

NOTE: A three-minute maximum time limit will be imposed on all comments from the public. A request form is available; fill it in and return to the Clerk prior to the start of the meeting. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager at the start of the meeting.

**TOWN OF BAY HARBOR ISLANDS
9665 BAY HARBOR TERRACE
BAY HARBOR ISLANDS, FL 33154**

**REGULAR COUNCIL MEETING
AGENDA**

October 19, 2022

7:00 P.M.

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

CALL TO ORDER: Set for approximately 7:00 P.M.:

PLEDGE OF ALLEGIANCE:

ROLL CALL

1. Oath of Office- Police Officer Kervens Norvil

SPECIAL PRESENTATION:

2. The Honorable County Commissioner Sally Heyman

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

PUBLIC COMMENT

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

COMMITTEE REPORTS:

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

3. **Consideration and Approval** to award a construction contract to Engineer Control Systems, Corp. for the amount of \$2,868,537.00 for the Rehabilitation of the Broad Causeway Bridge No. 875101 Project (BC-158). Enclosed are copies of the Bid Tabulations among other supporting documents.
4. **Consideration and Approval** to authorize the Town Manager to execute a Grant Agreement (LPA0255) with the FDEP for the amount of \$197,500.00 to upgrade the sanitary sewer system from Bay Harbor Terrace to the Main Pump Station from 15-inch to 18-inch to add more capacity to the system on this segment. Enclosed is a copy of the Grant Agreement.
5. **Consideration and Approval** of a Resolution urging Congress to reauthorize the National Flood Insurance Program, sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, URGING CONGRESS TO REAUTHORIZE THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING AN EFFECTIVE DATE.

6. **Consideration and Approval** of a Resolution recognizing the week of October 17-23, 2022 as "Florida City Government, sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RECOGNIZING THE WEEK OF OCTOBER 17-23, AS "FLORIDA CITY GOVERNMENT WEEK" AND ENCOURAGING ALL CITIZENS TO SUPPORT THE CELEBRATION AND CORRESPONDING ACTIVITIES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

7. **Consideration and Approval** of a Resolution honoring the Florida League of Cities on its 100th Anniversary, sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RECOGNIZING THE 100TH ANNIVERSARY OF THE FLORIDA LEAGUE OF CITIES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approve

POLL VOTE

PUBLIC HEARING:

8. An application by One Kane Concourse, LLC for approval of site plan development modification and approval of commercial activity on the rooftop, specifically a restaurant associated with the ground floor restaurant, for a Commercial Building, consisting of six (6) stories and two (2) levels of partially below grade parking at 9551 East Bay Harbor Drive, Lots 1 and 2 of Block 1, the Gateway District, which is designated as a Gateway property. Enclosed are the application and other supporting documents.

STAFF RECOMMENDATION: Council's Discretion.

POLL VOTE

ORDINANCES ON SECOND READING:

ORDINANCES ON FIRST READING:

DEFERRED ITEMS:

TOWN MANAGER ITEMS:

9. **Consideration** and **Ratification** of an approved proposal by David Mancini & Sons, Inc. for the amount of \$145,351.97 for the Emergency By-pass work (performed under emergency) for the Town's Sewer Main Pump Station D, in accordance with Section 2-1.3 of the Town Code, Emergency procurements. Enclosed is a copy of the proposal.

STAFF RECOMMENDATION: Approval

POLL VOTE

10. **Discussion** and **Possible Action** regarding a proposal received by David Mancini & Sons, Inc. for the amount of \$1,194,350.00 for the emergency replacement of the three (3) sanitary sewer pumps at Main Pump Station D, in accordance with Section 2-1.3 of the Town Code, Emergency procurements. Enclosed is a copy of the Proposal.

STAFF RECOMMENDATION: For Discussion

POLL VOTE

11. **Consideration** and **Approval** to issue a Request for Qualifications (RFQ) to select a Consultant to evaluate the whole system for infiltration/inflow and capacity of the lift stations. Enclosed is a copy of a Request for Qualifications (RFQ).

12. **Consideration** and **Approval** of a Request for Qualifications (RFQ) to select a Consultant to evaluate the feasibility of installing stormwater injection wells and/or pump stations in the Town, sponsored by Mayor Joshua Fuller. Enclosed is a copy of a Request for Qualifications (RFQ).

13. **Consideration** and **Approval** to authorize the Town Manager to negotiate the cost and enter into an Agreement with Waypoint Contracting, Inc. for the Design-Build Project BHI-228 - 92nd Street Dog Park Extension. Enclosed are the supporting documents.

STAFF RECOMMENDATION: Approve

POLL VOTE

14. **Consideration** and **Approval** of a request by BH Investment LLC, owner of the property located at 1135 103rd Street, to extend the use of the Temporary Sales Center to May 2023, in connection with the development of an eight-story building with 41 high-end residential units. Enclosed is the applicant's Letter of Intent and other supporting documents.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

DISCUSSION ITEMS:

15. **Discussion** and **Possible** action regarding Continuing Services contracts, sponsored by Council Member Stephanie Bruder.
16. **Consideration** and **Approval** of an Employment Agreement between the Town of Bay Harbor Islands and Town Manager Maria Lasday. Enclosed is a copy of the draft agreement.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

17. **Discussion** and **Possible** action regarding revision to Section 23-11(B1)(9) of the Town Code to lower the allowable building height for Multiple-Family single lot sites, introduced by Council Member Isaac Salver. Enclosed are proposed code text revisions and other supporting documents.

ADJOURNMENT: Set for 11:00 p.m. *(Any items not addressed by 11:00 PM, will be continued to the following day at 7:00 PM)*

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 1.

ITEM: Oath of Office- Police Officer Kervens Norvil

DESCRIPTION:

Officer Kervens Norvil graduated from Palm Beach State College Corrections Academy in 2007. In 2009, he completed the law enforcement academy at Miami Dade College. Officer Norvil continued pursuing higher education, where he later obtained, and completed his Bachelor of Science in Criminal Justice Management in 2018 from Union Institute and University. He started his law enforcement career, working for the Department of Corrections, obtaining experience in the transitional care unit, in addition to working with the forensic sector population from 2007 to 2010, while also working as a Reserved Police Officer for the City of Opa-Locka. Officer Norvil later worked for the City of Homestead Police Department from 2013-2021, where he was able to work in more than one sworn position, helping him expand his knowledge, while also gaining more experience in the field. Officer Norvil later went on to work for the Village of Tequesta as a police officer from May 2021, till joining the BHIPD.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Raul Diaz, Chief of Police

