusing to approve final payment, in which case the CONTRACTOR will make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment pay the CONTRACTOR the amount approved by the TOWN and issue a Certificate of Final Completion or return the application thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.10 If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CONTRACTOR, and the OWNER'S REPRESENTATIVE so confirms, the TOWN shall and



without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Article 6, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER'S REPRESENTATIVE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.11 If liquidated damages are to be deducted from the final payment, the TOWN shall so notify the CONTRACTOR in writing at least seven (7) calendar days prior to the TOWN'S submittal to Finance.

14.12 The Contractor will be required to submit with his final payment documents a DBE Participation Certification, Form No. FMB:016 indicating all DBE sub-contractor(s) and amount(s) utilized for the project, if applicable.

If the CONTRACTOR did not utilize the DBE firm(s) listed on the Bid Proposal, Schedule D, a letter of justification, as to why shall be submitted along with the DBE Participation Certification if appropriate.

14.13 Upon receipt of the Contractor Performance Evaluation, the CONTRACTOR will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the project manager. If the evaluation has not been received back from the CONTRACTOR within the seven (7) calendar days, the TOWN will assume the CONTRACTOR fully agrees with and has no comments to the evaluation. The evaluation will then be placed on file with Town of Fort Myers Beach Contracts Management.

Contractor's Continuing Obligation

14.14 The CONTRACTOR'S obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the TOWN, the issuance of the Certificates of Completion, any payment by the TOWN to the CONTRACTOR under the Contract Documents, any use or occupancy of the Project or any part thereof by the TOWN, any act of acceptance by the TOWN, any failure to do so, nor any correction of defective Work by the TOWN shall constitute an acceptance of Work not in accordance with the Contract Documents.

Waiver of Claims

14.15 The making and acceptance of final payment shall constitute:

14.15.1 A waiver of all claims by the TOWN against the CONTRACTOR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any guarantees specified therein, and,

14.15.2 A waiver of all claims by the CONTRACTOR against the TOWN other than those previously made in writing and still unsettled.

ARTICLE 15. SUSPENSION OF WORK AND TERMINATION

Town May Suspend Work

15.1 The TOWN may at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by notice in writing to the CONTRACTOR. The TOWN shall fix the date on which Work shall be resumed and the CONTRACTOR will resume the



Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price, an extension of the Contract Time or both, if such increases are justified and directly attributable to any TOWN suspension and if he makes a claim thereof as provided in Articles 11 and 12.

Town May Terminate

15.2 If the CONTRACTOR is adjudged bankrupt or insolvent, if CONTRACTOR makes a general assignment for the benefit of his creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, if he files a petition to take advantage of any debtor's act or reorganizes under the bankruptcy or similar laws, if CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, if CONTRACTOR repeatedly fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, if CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, if he disregards the authority of the OWNER'S REPRESENTATIVE, or if CONTRACTOR otherwise substantially violates any provisions of the Contract Documents, then the TOWN may, without prejudice to any other right or remedy and after giving the CONTRACTOR and CONTRACTOR's surety seven (7) calendar days written notice, terminate the services of the CONTRACTOR and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the Work by whatever method the TOWN may deem expedient or arrange with the Surety to complete the project. The CONTRACTOR, if notified by the TOWN to do so, shall promptly remove any part of his equipment and supplies from the property of the TOWN; failing, the TOWN shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

15.2.1 In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such cost exceeds such unpaid balance, the CONTRACTOR will pay the difference to the TOWN. Such cost incurred by the TOWN will be determined by the TOWN and incorporated in a Change Order.

15.2.2 Where the CONTRACTOR'S services have been so terminated by the TOWN, said termination shall not affect any rights of the TOWN against the CONTRACTOR then existing or which may thereafter accrue.

15.2.3 If so terminated, any retention or payment of monies by the TOWN due the CONTRACTOR will not release the CONTRACTOR from liability accruing under this Contract.

15.2.4 If after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of Article 15.2 or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 15.3.