ATTACHMENTS

None

BID OPENING DATE: 08/31/2022

				ENGINEER CONTROL SYSTEMS, CORP.		SOUTHERN ROAD & BRIDGE, LLC		JONES BENITEZ CORPORATION		M&J CONSTRUCTION COMPANY OF PINELLAS COUNTY, LLC.		KIEWIT INFRASTRUCTURE SOUTH CO.	
Pay Item Number	Item Description	Estimated Qty	Unit	Unit Cost	Estimated Total	Unit Cost	Estimated Total	Unit Cost	Estimated Total	Unit Cost	Estimated Total	Unit Cost	Estimated Total
400-3-20	CONCRETE CLASS III, SEAL	17	CF	\$3,000.00	\$51,000.00	\$5,000.00	\$85,000.00	\$4,000.00	\$68,000.00	\$1,550.00	\$26,350.00	\$2,500.00	\$42,500.00
401-70-2	RESTORE SPALLED AREAS, LATEX MODIFIED MORTAR- STYRENE BUTADIENE	3161	CF	\$575.00	\$1,817,575.00	\$590.00	\$1,864,990.00	\$600.00	\$1,896,600.00	\$530.00	\$1,675,330.00	\$815.00	\$2,576,215.00
411-1	EPOXY MATERIAL FOR CRACK INJECTION – STRUCTURES REHAB	12	GA	\$150.00	\$1,800.00	\$60.00	\$720.00	\$100.00	\$1,200.00	\$275.00	\$3,300.00	\$300.00	\$3,600.00
411-2	CRACKS INJECT AND SEAL – STRUCTURES REHAB	140	LF	\$40.00	\$5,600.00	\$150.00	\$21,000.00	\$200.00	\$28,000.00	\$60.00	\$8,400.00	\$90.00	\$12,600.00
415-1-4	REINFORCING STEEL – BRIDGE SUPERSTRUCTURE	3,500.00	LB	\$6.00	\$21,000.00	\$2.00	\$7,000.00	\$24.00	\$84,000.00	\$5.00	\$17,500.00	\$8.00	\$28,000.00
458-1-21	BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD	400	LF	\$60.00	\$24,000.00	\$125.00	\$50,000.00	\$60.00	\$24,000.00	\$60.00	\$24,000.00	\$80.00	\$32,000.00
458-2	POLYMER NOSING FOR BRIDGE DECK EXPANSION JOINT	14	CF	\$728.00	\$10,192.00	\$2,250.00	\$31,500.00	\$1,000.00	\$14,000.00	\$800.00	\$11,200.00	\$1,000.00	\$14,000.00
460-81	RIVETS – HIGH STRENGTH BOLTS, REPLACEMENT	5	EA	\$1,500.00	\$7,500.00	\$350.00	\$1,750.00	\$2,000.00	\$10,000.00	\$2,100.00	\$10,500.00	\$590.00	\$2,950.00
460-98-2	PIPE HANGERS, STAINLESS	2	EA	\$500.00	\$1,000.00	\$1,000.00	\$2,000.00	\$750.00	\$1,500.00	\$9,547.00	\$19,094.00	\$3,000.00	\$6,000.00
		Bridge Pay Items (I)			\$1,939,667.00		\$2,063,960.00		\$2,127,300.00		\$1,795,674.00		\$2,717,865.00
0101-1	MOBILIZATION	1	LS	\$280,000.00	\$280,000.00	\$300,000.00	\$300,000.00	\$330,000.00	\$330,000.00	\$527,948.00	\$527,948.00	\$401,000.00	\$401,000.00
0102-1	MAINTENANCE OF TRAFFIC	160	DA	\$250.00	\$40,000.00	\$300.00	\$48,000.00	\$2,000.00	\$320,000.00	\$1.00	\$160.00	\$576.00	\$92,160.00
0102-14	TRAFFIC CONTROL OFFICER	2,560.00	HR	\$50.00	\$128,000.00	\$50.00	\$128,000.00	\$80.00	\$204,800.00	\$65.00	\$166,400.00	\$67.00	\$171,520.00
0102-60	WORK ZONE SIGN	1,500.00	ED	\$1.00	\$1,500.00	\$0.35	\$525.00	\$0.50	\$750.00	\$0.36	\$540.00	\$0.50	\$750.00
0102-71-15	TEMPORARY BARRIER, F&I, ANCHORED	1,700.00	LF	\$25.00	\$42,500.00	\$34.00	\$57,800.00	\$0.10	\$170.00	\$54.42	\$92,514.00	\$65.00	\$110,500.00
0102-71-25	TEMPORARY BARRIER, RELOCATE, ANCHORED	3,130.00	LF	\$6.50	\$20,345.00	\$18.00	\$56,340.00	\$0.10	\$313.00	\$16.52	\$51,707.60	\$38.00	\$118,940.00
0102-74-1	CHANNELIZING DEVICE – TYPES I, II, DI, VP, DRUM, OR LCD	12,240.00	ED	\$1.00	\$12,240.00	\$0.15	\$1,836.00	\$0.25	\$3,060.00	\$0.16	\$1,958.40	\$0.25	\$3,060.00
0102-75-1	TEMPORARY SEPARATOR, F&I REMOVE	3,535.00	LF	\$15.00	\$53,025.00	\$17.00	\$60,095.00	\$5.00	\$17,675.00	\$18.88	\$66,740.80	\$22.00	\$77,770.00
0102-76	ARROW BOARD/ADVANCE WARNING ARROW PANEL	380	ED	\$10.00	\$3,800.00	\$7.00	\$2,660.00	\$10.00	\$3,800.00	\$7.08	\$2,690.40	\$9.00	\$3,420.00
0102-89-1	TEMPORARY CRASH CUSHION, REDIRECTIVE OPTION	8	LO	\$3,000.00	\$24,000.00	\$1,500.00	\$12,000.00	\$0.10	\$0.80	\$1,074.00	\$8,592.00	\$130.00	\$1,040.00
0102-99	PORTABLE CHANGEABLE MESSAGE SIGN, TEMPORARY	348	ED	\$25.00	\$8,700.00	\$13.00	\$4,524.00	\$24.00	\$8,352.00	\$14.16	\$4,927.68	\$20.00	\$6,960.00
0102-115	TYPE III BARRICADE	1,360.00	ED	\$1.00	\$1,360.00	\$0.40	\$544.00	\$1.00	\$1,360.00	\$0.42	\$571.20	\$0.50	\$680.00
		Roadway Pay Items (II)			\$615,470.00		\$672,324.00		\$890,280.80		\$924,750.08		\$987,800.00
639-2-6	ELECTRICAL SERVICE WIRE REMOVE	1,000	LF	\$25.00	\$25,000.00	\$30.00	\$30,000.00	\$25.00	\$25,000.00	\$237.50	\$237,500.00	\$42.00	\$42,000.00
639-7-1	ELECTRICAL POWER SERVICE FURNISH AND INSTALL MEDIUM VOLTAGE PULL BOX 62” X 34”	1	EA	\$5,600.00	\$5,600.00	\$15,000.00	\$15,000.00	\$8,000.00	\$8,000.00	\$13,770.00	\$13,770.00	\$18,200.00	\$18,200.00
N/A	STAINLESS STEEL BRACKET ASSEMBLY TO SUPPORT UNISTRUT BRACKET SPACED EVERY 2.5 FT	790	EA	\$320.00	\$252,800.00	\$250.00	\$197,500.00	\$50.00	\$39,500.00	\$269.00	\$212,510.00	\$340.00	\$268,600.00
N/A	INSTALL 6” DIAMETER FIBERGLASS CONDUIT, PROVIDED BY FPL	1,000	EA	\$30.00	\$30,000.00	\$80.00	\$80,000.00	\$230.00	\$230,000.00	\$238.22	\$238,220.00	\$80.00	\$80,000.00
		Electrical Pay Items (III)			\$313,400.00		\$322,500.00		\$302,500.00		\$702,000.00		\$408,800.00
TOTAL (I + II + III)					\$2,868,537.00		\$3,058,784.00		\$3,320,080.80		\$3,422,424.08		\$4,114,465.00

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

BID FORM

BID FROM: ENGINEER CONTROL SYSTEMS, CORPORATION
Company: _____
Address: 12550 Biscayne Blvd., Ste 800, North Miami, Fl 33181
City/St/Zip: North Miami, Florida, 33181
Phone/ Fax: 305-895-4376

To furnish all materials, equipment and labor and to perform all work in accordance with the Bid and Contract Documents for Project:

Rehabilitation of Broad Causeway Bridge No. 875101, located in the Town of Bay Harbor Islands, Florida.

TO: TOWN OF BAY HARBOR ISLANDS, FLORIDA
ATTN: TOWN MANAGER

- 1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract for Construction, with the Town in substantially the form included in the Bidding Documents to perform all Work and any Additional Services as specified or indicated in the Bidding Documents at the Total Bid Price and within the Contract Times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 120 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Town.
- 3.01 In submitting this Bid, Bidder represents, as set forth in the Bidding Documents, Contract for Construction, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
01	JUNE 30 2022
02	AUGUST 10, 2022
03	AUGUST 17 2022
04	AUGUST 25 2022

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work, including all requirements applicable to the Project, including the provisions, clauses, terms or conditions set forth in

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Construction Contract (Contract Requirements).

- D. Bidder has carefully studied all documents as applicable: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Bidding Documents, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Bidding Documents.
 - E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - H. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - J. Bidder has reviewed and carefully studied the Contract for Construction, together with Construction Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.

BID TABULATION SHEET ON FOLLOWING PAGE

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Bay Harbor Islands – Rehabilitation of Broad Causeway Bridge No. 875101 Project

Pay Item Number	Item Description	Estimated Quantity	Unit	Unit Cost	Estimated Total
-----------------	------------------	--------------------	------	-----------	-----------------

I. BRIDGE PAY ITEMS

400-3-20	CONCRETE CLASS III, SEAL	17.00	CF	\$3,000.00	\$ 51,000.00
401-70-2	RESTORE SPALLED AREAS, LATEX MODIFIED MORTAR- STYRENE BUTADIENE	3161	CF	\$575.00	\$1,817,575.00
411-1	EPOXY MATERIAL FOR CRACK INJECTION – STRUCTURES REHAB	12.00	GA	\$150.00	\$1,800.00
411-2	CRACKS INJECT AND SEAL – STRUCTURES REHAB	140.00	LF	\$40.00	\$5,600.00
415-1-4	REINFORCING STEEL – BRIDGE SUPERSTRUCTURE	3,500.00	LB	\$6.00	\$21,000.00
458-1-21	BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD	400.00	LF	\$60.00	\$24,000.00
458-2	POLYMER NOSING FOR BRIDGE DECK EXPANSION JOINT	14.00	CF	\$728.00	\$10,192.00
460-81	RIVETS – HIGH STRENGTH BOLTS, REPLACEMENT	5.00	EA	\$1,500.00	\$7,500.00
460-98-2	PIPE HANGERS, STAINLESS	2.00	EA	\$500.00	\$1,000.00
BRIDGE PAY ITEMS SUB-TOTAL=					\$1,939,667.00

II. ROADWAY PAY ITEMS

0101-1	MOBILIZATION	1.00	LS	\$280,000.00	\$280,000.00
0102-1	MAINTENANCE OF TRAFFIC	160.00	DA	\$250.00	\$40,000.00
0102-14	TRAFFIC CONTROL OFFICER	2,560.00	HR	\$50.00	\$128,000.00
0102-60	WORK ZONE SIGN	1,500.00	ED	\$1.00	\$1,500.00
0102-71-15	TEMPORARY BARRIER, F&I, ANCHORED	1,700.00	LF	\$25.00	\$42,500.00
0102-71-25	TEMPORARY BARRIER, RELOCATE, ANCHORED	3,130.00	LF	\$6.50	\$20,345.00
0102-74-1	CHANNELIZING DEVICE – TYPES I, II, DI, VI, DRUM, OR LCD	12,240.00	ED	\$1.00	\$12,240.00
0102-75-1	TEMPORARY SEPARATOR, F&I REMOVE	3,535.00	LF	\$15.00	\$53,025.00
0102-76	ARROW BOARD/ADVANCE WARNING ARROW PANEL	380.00	ED	\$10.00	\$3,800.00
0102-89-1	TEMPORARY CRASH CUSHION, REDIRECTIVE OPTION	8.00	LO	\$3,000.00	\$24,000.00
0102-99	PORTABLE CHANGEABLE MESSAGE SIGN, TEMPORARY	348.00	ED	\$25.00	\$8,700.00
0102-115	TYPE III BARRICADE	1,360.00	ED	\$1.00	\$1,360.00
ROADWAY PAY ITEMS SUB-TOTAL=					\$615,470.00

III. ELECTRICAL PAY ITEMS

639-2-6	ELECTRICAL SERVICE WIRE REMOVE	1,000	LF	\$25.00	\$25,000.00
639-7-1	ELECTRICAL POWER SERVICE FURNISH AND INSTALL MEDIUM VOLTAGE PULL BOX 62" X 34"	1	EA	\$5,600.00	\$5,600.00
N/A	STAINLESS STEEL BRACKET ASSEMBLY TO SUPPORT UNISTRUT BRACKET SPACED EVERY 2.5 FT	790	EA	\$320.00	\$252,800.00

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

N/A	INSTALL 6" DIAMETER FIBERGLASS CONDUIT, PROVIDED BY FPL	1,000	EA	\$30.00	\$30,000.00
ELECTRICAL PAY ITEMS SUB-TOTAL=					\$313,400.00

TOTAL BASE BID PRICE (TOTAL OF BID ITEMS I THROUGH III) = \$2,868,537.00

Two Million eight hundred sixty eight thousand five hundred
 Written Thirty seven and 00/100
Engineer Control Systems, Corp. 08/30/2022
 (Contractor) (Date)

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following

Total Base Bid Price as itemized above:
 \$ Two Million five hundred fifty five thousand one hundred
 (Total Base Bid Price: Total for items I through II) Thirty seven and 00/100

Written Total Base Bid Price Amount (in Words):

\$ 2,555,137.00 (Dollars) 00 (cents)
Frank Zayas, President Frank Zayas
 Name of Bidder Signature of Bidder

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

- 6.01** Bidder's Information:
The Bidder states that he/she is an experienced Contractor and has completed similar projects within the last five years. This information has been provided on the Contractor's Qualifications Statement.
- 7.01** Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Bid and Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Bid Documents and the Contract for Construction, attach a statement to this Bid Form to indicate the number of days required.
- 8.01** Bidder accepts the provisions of the Contract for Construction as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Contract Documents.
- 9.01** The following documents are attached to and made a condition of this Bid:
- A. Required Bid security in the form of Bid Bond
 - B. Bid Bond form
 - C. Contractor's Qualifications Statement, containing a tabulation of Subcontractors, Suppliers [and other] individuals and entities required to be identified in this Bid;
 - D. Signed Trench Safety Act Form (if applicable)
 - E. O.S.H.A. Standards Acknowledgement Form
 - F. Non-Collusion Affidavit
 - G. Copy of State of Florida General Contractor's License (ten days prior to Award);
 - H. Addenda
 - I. Performance Bond
- 10.01** The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions, if any.

SUBMITTED on AUGUST 25, 2022.

State Contractor License No. CGC007494. (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Corporation

Corporation Name: Engineer Control Systems, Corporation (SEAL)

State of Incorporation: Florida

Type (General Business, Professional, Service, Limited Liability): Construction

By: Frank M. Zayas, President
(Signature -- attach evidence of authority to sign)

Name: (typed or printed): Frank M. Zayas

Title: President

Attest Rajiv Zayas (CORPORATE SEAL)
(Signature of Corporate Secretary)

Business address: 12550 BISCAYNE BLVD., STE 800, N. MIAMI, FL 33181

Phone No.: 305-895-4376 FAX No.: 305-895-0019

Date of Qualification to do business is July 1981.

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

CONTRACTOR'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.
The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your entity/company in detail.
ENGINEER CONTROL SYSTEMS, CORPORATION, began operations in July 1981.
The Company specializes in Bridge Repair and Construction. The Company is prequalified
by FDOT in Bridge Repair and Construction.

2. The address of the principal place of business is:
12550 Biscayne Blvd., Ste 800, North Miami, Fl 33181

3. Entity/Company telephone number, fax number and e-mail addresses:
Phone : 305 895 4376 Fax : 305-895-0019
Email: fzayas@engineercontrols.com

4. Number of employees:
18

5. Number of employees assigned to this Project:
10

6. Entity/Company Identification numbers for the Internal Revenue Service:
59-2073526

7. Provide Miami-Dade County Occupational License Number, if applicable, and expiration date:
1718098 September 30 2023

8. How many years has your organization been in business as a General Contractor? Does your
organization have a specialty?
42 Years Bridge Repair

9. What is the last project of this nature or magnitude that you have completed? Has this firm ever

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

completed a "public" project? Please provide project description, reference and cost of work completed.
 E7M31 Repairs Various Bridges Penella County FDOT \$ 2,064,981.00

Type text here
 Miami Dade William Powell Bridge Repair \$1,102,454 Type text here
 E55A5 SR 401 Over the Barge Canal Bridge Fender Repair \$938,530.00

10. Have you ever failed to complete any work awarded to you? If so, where and why?
 No.

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.
 Name City of Fort Lauderdale Public Works
 Address 100 North Andrews Avenue, Fort Lauderdale, FL 33301
 Telephone No. 954 348 2180 Connie Hayman

11.2.
 Name FDOT District 5
 Address 605 Suwanee Street, Tallahassee, FL 32399
 Telephone No. 407-960-5980 Robert Martens

11.3.
 Name FDOT District 5
 Address 605 Suwanee Street, Tallahassee, FL 32399
 Telephone No. 407 832 1694 Daley Carlton

12. List the following information concerning all contracts or work in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date
Dania Cut-off	FDOT District 4	\$895,000.00	March 2023	0%
Swing Bridge Rpt.	City of Fort Lauderdale	\$262,800.00	Dec 2022	0%

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the Project site and does the Bidder have a complete plan for its performance?