15.3 Upon seven (7) calendar days written notice to the CONTRACTOR, the TOWN may without cause and without prejudice to any other right or remedy elect to abandon the Project and terminate the Agreement. In such case the CONTRACTOR shall be paid for all Work executed and any expense sustained plus a reasonable profit.

Contractor May Stop Work or Terminate the Contract

15.4 If through no fault of the CONTRACTOR, or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) calendar days by the



TOWN or under an order of court or other public authority, or the OWNER'S REPRESENTATIVE has not issued a certificate for payment and has not notified the CONTRACTOR of the reason for withholding certification as provided in 14.4 or because the TOWN has not made payment on a certificate for payment within the time stated in the Contract Documents, then the CONTRACTOR may, upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE, terminate the Agreement and recover from the TOWN payment for all Work executed and proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

15.5 In addition and in lieu of terminating the Agreement, if the OWNER'S REPRESENTATIVE has failed to act on an application for payment or the TOWN has failed to make any payment as aforesaid, the CONTRACTOR may upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligation under paragraph 7.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the TOWN.

ARTICLE 16. MISCELLANEOUS

General

16.1 All Specifications, Drawings and copies thereof furnished by the TOWN, to the CONTRACTOR, shall remain the TOWN'S property. They shall not be used on another Project.

16.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the CONTRACTOR and the rights and remedies available to the TOWN thereunder shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.

16.3 Should the TOWN or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or any of his employees, agents, or others for whose acts a party is legally liable, a claim should be made in writing to the other party within seven (7) calendar days of the first observance of such injury or damage. This shall not be deemed to waive any immunity from claim on the part of the TOWN, whether it be through sovereign immunity or due to specific provisions set forth in these Contract Documents.

16.4 The Contract Documents shall be governed by the laws of the State of Florida, the County of Lee, and the municipality in which the project is being done.

Computation of Time

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

ARTICLE 17. MAINTENANCE OF RECORDS

17.1 The CONTRACTOR shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CONTRACTOR for a minimum of five (5) years from the date of termination of this Contract. The TOWN and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the TOWN deems necessary during the period of this Contract and during the period of five (5) years



thereafter; provided, however, such activity shall be conducted only during normal business hours. The TOWN, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CONTRACTOR as concerns the aforesaid records and documentation.

ARTICLE 18. FEDERAL REQUIREMENTS

18.1 In the event this Contract is paid in whole or in part from any Federal Governmental agency or source, the specific terms, regulations and requirements governing the disbursement of these funds are incorporated by reference and made a part of this Contract as if attached hereto and become a part of this Article.



PART E
FMB:007 – CONSTRUCTION CONTRACT
PUBLIC CONSTRUCTION BOND

(1 of 3 Pages)

FORT MYERS BEACH CONSTRUCTION CONTRACT
PUBLIC CONSTRUCTION BOND

BOND NO:

1. Know all men by these presents, that _____

(Name, Full Address & Phone # of Awarded Contractor)

hereinafter referred to as the CONTRACTOR, as Principal, and _____, a corporation, licensed to do business in the State of Florida, hereinafter called SURETY, located at: _____, are

held and firmly bound unto the Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, (239) 765-0202, a Political Subdivision of the State of Florida as "OWNER", in the full and just sum of _____

(Amount of Bond Written in Words)

(\$ _____) Dollars, lawful money of the United States of America, to the payment of which sum, will and truly to be made, the CONTRACTOR and SURETY bind themselves, their representatives, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS, the CONTRACTOR has entered into a certain written Contract with the TOWN as the OWNER, dated the ___ day of ___, 20___, for: Legal Description of project, _____, whose address is _____ for the project known as _____, with conditions and provisions as are further described in the aforementioned Contract, which Contract is by reference made a part hereof in its' entirety for the purpose of perfecting this bond.