14. Provide list of subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

SubContractor Name	Address	Work to be Performed
None - Self Perform		

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?
 Loaders, Barges , Boats.

16. What equipment will you purchase for the proposed work?
 As required.

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

17. What equipment will you rent for the proposed work?

type text here
None

18. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

Armando Cardona.
Has been managing same type work for the last 15 years.

19. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

Engineer Control Systems, Corporation
12550 BISCAYNE BLVD., STE 800, N. MIAMI, FL 33181
Frank Zayas, President Angie Zayas, Secretary/Treassurer

- 19.1 The correct name of the Bidder is:

Engineer Control Systems, Corporation

- 19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

Corporation

- 19.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

N/A

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Only those Bidders and Subcontractor (s) who are qualified in the selected installation methodology will be considered as bona fide bidders. As Bidder, we certify to have constructed at least three (3) similar projects in the last five (5) year period as indicated by the following:

- | | |
|---------------------|--|
| 1) NAME OF PROJECT | P12010 Repair Bridge Annual Contract |
| YEAR OF PROJECT | 2021 |
| OWNER OF PROJECT | City of Fort Lauderdale Public Works |
| CONTACT NAME | Mr. Raymond Nazaire, P.E. |
| CONTACT PHONE NO. | 954-828-8954 |
| CONTACT E-MAIL | rnazaire@fortlauderdale.gov |
| LOCATION OF PROJECT | Various Bridges in the City of Fort Lauderdale |
| SCOPE OF WORK | Spall Repairs, Epoxy Injection, Concrete Piles repair with NSM rebar and Fiber Wrap. |
| APPROXIMATE VALUE | \$520,000.00 |
| 2) NAME OF PROJECT | E7M31 Repairs Various Bridges ,Pinellas County, Florida |
| YEAR OF PROJECT | 2019 |
| OWNER OF PROJECT | Florida Department of Transportation |
| CONTACT NAME | Mr. David Gillet |
| CONTACT PHONE NO. | 813-919-6746 |
| CONTACT E-MAIL | david.gillett@fdot.state.fl.us |
| LOCATION OF PROJECT | Several locations in Pinellas County |
| SCOPE OF WORK | Spall Repairs, Installation of Structural and Non-Structural Pile Jackets, Mettalizing, MOT, etc. |
| APPROXIMATE VALUE | \$1,932,280.00 |
| 3) NAME OF PROJECT | E2Y24 SR 115 Over Trout River Bridge Rehabilitation |
| YEAR OF PROJECT | 2020 |
| OWNER OF PROJECT | Florida Department of Transportation |
| CONTACT NAME | Mr. Mathew Kuhn |
| CONTACT PHONE NO. | 904-234-4243 |
| CONTACT E-MAIL | Mathew.Kuhn@parsons.com |
| LOCATION OF PROJECT | Jacksonville, FL |
| SCOPE OF WORK | Structural Repair to Bridge by installing Cross Braces to several Bents, Spall Repair, Concrete Formong and Pouring of a Bottom Cap. |
| APPROXIMATE VALUE | Type text here \$1,280.762.00 |

FOLLOW ON THE NEXT PAGE

SIGNATURE AND NOTARY ACKNOWLEDGEMENT

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

BID BOND

BIDDER (Name and Address):

Engineer Control Systems Corporation
12550 Biscayne Blvd, Suite 800, North Miami, FL 33181

SURETY (Name and Address of Principal Place of Business):

FCCI Insurance Company
6300 University Parkway
Sarasota, FL 34240

OWNER (Name and Address):

TOWN OF BAY HARBOR ISLANDS
9665 Bay Harbor Terrace
Bay Harbor, FL 33154

BID

BID DUE DATE: August 26, 2022

Project Description including Location is as follows:

PROJECT NAME: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101

PROJECT NO: BC-158

LOCATION: TOWN OF BAY HARBOR ISLANDS, FLORIDA

BOND

BOND NUMBER: N/A

DATE: (Not later than Bid Due Date): 08/19/2022

PENAL SUM: Five Percent of Amount Bid

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

Engineer Control Systems Corporation (Seal)
Bidder's Name and Corporate Seal

By: Frank Lopez, President
Signature and Title

Attest: [Signature]
Signature and Title

Note: (1)
(2)

Above addresses are to be used for giving required notice.

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

SURETY

FCCI Insurance Company
Surety's Name and Corporate Seal

By: Michael A. Bonet
Signature and Title Michael A. Bonet, Attorney-In-Fact

(Attach Power of Attorney)

Attest: See Power of Attorney Attached

Signature and Title



REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder for the Work required by the Contract Documents, provided that:

- 1.1. The penal sum set forth on the face of this Bond, and
- 1.2. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds and insurance certificates required by the Bidding Documents and Contract Documents.

3. This obligation shall be null and void if:

- 3.1. Owner accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Construction Contract required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
- 3.2. All bids are rejected by Owner, or
- 3.3. Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by

Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30

calendar days after receipt by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by Owner and Bidder, provided that the total time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid Due Date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable provision of this Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "bid" as used herein includes a bid, offer or proposal as applicable.



GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Roy V. Fabry; Michael A. Bonet

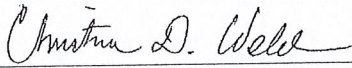
Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$10,000,000.00): \$10,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest:


Christina D. Welch, President
FCCI Insurance Company



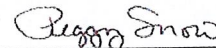

Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

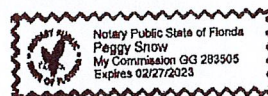


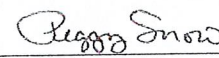

Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023




Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 19th day of August, 2022




Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

TRENCH SAFETY ACT

(90-96, Laws of Florida)

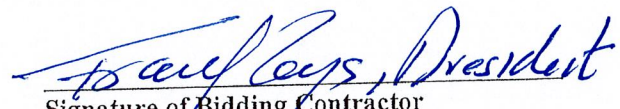
Bidder acknowledges that included in the appropriate bid items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The bidder further identifies the costs of such compliance to be summarized below:

	Trench Safety Measure (Description)	Unit of Measure (LFSF)	Unit (Quantity)	Unit Cost	Extended Cost
A.	N/A	N/A	N/A	N/A	N/A
B.					
C.					
D.					
				Total	\$ 0.00

If applicable, the Contractor certifies that all trench excavation done within his control in excess of five feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Subarticle 125-4.1 (**TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL -TRENCH EXCAVATION**).

Failure to complete the above may result in the bid being declared non-responsive.

Contractor agrees that the above safety compliances and costs are included in his bid package.


Signature of Bidding Contractor

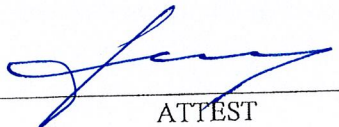
END OF DOCUMENT

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

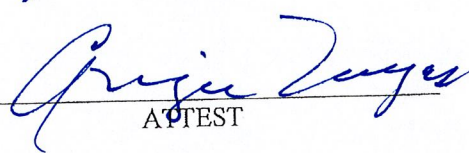
ACKNOWLEDGEMENT OF CONFORMANCE
WITH O.S.H.A. STANDARDS

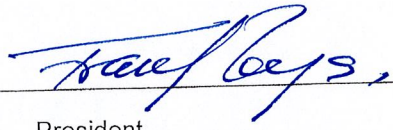
TO: Town of Bay Harbor Islands, Florida

We Engineer Control Systems, Corp., hereby acknowledge and agree that as contractors for the construction of the "Rehabilitation of Broad Causeway Bridge No. 875010", that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the Town of Bay Harbor Islands, Florida against any and all legal liability or loss the Town may incur due to Engineer Control Systems, Corp.
(Contractor's name) failure to comply with such act.


ATTEST

Engineer Control Systems, Corp.
CONTRACTOR

 ATTEST

By: 
Title: President

08-30-2022
DATE

END OF DOCUMENT

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

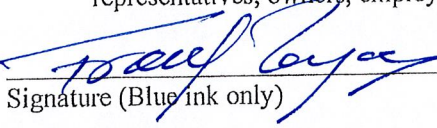
- 1 He/She is President of Engineer Control Systems, Corp.,
the Bidder that has submitted the attached Bid;
- 2 He/She is fully informed respecting the preparation and contents of the attached Bid and of all
pertinent circumstances respecting such Bid and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees,
or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly
or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in
connection with the Construction Contract for which the attached Bid has been submitted or to
refrain from proposing in connection with such Construction Contract, or has in any manner,
directly or indirectly, sought by agreement of collusion or communication of conference with any
other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any
other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other
bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage
against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed
Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

**NON-COLLUSION AFFIDAVIT
(CONTINUED)**

5. The response to the attached Invitation to Bid is fair and proper and is not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.


Signature (Blue ink only)

Frank Zayas

Print Name

President

Title

August 26 2022

Date

Witness my hand and official notary seal/stamp at Miami Dade the day and year written above

STATE OF FLORIDA)

)SS:

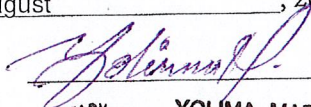
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Frank Zayas as President of Engineer Control Systems, Corp., an organization authorized to do business in the State of Florida, and acknowledged executing the foregoing Affidavit as the proper official of Engineer Control Systems, Corp. for the use and purposes mentioned in the Affidavit and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/She is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 26 day of August, 2022.

NOTARY PUBLIC
My Commission Expires:




YOLIMA MARTINEZ
Notary Public
State of Florida
Comm# HH220289
Expires 1/24/2026

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

ADDENDUM NO. 1

Issued: June 30 2022 (Date)

Project: Rehabilitation of Broad Causeway Bridge No. 875010

Project No. BC-158

Notice to All Bidders:

ADDENDA TO BE PLACED HERE

Issued By:

Town of Bay Harbor
Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

Frank Lopez
FRANK LOPEZ
Engineer Control Systems, Corp.
08-30-2022

REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101
TOWN OF BAY HARBOR ISLAND
BC-158

ADDENDUM NO. 1

Issued: June 30, 2022

**PROJECT: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO.
875101**

PROJECT NO. BC - 158

Notice to All Bidders:

The Bid Documents are modified as follows;

Item #1

New Plan Sheets:

The Following New Plan Sheets are being added to the Construction Documents.

Sheet No. E-1 : Electrical Conduit Repairs (New Sheet)

Sheet No. E-2 : Summary of Quantities (New Sheet)

Sheet No. E-3 : General Notes (New Sheet)

Sheet No. E-4 : Plan Sheet (New Sheet)

Sheet No. E-5 : Conduit Installation Details (New Sheet)

Item #2

Revisions to the Bid Form:

**The Bid Form was revised to incorporate the Pay Items related to the added Plan Sheets on
Item #1.**

Issued By: JOSE CUSTODIO – PUBLIC WORKS DIRECTOR/TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:


Frank Zayas
Engineer Control Systems, Corp
08-30-2022

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Construction Contract (Contract Requirements).

- D. Bidder has carefully studied all documents as applicable: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Bidding Documents, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Bidding Documents.
 - E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - H. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - J. Bidder has reviewed and carefully studied the Contract for Construction, together with Construction Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.

BID TABULATION SHEET ON FOLLOWING PAGE

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

TOTAL BASE BID PRICE (TOTAL OF BID ITEMS I THROUGH III) =

Written

(Contractor)

(Date)

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following
Total Base Bid Price as itemized above:

\$ _____
(Total Base Bid Price: Total for items I through II)

Written Total Base Bid Price Amount (in Words):

\$ _____ (Dollars) _____ (cents)

Name of Bidder

Signature of Bidder

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature --attach evidence of authority to sign)

Name: (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ FAX No.: _____

Date of Qualification to do business is _____.

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

completed a "public" project? Please provide project description, reference and cost of work completed.

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.

Name

Address

Telephone No.

11.2.

Name

Address

Telephone No.

11.3.

Name

Address

Telephone No.

12. List the following information concerning all contracts or work **in progress** as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

17. What equipment will you rent for the proposed work?

18. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

19. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

19.1 The correct name of the Bidder is:

19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

19.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

CONTRACTOR:

Print Name: _____

Print Title: _____

Date: _____

STATE OF FLORIDA)
) S.S.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 2022.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder for the Work required by the Contract Documents, provided that:

- 1.1. The penal sum set forth on the face of this Bond, and
- 1.2. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds and insurance certificates required by the Bidding Documents and Contract Documents.

3. This obligation shall be null and void if:

- 3.1. Owner accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Construction Contract required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
- 3.2. All bids are rejected by Owner, or
- 3.3. Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by

Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30

calendar days after receipt by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by Owner and Bidder, provided that the total time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid Due Date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

TRENCH SAFETY ACT

(90-96, Laws of Florida)

Bidder acknowledges that included in the appropriate bid items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The bidder further identifies the costs of such compliance to be summarized below:

Trench Safety Measure (Description)	Unit of Measure (LFSF)	Unit (Quantity)	Unit Cost	Extended Cost
A.				
B.				
C.				
D.				
				Total \$

If applicable, the Contractor certifies that all trench excavation done within his control in excess of five feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Subarticle 125-4.1 (**TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL -TRENCH EXCAVATION**).

Failure to complete the above may result in the bid being declared non-responsive.

Contractor agrees that the above safety compliances and costs are included in his bid package.

Signature of Bidding Contractor

END OF DOCUMENT

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

- 1 He/She is _____ 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 and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in connection with the Construction Contract for which the attached Bid has been submitted or to refrain from proposing in connection with such Construction Contract, or has in any manner, directly or indirectly, sought by agreement of collusion or communication of conference with any other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

ADDENDUM NO. 1

Issued: _____ *(Date)*

Project: Rehabilitation of Broad Causeway Bridge No. 875010

Project No. BC-158

Notice to All Bidders:

ADDENDA TO BE PLACED HERE

Issued By:

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

ATTEST

CONTRACTOR

BY: _____

TITLE BY: _____

(SEAL)

ATTEST:

BY: _____

TITLE BY: _____
SURETY

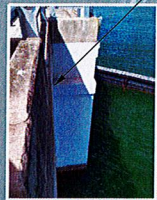
(SEAL) BY:

ATTORNEY-IN-FACT

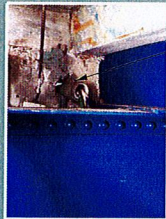
BY _____
Registered Florida
Agent for Surety

Approved as to form and sufficiency
By Town Attorney on behalf of the
Town of Bay Harbor Islands this _____ day of
_____, 2022.

BY: _____



PROPOSED CONDUIT
ENTRY POINT INTO BRIDGE
LOWER DECK EQUIPMENT ROOM.
CONTRACTOR ACCESS THROUGH
TOP DECK HATCH DOOR, ABOVE
THIS LOCATION.



MACHINE ROOM ENTRY
POINT FOR CONDUIT.
EAST WALL EXISTING
CONDUIT AND CABLES TO
BE REMOVED. CONTRACTOR
SHALL INCREASE THE OPENING
SIZE TO ALLOW 6" CONDUIT
ENTRANCE.

INSET B

PROPOSED 6" FIBERGLASS
WITH 3 MV ALUMINUM, 25KV, #1/0 WIRES
STRD. GENERAL CABLE, EMPWR.
200 MILS, LLOPE JACKET, 90 DEG C.
FPL PROVIDES CONDUIT AND WIRES.
CONTRACTOR INSTALLS CONDUIT.
FPL INSTALLS AND SPLICES MV CABLES.

STA. 11+82.28 22.77' LT.
NB SR 922

LAT. 25°53'14.60"N
LONG. 80° 8'33.56"W

SEE INSET A & B



AFTER CONTRACTOR INSTALLS THE 6" FIBERGLASS CONDUIT,
F&I UV RESISTANT, WATERPROOF, LAMINATED POLYESTER
LABELS, TEXTING READ "DANGER HIGH VOLTAGE" LABEL
DIMENSION 7X10 INCH, SPACING 25FT.