3. NOW, THEREFORE, the conditions of this obligation are such that if CONTRACTOR shall fully, promptly and faithfully perform said Contract and all obligations there under, including all obligations imposed by the Contract Documents (which includes the Notice to Bidders, Instruction to Bidders, Bid Proposal Form, General and Supplementary Conditions, Detail Specifications, Form(s) of Contract Bond(s), Plans and Specifications, Change Orders, and such alterations thereof as may be made as provided for therein), and shall promptly make payments to all claimants for any and all labor and materials used or reasonably required for use or furnished in connection with the performance of said Contract, and shall perform all other covenants and obligations of this bond, then this obligation shall be void; otherwise it shall remain in full force and effect.

3.1. The undersigned shall indemnify and save harmless the OWNER from and against all costs, expenses and damages, including litigation costs and attorneys fees arising out of, or in connection with the neglect, default or want of care or skill, including patent infringement on the part of said CONTRACTOR, his agents, servants or employees in the execution or performance of said Contract with the OWNER.

3.2. The undersigned shall promptly make payment(s) to all persons supplying services, labor, material or supplies used directly or indirectly by said CONTRACTOR, or any Sub-Contractor or Sub-Contractor, in the prosecution of the work provided for in said Contract with the OWNER.



PART E
FMB:007 - CONSTRUCTION CONTRACT
PUBLIC PAYMENT and PERFORMANCE BOND

(2 of 3 Pages)

- 3.3. The undersigned agree to promptly pay to the OWNER any difference between the sum to which the CONTRACTOR would be entitled for the completion of the contract including any damages, direct, liquidated or delay, which the OWNER may sustain by reason of failure of the CONTRACTOR to properly and promptly perform and abide by all of the provisions of said Contract, and any sum which the OWNER may be or was obligated to pay for the completion of said Work by the CONTRACTOR.
- 3.4. The undersigned SURETY covenants and agrees that change orders, extensions of time, alterations or additions to the terms of the Contract or the Work to be performed there under, or the specifications accompanying the same shall in no way effect their obligation on this Bond, and the SURETY does hereby expressly waive notice of any such changes, extensions of time, alterations or additions, so long as the fundamental nature of the work on the Project by the CONTRACTOR is not changed.
- 3.5. Subject to the OWNER'S priority, claimants covered by Section 713.01, Florida Statutes, shall have a direct right of action against the Principal and Surety under this obligation, after written notice is provided to the OWNER of the performance of labor or delivery of materials or supplies, and non-payment thereof. Any claimant who seeks to recover against the Principal or Surety under this obligation must also satisfy the notice requirements and time limitations of Section 255.05, Florida Statutes, as they may be revised from time to time.
- 4. The CONTRACTOR and the SURETY shall hold the Town harmless from any and all damages, expenses and cost, or lawsuits, which may arise by virtue of any defects in said work or materials within the period of one (1) year from the date of OWNER'S express acceptance of the project, providing, however, that upon completion of the Work, the amount of this bond shall be reduced to 100% of the Contract Price.
- 5. This public payment and performance bond shall be governed by the laws, administrative rules, and regulations of the State of Florida. Any claims or suits instituted under this bond shall be governed solely by the laws of the State of Florida.

SIGNED and sealed this, the _____ day of _____, 20__

CONTRACTOR, As Principal:

WITNESS:

(Signature)

(Type Name and Title)

WITNESS: (If No Seal)

(Signature)

(Type Name and Title)

(Firm Name)

BY: _____ (SEAL)
(Signature)

(Type Name and Title)



PART E
FMB:007 - CONSTRUCTION CONTRACT
PUBLIC PAYMENT and PERFORMANCE BOND
(3 of 3 Pages)

COUNTERSIGNED, as SURETY

(Title)

STATE OF _____)
COUNTY OF _____) SS
CITY OF _____)

(Name)

(Address)

(City, State, Zip Code)

(Power-of-Attorney Signature)

BEFORE me, a Notary Public, duly commissioned, qualified and acting personally, appeared:

to me well-known, who being by me first duly sworn upon oath says that he/she is Attorney-in-Fact for _____, as Surety, and that he has been authorized by said Surety to execute the foregoing Public Payment and Performance Bond on behalf of the (CONTRACTOR) Principal named therein in favor of the OWNER.