STA. 21+85.55 23.63' LT.
NB SR 922

EXISTING CONDUIT
AND CABLE TO REMAIN
IN SERVICE UNTIL THE
NEW CONDUIT AND CABLE
HAVE BEEN INSTALLED
ON SUPPORT BRACKETS.
BRACKET SPACING IS
2.5'

EXISTING ELECTRICAL
PULL BOX TO BE REPLACED 62"X33"
M4-TYPE PULL BOX, W/ CONCRETE
BATTED LID.
MV CABLES SPLICE POINT
COORDINATE WITH FPL FOR
RE-SPLICE.

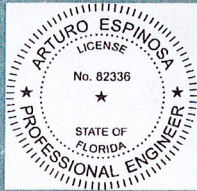
LAT. 25°53'17.64"N
LONG. 80° 8'20.93"W

SEE INSET C



INSET C

6" CONDUIT TO BE INSTALLED BY CONTRACTOR, BUT
PROVIDED BY F&I. MV WIRES TO BE F&I BY F&I.
NEW BRACKETS SHALL BE ALIGNED FOR THE NEW
CONDUIT TO FOLLOW THE SAME PATH TO THE
EXISTING MV PULL BOX.



REVISIONS		ARTURO ESPINOSA, P.E.		TOWN OF BAY HARBOR ISLANDS		PLAN SHEET	SHEET NO. E-4
DATE	DESCRIPTION	DATE	DESCRIPTION	BRIDGE NO.	COUNTY		
				875103	MIAMI-DADE		

respinosa 1/11/2022 2:16:45 PM Default

WJ12103A

H:\Projects\2120103\01 Town of Bay Harbor\TWO 4-09-00_CADD\T5\PLAN101.dgn

REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101
TOWN OF BAY HARBOR ISLAND
BC-158

ADDENDUM NO. 2

Issued: August 10, 2022

PROJECT: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101

PROJECT NO. BC - 158

Notice to All Bidders:

The Bid Documents are modified as follows;

Item #1

New Date for Submittal of Sealed Bids:

The Bids Submittal Deadline/Opening of Sealed Bids has been moved from August 19, 2022, to August 26, 2022 at 3:00 PM.

Item #2

Clarification to Pre-Bid Meeting Minutes:

FPL has delivered the 6" conduits (approx. 1,000 linear feet) to the Public Works storage facility (9665 Bay Harbor Terrace). However, Contractor must furnish and install the stainless-steel brackets as indicated on the plans. In addition, Contractor is responsible to transport the 6" conduits from 9665 Bay Harbor Terrace to their storage and staging area.

Item #3

Responses to Bidders Questions:

Refer to this Addendum #2 for the Responses to the Questions received.

Issued By: JOSE CUSTODIO – PUBLIC WORKS DIRECTOR/TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

Frazer Zayas
FRAZER ZAYAS
Engineer Control Systems, Corp.
08/30/2022



time consuming and difficult to do as the concrete being sound is very hard. If all repairs require depth of 1" behind reinforcing, there is not enough time allotted to complete this task. Please clarify if specification or plan notes govern?

- b. Concerning the quantity there is a large difference between the Plans B1-8 & 9 and the quantity summary on BQ-1. In order to price correctly we need to quantify the amount of locations, pours and moves per that quantity. This will affect the pricing in a large way, as it is almost half the item. How are we to handle this difference or are we missing something?

Response

EOR Response: (a) Sheet B1-12 "Section D-D" (shallow repair detail, see Spall Repair Procedure Note 2) is to be used when concrete removal does not expose reinforcing steel or bond is not broken and less than 1/2 the perimeter of reinforcing is exposed after removing unsound concrete. In that case, the anchors and mesh are required to provide proper bond for the repair material. In all other cases, it is necessary to excavate behind rebar to provide proper bond for the repair material. Based on field observations in 2021, it is possible that all repairs may not require excavation to a depth of 1" behind reinforcing. Also, any single repair area may be subdivided into areas that require excavation to 1" behind reinforcing, or require anchors/mesh, depending on the conditions encountered at the time of concrete removal. Plans revision not required.

EOR Response: (b) The quantity on sheet BQ-1 should be used. Sheets B1-8 and 9 summarize repair areas/volumes based upon field observations in 2021. The actual repair areas/volumes are expected to be larger than that observed in 2021, due to factors such as increased deterioration between the field investigation and actual construction, limits of the field observations, etc. For the purposes of estimating location/pour/moves, it may be assumed that each of the repair volumes shown in sheets B1-8 and 9 is increased by 50%. Plans revision not required.

Question

3. Item 411-2
 - a. The item pays for cleaning and sealing old railing bolts on top of parapet at locations noted on plan sheets plus the LF of crack noted on sheet B1-

PUBLIC WORKS DEPARTMENT

9665 BAY HARBOR TERRACE, BAY HARBOR ISLANDS, FLORIDA 33154

TELEPHONE (305) 866-6241

WWW.BAYHARBORISLANDS-FL.GOV



EOR Response: The bid should be based on the quantities on sheet BQ-1. The quantities shown on sheets B1-8 and B1-9 are just approximations based on a limited visual inspection in 2001 and not to be used for purposes of quantities/bid. The actual repair areas/volumes are expected to be larger than that observed in 2021, due to factors such as increased deterioration between the field investigation and actual construction, limits of the field observations, etc. Additionally, the total underside repair quantity on BQ-1 includes possible full-depth repair at some expansion joints, as shown on sheet B1-12.

Question

7. Plans call for expansion joints in the 6" fiberglass pipe every 50 feet. Is FPL to furnish those also?

Response

EOR Response: No. Contractor to provide the expansion joints.

Question

8. Is the Town allowing for storage / bulkhead access at corners adjacent to bridge approach?

Response

Town's Response: The southeast portion of the Broad Causeway Island (west side of the bridge) can be used for storage and staging. The area shall be covered around with construction and silt fences and stormwater inlets protected. The area shall be restored to original construction once work is completed. Town staff shall have access to the site anytime during construction. Contractor shall be responsible to prevent runoff from reaching the Biscayne Bay.

PUBLIC WORKS DEPARTMENT

9665 BAY HARBOR TERRACE, BAY HARBOR ISLANDS, FLORIDA 33154

TELEPHONE (305) 866-6241

WWW.BAYHARBORISLANDS-FL.GOV



Question

11. Addendum 1 Sheet E-2 Sequence of repairs 3, requires increasing the size of the existing hole. Bridge machinery will be non-operational during this time frame. Consider adding new penetration.

Response

EOR Response: Agree. Please do not core drill the wall farther than 6" from current opening. But consider options to extend the current opening through use of hand tools, from the outside, while standing in the snooper truck bucket. It is advised to not drill or hammer from inside the room out, due to possible harmful particles in the walls, and to avoid hitting the MV line with metal tools. Starting the hole from the outside is safer because the MV cable is better protected by the current PVC duct. See preferred penetration area sketch, as orange hand drawn rectangle:



Question

12. Addendum 1 Sheet E-2 Summary of Structures Quantity 0000-700-ST and 102-81 not reflected in Electrical Pay Item on bid tabulation sheet in Addendum 1.



Response

EOR Response: As the work operations are only per night, temporary pavement markings are not required.

Question

16. Technical Specification T401-1.2 allows the Engineer to control the timing and sequence of work performed. Please remove from contract requirements as this is Contractor's Means and Methods.

Response

EOR Response: "T401-1.2 Quantities" does not enable the Engineer to dictate Contractor Means and Methods. Rather, "T401-1.2 Quantities" specifically enables the Engineer to control the volume (quantity) of work performed at any one time in order to best meet the goals of the project. As a result, T402-1.2 will not be removed from the contract requirements.

Question

17. Is the intent of the EOR / TCP phasing to ensure no traffic over spall repair? As this will require multiple mobilizations to each span.

Response

EOR Response: The main purpose of the TCP is to create work zones, such as repairs affecting the top area of the bridge deck/riding surface/joints, material delivery, inspection access, etc. Spall repairs to the bridge deck underside may be performed under live traffic loading.

REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101
TOWN OF BAY HARBOR ISLAND
BC-158

ADDENDUM NO. 3

Issued: August 17, 2022

PROJECT: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101

PROJECT NO. BC - 158

Notice to All Bidders:

The Bid Documents are modified as follows;

Item #1

Revision to Electrical Drawings:

The Electrical Drawings E-2, E-3 and E-5 has been revised. See attached as part Addendum #3.