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____ by _____ (Print or Type Name)

who has produced _____ (Type of Identification and Number)

as identification.

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

**FMB:008 - CONSTRUCTION CONTRACT
CLEAN IRREVOCABLE LETTER OF CREDIT**

DATE: _____

TO:

AMOUNT: \$ _____

EXPIRATION DATE: _____

(U.S. Dollars)

We hereby open our Clean Irrevocable Letter of Credit No. _____ in favor of the Town of Fort Myers Beach Town Council (Town) for the amount of _____ U.S. Dollars (_____) effective as of this date.

This Letter of Credit is issued pursuant to that certain contract No. _____ between _____, as Contractor, and the Town of Fort Myers Beach, Florida, dated _____, 20__ (the "Contract"), however, this Letter of Credit is independent of that contract and reference herein is for information only.

Funds under this Letter of Credit are available to the Town hereunder not exceeding in aggregate the amount of this Credit against the Town's demand for payment on us referencing our Credit No. _____.

When we receive your demand for payment at _____ (street address)

on or prior to the Expiration Date, we will promptly honor the same.

Kindly address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department, mentioning specifically our Credit Number.

Venue for any and all legal action necessary to enforce the terms of this Letter of Credit shall be Lee County, Florida.

This bond shall be effective from _____ and remain in effect until _____ and shall be renewed annually for the term of the agreement.

Authorized Signature: _____

Name (Typed): _____

Title: _____

Notary Public: _____

Except as is inconsistent with the express provisions hereof, this Letter of Credit is subject to the Uniform Customs and Practices For Documentary Credits (1993) Revision, International Chamber of Commerce Publication No. 500.



TOWN of FORT MYERS BEACH
PART E
CONSTRUCTION CONTRACT
CERTIFICATE OF INSURANCE

BID NO. ITB-21-16-PW

(INSERT CERTIFICATE OF INSURANCE HERE)



**PART E
FMB:009 - CONSTRUCTION CONTRACT
TOWN OF FORT MYERS BEACH BID PROPOSAL REQUEST**

PROPOSAL REQUEST NO. _____

CONTRACT/PROJECT NAME: _____

CONTRACTOR: _____ PROJECT NO. _____

CONTRACT NO. _____ BID NO.: _____

CHANGE REQUESTED BY: _____ DATE OF REQUEST _____

Please submit an itemized bid for changes in the Contract Sum and/or Time incidental to proposed modifications to the Contract Documents described herein.

THIS IS NOT A CHANGE ORDER NOR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED HEREIN.

Description: (Written description of the Work)

Attachments: (List attached documents that support description)

CONTRACTOR:

BY: _____



**PART E
FMB:010 - CONSTRUCTION CONTRACT
FIELD CHANGE ORDER**

Project No. _____ Bid No.: _____ Contract No.: _____ No. _____
Date: _____

Contract/Project Name: _____

Request By: _____

It is hereby requested, agreed, and authorized that the following field change(s) in the work required by the contract documents be made:

Description of the change:

Indicate drawings and/or specification affected by this change:

CONDITIONS TO THIS CHANGE ORDER:

It is hereby understood and agreed that the above described field change will not involve:

- (A) any change in the Contract Price, or
- (B) any change in the Contract Completion Time, or
- (C) any change that would be inconsistent with the scope of the Contract Documents.

NOTE If this change affects prior approvals for permits granted by any agency, written documentation of that agency's approval of the change is required prior to commencing this change.

CONTRACTOR ACCEPTANCE By: _____
Contractor's Business Name

By: _____
Signature _____ Date _____
Title _____

CONSULTANT'S RECOMMENDATION _____ (if applicable)

BY: _____
(Print Name of Consultant)

BY: _____
Signature _____ Date _____

TOWN APPROVAL AND AUTHORIZATION

BY: _____
(Print Name) Department Director or Designated
Project Manager

BY: _____
Signature _____ Date _____

Copies to: Contractor (Top Copy)
Project Consultant
Project Sponsoring Department
Contracts Management



**PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER**

No.: _____

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: _____

CONTRACTOR: _____ PROJECT NO.: _____

CONTRACT NO.: _____ BID NO.: _____

CHANGE REQUESTED BY: _____ DATE OF REQUEST: _____

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:
(If you need space other than what has been provided, please attach additional sheets.)

Description: _____

Purpose of Change Order: _____

Attachments: (List documents supporting change) _____

CHANGE IN CONTRACT PRICE:

Original Contract Price
\$ _____

Previous Change Order No. _____ to No. _____
\$ _____

Contract Price prior to this Change Order
\$ _____

Net Increase (Decrease) of this Change Order
\$ _____

Contract Price will all approved Change Orders
\$ _____

CHANGE IN CONTRACT TIME:

Original Contract Time
_____ Calendar Days

Net Change from previous Change Orders
_____ Calendar Days

Contract Time prior to this Change Order
_____ Calendar Days

Net Increase (Decrease) of this Change Order
_____ Calendar Days

Contract Time with all approved Change Orders
_____ Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:

By: _____ Date _____
Consultant (if applicable)

By: _____ Date _____
Department Director

Contracts Management

APPROVED:

Town Attorney Date _____

ACCEPTED

By: _____
Contractor

Date Accepted: _____

(CORPORATE SEAL)

TOWN APPROVAL:

By: _____
Finance Director (Under \$25,000)

Date Approved: _____

By: _____
Town Manager (Under \$25,000)

Date Approved: _____

By: _____
Mayor, Town Council
(Over \$25,000)

Date Approved: _____



PART E
FMB:012 - CONSTRUCTION CONTRACT
FIELD DIRECTIVE CHANGE

(1 of 2 Pages)

NO.: _____

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name: _____

Contractor: _____

Request By: _____ Date of Request: _____

1. DIRECTIVE: The TOWN hereby directs and authorizes the following change(s) in the work required by the contract documents be made and the CONTRACTOR is hereby directed to proceed promptly. In the event that as a result of the CONTRACTOR accepting this Field Directive Change, there are determined to be change(s) in the Contract (1) scope, (2) cost, or (3) time. Subsequent to the CONTRACTOR finalizing the change(s) in the work required, and upon receipt and acceptance by the TOWN of a written and documented claim by the CONTRACTOR, such changes shall be incorporated in a Change Order which is subject to approval by the TOWN and the CONTRACTOR.

2. Description of the change(s):

3. Purpose or Intent of Field directive Change:

4. Attachments: (List documents supporting change)

5. Not-to-exceed limits applicable to this Field Directive Change:
Unless specifically authorized by the TOWN by a written amendment to this Field Directive Change, the CONTRACTOR shall not exceed the following limits:

A. Estimated not-to-exceed increase (decrease) in the contract price: _____

B. Estimated not-to-exceed increase (decrease) in completion time in calendar days: _____

6. Claim(s) resulting from Field Directive Change
In the event that, as a result of the CONTRACTOR providing or performing the change(s) in the required construction work as set forth in this Field Directive Change, the CONTRACTOR determines that consideration should be given to (1) changing the contract scope, (2) increasing the CONTRACTOR'S compensation, or (3) increasing the contract time; the CONTRACTOR shall in accordance with the provisions of Articles 11, 12 and 13 of the Contract Document, submit a written claim to the TOWN requesting that a Change Order be executed incorporating changes in the (1) contract scope, (2) CONTRACTOR compensation, or (3) contract time as appropriate. Such a claim shall include documentation to support the claim.