Item #2

Responses to Bidders Questions:

Refer to this Addendum #3 for the Responses to the Questions received.

Issued By:

JOSE CUSTODIO – PUBLIC WORKS DIRECTOR/TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

Frank Lopez
FRANK LOPEZ
Engineer Control Systems, Corp.
08-30-2022

CONTRACT PLANS

[illegible]

E-1 KEY SHEET
E-2 SUMMARY OF QUANTITIES
E-3 GENERAL NOTES
E-4 PLAN SHEET
E-5 CONDUIT INSTALLATION DETAILS

Standard Plans for Road Construction and associated JRS are available at the following website: <http://www.fdot.gov/design/standardplans>

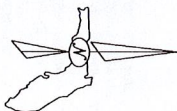
Standard Plans for Bridge Construction are included in the Structures Plans

Florida Department of Transportation, January 2021 Standard Specifications for Road and Bridge Construction at the following website:
<http://www.fdot.gov/programmanagement/Implemented/Speccbooks>

ARTURO ESPINOSA
LICENSE
No. 82336
Arturo Espinosa ★
2022-08-16 17:45:39 -0400
★ R

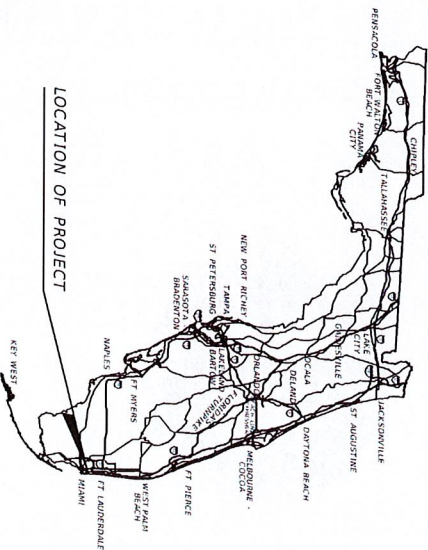
ELECTRICAL PLANS
ENGINEER OF RECORD: ARTURO ESPINOSA, P.E.
P.E. NO.: 82336

P.E. NO.: 82336



LOCATION OF PROJECT

LOCATION OF PROJECT



PLANS PREPARED BY:
LAKES ENGINEERING, INC.
6401 SW 87TH AVENUE, SUITE 200
MIAMI, FL 33173
TEL (305) 670-2250
CA 30255
ARTURO ESPINOSA, P.E.
LICENSE NUMBER: 82336

choices?

1/10/2022

9:53.29 AM

H:\Projects\2120103\01 Town of Bay Harbor\TWO AND 09.00 CAD\NTS\KEYSET01.dgn

FISCAL YEAR	SHEET NO.
22-23	E-1

GENERAL NOTES

GN 01. GENERAL SPECIFICATIONS:

FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (JULY 2020) WITH APPROVED SUPPLEMENTS THERE TO OR AS AMENDED BY CONTRACT PLANS OR TECHNICAL SPECIAL PROVISION.

GN 02. DESIGN SPECIFICATIONS:

1. AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO) STANDARD SPECIFICATION FOR HIGHWAY BRIDGES (17TH EDITION 2002)
2. AASHTO GUIDE DESIGN SPECIFICATIONS FOR BRIDGE TEMPORARY WORKS (1ST EDITION WITH 2008 INTERIM REVISIONS)
3. NFPA 70, NATIONAL ELECTRICAL CODE (NEC), 2020 EDITION

GN 03. ASBESTOS

THERE IS NO INFORMATION ABOUT ASBESTOS COMPOUNDS IN THE BRIDGE'S CONCRETE. NEVERTHELESS DUE TO THE AGE OF THE BRIDGE, CONTRACTOR SHALL TREAT ANY CONCRETE DRILLING AS IF ASBESTOS WERE PRESENT. TO PROTECT WORKERS FROM BEING EXPOSED TO ANY AIRBORNE PARTICULATE, THIS REPAIR WORK REQUIRES DRILLING A NEW HOLE ADJACENT TO THE EXISTING ONE, FOR THE ENTRANCE OF THE NEW 6" CONDUIT INTO THE MACHINE ROOM.

GN 04. ENVIRONMENT:

SUBSTRUCTURE-CORROSIVE (EXTREMELY AGGRESSIVE).
LOCATION - COASTAL

GN 05. PROTECTION OF EXISTING STRUCTURES:

CONTRACTOR SHALL EXERCISE SPECIAL CARE TO PROTECT STRUCTURES THAT ARE TO REMAIN, INCLUDING EXISTING REINFORCING ELEMENTS THAT ARE TO REMAIN, WHICH ARE DAMAGED DURING CONSTRUCTION SHALL BE REPLACED AT NO ADDITIONAL COST.

GN 06. COORDINATION:

THE CONTRACTOR SHALL COORDINATE ALL WORK WITH THE FOLLOWING PERSONS, DEPARTMENTS, COMPANIES, AND AGENCIES.

ENGINEER-OF-RECORD

MR. ARTURO ESPINOSA, P.E.
LAKES ENGINEERING, INC.
6401 SW 87TH AVENUE, SUITE 200
MIAMI, FLORIDA 33173
(305) 670-2350 FAX: (305) 670-2351

PUBLIC WORKS DIRECTOR

MR. DOUGLAS P. ARMSTRONG, P.E.
9665 BAY HARBOR T
BAY HARBOR ISLANDS, FL 33154
(305) 866-6241

U.S. COAST GUARD SEVENTH COAST GUARD DISTRICT

MR. MICHAEL LIEBERUM
BRICKELL PLAZA FEDERAL BLDG.
909 SOUTH EAST FIRST AVENUE
MIAMI, FLORIDA 33131-3050
(305) 415-6744

FPL

MS. ISABELA ARCOS ISABELLA.ARCOS@FPL.COM
MS. RITA SUAREZ RITA.SUAREZ@FPL.COM
(305)-377-6079

GN 07. UTILITIES:

ALL EXISTING UTILITIES ARE TO REMAIN UNLESS OTHERWISE NOTED.

UTILITY OWNERS: COMPANY NAME	CONTACT NAME	TELEPHONE
ATLANTIC BROADBAND	PETE FREYTAG	305-861-8069 Ext: 5208
AMERICAN TRAFFIC SOLUTIONS	VICTORIA GRASSER	480-596-4559
VILLAGE OF BAL HARBOUR	HEIDI BELLE HENDERSON	954-921-7781
TOWN OF BAY HARBOR ISLANDS WTR/SWR DEPT	DOUGLAS ARMSTRONG	305-866-6241 Ext: 111
COMCAST CABLE	LEONARD MAXWELL-NEUBOLD	754-221-1254
DADE COUNTY PUBLIC WORKS AND TRAFFIC	OCTAVIO VIDAL	305-412-0891 Ext: 102

FLORIDA POWER & LIGHT
EDGAR AGUILAR
386-586-6403

FLORIDA POWER & LIGHT
EDDIE FREAY
305-938-1936

TOWN OF SURFSIDE
RANDY STOKES
305-861-4863

HOTWIRE COMMUNICATIONS
WALTER DAVILA
954-699-0900

MCI
MCIUOI INVESTIGATIONS
469-886-4091

MIAMI DADE WATER SEWER
LAZARO GUERRA
786-268-5273

CROWN CASTLE NG
FIBERDIG TEAM
888-632-0931 Ext: 2

TECO PEOPLES GAS-
SOUTH FLORIDA
JOAN DOMNING
813-275-3783

AT & T DISTRIBUTION
DINO FARRUGGIO
561-997-0240

GN 08. CONDUIT EXPANSION JOINTS
CONTRACTOR FURNISH AND INSTALLS CONDUIT EXPANSION COUPLINGS/JOINTS FOR 6" FIBERGLASS CONDUIT, EVERY 100FT. FOR CONDUIT SECTIONS ON BRIDGE.