PART E
FMB:012 - CONSTRUCTION CONTRACT
FIELD DIRECTIVE CHANGE

(2 of 2 Pages)

It is understood and agreed by the TOWN in authorizing and by the CONTRACTOR in accepting this Field Directive Change that the following methods shall be used as the basis for considering the issuance of a contract Change Order or any CONTRACTOR claim arising out of this Field Directive Change:

A. Method of Determining Change in Contract Price:

- Time and Materials
- Unit Prices
- Cost plus fixed fee
- Other

B. Method of Determining Change in Contract Time:

- Contractor's Records
- Consultant's Records
- Other

7. ACCEPTANCE:

TOWN AUTHORIZATION

By _____
Printed Name

By _____
Signature

Title/Position _____

Date _____

CONTRACTOR AUTHORIZATION

By _____
Contractor's Business Name

By _____
Print Name

By _____
Signature

Witness

Title/Position _____

Date _____

Corporate Seal (Affix if applicable, if not enter "None")

Copies Distributed to:

- Contractor (Signed Original)
- Director Project Sponsoring Department (Signed Original)
- Project Manager
- Consultant (if applicable)
- Contracts Management



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

FMB:013 - CONSTRUCTION CONTRACT ESTIMATE AND REQUISITION FOR PAYMENT

(1 of 3 Pages)

Bid No.: _____ Contract No.: _____ Date: _____ Project No.: _____

Estimate No.: _____ (Partial Final) for Period _____ to _____

Project Name: _____

PAYEE: Contractor's Name: _____ Mailing Address: _____ City & State _____ ZIP CODE _____

Deliver Warrant: _____ Special Instructions - If Other than Mail _____

Attach a list of names and addresses of all Sub-Contractors, material men, or suppliers that are to be paid from this requisition.

CONTRACTUAL FINANCIAL DATA

Date of Original Contract: _____

Total Amount of Original Contract \$ _____

PLUS: Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____

Total Change Orders ADDING to cost of Contract \$ _____

LESS: Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____ Change Order # _____ dated _____ \$ _____

Total Change Orders SUBTRACTING from cost of Contract \$ _____

Less Total Unit Price Amount Not Used Per Final Field Measurements \$ _____

TOTAL OF ABOVE \$ _____

SPECIAL NOTE: Any change orders which affect the contract not previously transmitted to the Town's Finance Office or to Contracts Mgmt must be properly executed and attached to this form before payment will be made.

Total Completed this Requisition \$ _____ Retainage \$ _____

Total Complete to Date (Column F, Sheet 3) \$ _____

Retainage % (Percent required in Contract Documents) \$ _____

Total Earned Less Retainage \$ _____

Less Prior Payments Made \$ _____

Less Liquidated Damages \$ _____

Amount of this Requisition \$ _____

Total Amount Paid to DBE's from above \$ _____



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

FMB:013 - CONSTRUCTION CONTRACT
PROGRESS PAYMENT CERTIFICATION

(2 of 3 Pages)

Project Name: _____

Bid No.: _____

Contract No.: _____

Estimate No.: _____

Project No.: _____

Requisition Date: _____

Period From: _____

To: _____

I do hereby certify that all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed, and materials delivered. I further certify that all Sub-Contractors, material men or suppliers listed to be paid from this requisition will be paid prior to any future payment request for this particular project. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for a progress payment.

Signed: _____

Contractor

Date: _____

(CORPORATE SEAL)

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by means

of () physical presence or () online notarization, personally appeared _____ as

_____ of _____,

() who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and documents shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for progress payment.

Signed: _____
Owner's Rep. Preparing Estimate

Signed: _____
Department/Division Director

Date: _____

Date: _____

Alternate No.



TOWN of FORT MYERS BEACH
PART E

BID NO. ITB-21-16-PW

FMB:013 - CONSTRUCTION CONTRACT
FINAL PAYMENT CERTIFICATION AND CONTRACTORS AFFIDAVIT
(3 of 3 Pages)

Project Name: _____

Bid No.: _____
Contract No.: _____
Estimate No.: _____
Project No.: _____
Requisition Date: _____
Period From: _____
To: _____

I do hereby certify that all items and amounts shown in the requisition for payment are correct and all work has been performed and materials delivered. This waiver and release of lien is conditioned upon payment of the consideration specified herein. It is not effective until said payment is received. I further certify that the consideration received in exchange for this final waiver and release of lien, when received is designated by the Contractor to be applied to the payment of subcontractors, material men, and suppliers who have furnished such services, labor, materials and supplies for which this request for payment is being made.

For warranty and guarantee start date, it is understood and agreed that the date of the final completion of the Work shall apply unless otherwise provided in the Certificate of substantial completion at which time the TOWN initiates occupancy or utilizes the Work or designated portion thereof for the use for which it is intended, which ever is first.

Signed: _____
Contractor

Date: _____
CORPORATE SEAL

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____, by means of () physical presence or () online notarization, personally appeared _____ as _____ of _____, () who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

I do hereby certify that to the best of my knowledge and belief, all items and amounts shown in this Estimate and Requisition for Payment are correct and that all work has been performed in accordance with the requirements of the Contract Documents. Accordingly, I hereby certify the amount of \$_____ to the Town of Fort Myers Beach for final payment.

Substantial Completion Date: _____

Final Completion Date: _____

Signed: _____
Owner's Rep. Preparing Estimate

Signed: _____
Department/Division Director

Date: _____

Date: _____

APPROVAL RECOMMENDED

By: _____
Town Attorney

Date: _____



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

FMB:014 - CONSTRUCTION CONTRACT
CERTIFICATE OF SUBSTANTIAL COMPLETION

(1 of 2 Pages)

Project No.: Bid No.: Contract No.:

Contract/Project Name(s):

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

A Certificate of Occupancy or Compliance has been issued by the Authority having jurisdiction and the Work to which this Certificate of Substantial Completion applies has been inspected by authorized representatives of OWNER and the CONTRACTOR and that Work is hereby declared to be substantially complete in accordance with the Contract Documents.

Date of Substantial Completion

The following Punch List items to be completed or corrected may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of the CONTRACTOR to complete all the work in accordance with the Contract Documents. The items in this list shall be completed or corrected by the CONTRACTOR within days of the above date of Substantial Completion.

PUNCH LIST: (Each item must be numbered)

Multiple horizontal lines provided for listing punch list items.

Additional sheets may be added if necessary. Each such additional sheet shall be numbered and noted herein:



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

FMB:014 - CONSTRUCTION CONTRACT
CERTIFICATE OF SUBSTANTIAL COMPLETION

(2 of 2 Pages)

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name(s): _____

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

RESPONSIBILITIES:

OWNER: _____

CONTRACTOR: _____

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

Project Inspector _____ Date _____,
Name

Executed by OWNER'S REP. On _____
Date: _____,

CONTRACTOR accepts this Certificate of Substantial
Completion on _____
Date: _____,

OWNER'S REPRESENTATIVE (Print)

CONTRACTOR (Print)

By _____
Signature

By _____
Signature

TOWN accepts this Certificate of Substantial
Completion on _____
Date: _____,

DIRECTOR (Print)

By _____
Signature

cc: Project Manager
Town of Fort Myers Beach Sponsoring Department
CONTRACTOR
Contracts Management



**TOWN of FORT MYERS BEACH
PART E
FMB:015 - CONSTRUCTION CONTRACT
WARRANTY**

BID NO. ITB-21-16-PW

The undersigned party does hereby warranty and/or guarantee all work executed by the Contractor:

Name and Address of Contractor

Project Title

To be free from defects of materials and workmanship for a period of one year from

(Date of Substantial/Final Completion)

The undersigned party further agrees that it will, at its own expense, repair and replace all such defective work and all other work damaged by said defective work under this Warranty Guaranty. It is furthermore understood that the consideration for the giving of this warranty and/or guaranty is the requirement by the general conditions and specifications under which the contract was let that such warranty and/or guaranty would be given.

DATE _____

CONTRACTOR

By _____

Corporate Seal

Attest _____



TOWN of FORT MYERS BEACH
PART E

BID NO. ITB-21-16-PW

**FMB:016 - CONSTRUCTION CONTRACT
OWNER'S REPRESENTATIVE CERTIFICATE OF FINAL COMPLETION**

EFFECTIVE DATE: _____

CONSULTANT (If Applicable): _____

PROJECT NAME: _____

PROJECT NUMBER: _____

CONTRACT NUMBER: _____

CONTRACTOR: _____

TOWN PROJECT MANAGER: _____

This is a formal certification that based on observation of the Owner's Representative the above contractor has completed all work for the above project in conformance with the plans, specifications and provisions established by the Contract Documents.

I recommend that the work be accepted by the Town of Fort Myers Beach.

SIGNED: _____
Owner's Representative

DATED: _____

cc: Project Manager
Town of Ft. Myers Beach Sponsoring Department
CONTRACTOR
Contracts Management



TOWN of FORT MYERS BEACH

BID NO. ITB-21-16-PW

PART E

**FMB:017 - CONSTRUCTION CONTRACT
DISADVANTAGED BUSINESS AND MINORITY BUSINESS ENTERPRISE
PARTICIPATION CERTIFICATION**

(If Applicable)

Project No.: _____ Bid No.: _____ Contract No.: _____

Contract/Project Name(s): _____

This is a formal certification that the below list of Disadvantaged Business Enterprise Sub-Contractor(s) and amount(s) were utilized on the above project.

DBE SUB-CONTRACTOR	SUB-CONTRACTOR AMT	AMOUNT PAID
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed: _____
Contractor

Date: _____

cc: Project Manager
Contracts Management



PART E

FMB:018 - CONSTRUCTION CONTRACT
CONTRACTOR PERFORMANCE EVALUATION

(1 of 2 Pages)

Contractor Name: _____

Project Manager: _____ Phone: _____

Project Name: _____ Fax: _____

Town Project Manager: _____ Bid #: _____

Notice to Proceed Date: _____ Completion Date: _____

SECTION 1

MANAGEMENT AND ORGANIZATION OF THE WORK

- A. Effectiveness of supervision in scheduling the work, organizing construction operations and providing quality control. _____
- B. Negotiation of contract modifications, project recordkeeping and project documentation. _____
- C. Working relationship with department personnel responsible for administration of the contract requirements and inspection of the work. _____

SECTION 1 TOTAL:

SECTION 1 AVERAGE:

SECTION 2

WORK PERFORMANCE

- A. Prosecution of the work. _____
- B. Work effort and product quality control. _____
- C. Scheduling and controlling of construction activities to minimize the impact on traffic through the construction zone, access to adjacent property and protection of the general public. _____
- D. Sufficiency of appropriate equipment to prevent downtime and safe production of a quality product. _____
- E. Compliance with E.E.O., labor, training and on-site safety. _____
- F. Interface with utility companies in adjusting, relocating or installing facilities concurrent with construction. _____
- G. Final completion of the project. _____

SECTION 2 TOTAL:

SECTION 2 AVERAGE:



PART E

FMB:018 - CONSTRUCTION CONTRACT
CONTRACTOR PERFORMANCE EVALUATION

(2 of 2 Pages)

RATING SCALE

RANGE	RATING	DESCRIPTION
0 - 1	Completely Insufficient	Uncorrected or uncorrectable problems
2 - 3	Poor	Problems and errors resulting in excessive effort, delay or actual damages to Town or others; some effort made to remedy problems with active participation by Town
4 - 5	Below Expectations	Minor but consistent problems usually corrected after identification
6 - 7	Acceptable	May encounter rare problems which are quickly remedied
8 - 9	Above Expectations	Consistently problem-free, complete and of high quality
10	Outstanding	Excellent performance with service often above that specifically defined

PROJECT MANAGER'S REMARKS SUPPORTING GRADES

(Attach Additional Remarks)

Submitted _____ Date _____
 Project Manager

CONTRACTOR'S COMMENTS

(Attach Additional Remarks)

Submitted _____ Date _____
 Contractor Signature

Approved _____ Date _____
 Department/Division Director