DATE 8/16/22 DESCRIPTION REV.1 CONDUIT EXPANSION JOINT REVISED		REVISIONS DATE DESCRIPTION		ARTURO ESPINOSA, P.E. REGISTERED PROFESSIONAL ENGINEER NO. 82336 6401 SW 87TH AVENUE, SUITE 200 MIAMI, FLORIDA 33173 CERTIFICATE OF AUTHORIZATION 30255		TOWN OF BAY HARBOR ISLANDS BRIDGE NO. 875103 COUNTY MIAMI-DADE		GENERAL NOTES		SHEET NO. E-3	
---	--	--	--	--	--	--	--	---------------------------------------	--	--	--

REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101
TOWN OF BAY HARBOR ISLAND
BC-158

ADDENDUM NO. 4

Issued: August 25, 2022

PROJECT: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101

PROJECT NO. BC - 158

Notice to All Bidders:

The Bid Documents are modified as follows;

Item #1

Revision to Price Proposal Form:

The Price Proposal Form has been revised. Reflect to items in red, as part of the Price Proposal Form included as part of Addendum No. 4.

Item #2

Bid Submittals Deadline Extended:

The Bids Submittals Deadline has been extended to August 31, 2022.

Issued By: JOSE CUSTODIO – PUBLIC WORKS DIRECTOR/TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

Frank Laya
FRANK LAYA
Engineer/Custodio Systems, Corp.
08-30-2022

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Bay Harbor Islands – Rehabilitation of Broad Causeway Bridge No. 875101 Project

Pay Item Number	Item Description	Estimated Quantity	Unit	Unit Cost	Estimated Total
-----------------	------------------	--------------------	------	-----------	-----------------

I. BRIDGE PAY ITEMS

400-3-20	CONCRETE CLASS III, SEAL	17.00	CF		
401-70-2	RESTORE SPALLED AREAS, LATEX MODIFIED MORTAR- STYRENE BUTADIENE	3161	CF		
411-1	EPOXY MATERIAL FOR CRACK INJECTION – STRUCTURES REHAB	12.00	GA		
411-2	CRACKS INJECT AND SEAL – STRUCTURES REHAB	140.00	LF		
415-1-4	REINFORCING STEEL – BRIDGE SUPERSTRUCTURE	3,500.00	LB		
458-1-21	BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD	400.00	LF		
458-2	POLYMER NOSING FOR BRIDGE DECK EXPANSION JOINT	14.00	CF		
460-81	RIVETS – HIGH STRENGTH BOLTS, REPLACEMENT	5.00	EA		
460-98-2	PIPE HANGERS, STAINLESS	2.00	EA		
BRIDGE PAY ITEMS SUB-TOTAL=					

II. ROADWAY PAY ITEMS

0101-1	MOBILIZATION	1.00	LS		
0102-1	MAINTENANCE OF TRAFFIC	160.00	DA		
0102-14	TRAFFIC CONTROL OFFICER	2,560.00	HR		
0102-60	WORK ZONE SIGN	1,500.00	ED		
0102-71-15	TEMPORARY BARRIER, F&I, ANCHORED	1,700.00	LF		
0102-71-25	TEMPORARY BARRIER, RELOCATE, ANCHORED	3,130.00	LF		
0102-74-1	CHANNELIZING DEVICE – TYPES I, II, DI, VP, DRUM, OR LCD	12,240.00	ED		
0102-75-1	TEMPORARY SEPARATOR, F&I REMOVE	3,535.00	LF		
0102-76	ARROW BOARD/ADVANCE WARNING ARROW PANEL	380.00	ED		
0102-89-1	TEMPORARY CRASH CUSHION, REDIRECTIVE OPTION	8.00	LO		
0102-99	PORTABLE CHANGEABLE MESSAGE SIGN, TEMPORARY	348.00	ED		
0102-115	TYPE III BARRICADE	1,360.00	ED		
ROADWAY PAY ITEMS SUB-TOTAL=					

III. ELECTRICAL PAY ITEMS

639-2-6	ELECTRICAL SERVICE WIRE REMOVE	1,000	LF		
639-7-1	ELECTRICAL POWER SERVICE FURNISH AND INSTALL MEDIUM VOLTAGE PULL BOX 62" X 34"	1	EA		
N/A	STAINLESS STEEL BRACKET ASSEMBLY TO SUPPORT UNISTRUT BRACKET SPACED EVERY 2.5 FT	790	EA		

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

N/A	INSTALL 6" DIAMETER FIBERGLASS CONDUIT, PROVIDED BY FPL	1,000	EA		
ELECTRICAL PAY ITEMS SUB-TOTAL=					

TOTAL BASE BID PRICE (TOTAL OF BID ITEMS I THROUGH III) =

Written

(Contractor)

(Date)

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following
Total Base Bid Price as itemized above:

\$ _____
(Total Base Bid Price: Total for items I through II)

Written Total Base Bid Price Amount (in Words):

\$ _____ (Dollars) _____ (cents)

Name of Bidder

Signature of Bidder

REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101
TOWN OF BAY HARBOR ISLAND
BC-158

ADDENDUM NO. 4

Issued: August 25, 2022

PROJECT: REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101

PROJECT NO. BC - 158

Notice to All Bidders:

The Bid Documents are modified as follows;

Item #1

Revision to Price Proposal Form:

The Price Proposal Form has been revised. Reflect to items in red, as part of the Price Proposal Form included as part of Addendum No. 4.

Item #2

Bid Submittals Deadline Extended:

The Bids Submittals Deadline has been extended to August 31, 2022.

Issued By: JOSE CUSTODIO – PUBLIC WORKS DIRECTOR/TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

Frank Zayas
FRANK ZAYAS
Engineer Control Systems, Corp.
08-30-2022

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

Bay Harbor Islands – Rehabilitation of Broad Causeway Bridge No. 875101 Project

Pay Item Number	Item Description	Estimated Quantity	Unit	Unit Cost	Estimated Total
-----------------	------------------	--------------------	------	-----------	-----------------

I. BRIDGE PAY ITEMS

400-3-20	CONCRETE CLASS III, SEAL	17.00	CF		
401-70-2	RESTORE SPALLED AREAS, LATEX MODIFIED MORTAR- STYRENE BUTADIENE	3161	CF		
411-1	EPOXY MATERIAL FOR CRACK INJECTION – STRUCTURES REHAB	12.00	GA		
411-2	CRACKS INJECT AND SEAL – STRUCTURES REHAB	140.00	LF		
415-1-4	REINFORCING STEEL – BRIDGE SUPERSTRUCTURE	3,500.00	LB		
458-1-21	BRIDGE DECK EXPANSION JOINT, REHABILITATION, POURED JOINT WITH BACKER ROD	400.00	LF		
458-2	POLYMER NOSING FOR BRIDGE DECK EXPANSION JOINT	14.00	CF		
460-81	RIVETS – HIGH STRENGTH BOLTS, REPLACEMENT	5.00	EA		
460-98-2	PIPE HANGERS, STAINLESS	2.00	EA		

BRIDGE PAY ITEMS SUB-TOTAL=

II. ROADWAY PAY ITEMS

0101-1	MOBILIZATION	1.00	LS		
0102-1	MAINTENANCE OF TRAFFIC	160.00	DA		
0102-14	TRAFFIC CONTROL OFFICER	2,560.00	HR		
0102-60	WORK ZONE SIGN	1,500.00	ED		
0102-71-15	TEMPORARY BARRIER, F&I, ANCHORED	1,700.00	LF		
0102-71-25	TEMPORARY BARRIER, RELOCATE, ANCHORED	3,130.00	LF		
0102-74-1	CHANNELIZING DEVICE – TYPES I, II, DI, VP, DRUM, OR LCD	12,240.00	ED		
0102-75-1	TEMPORARY SEPARATOR, F&I REMOVE	3,535.00	LF		
0102-76	ARROW BOARD/ADVANCE WARNING ARROW PANEL	380.00	ED		
0102-89-1	TEMPORARY CRASH CUSHION, REDIRECTIVE OPTION	8.00	LO		
0102-99	PORTABLE CHANGEABLE MESSAGE SIGN, TEMPORARY	348.00	ED		
0102-115	TYPE III BARRICADE	1,360.00	ED		

ROADWAY PAY ITEMS SUB-TOTAL=

III. ELECTRICAL PAY ITEMS

639-2-6	ELECTRICAL SERVICE WIRE REMOVE	1,000	LF		
639-7-1	ELECTRICAL POWER SERVICE FURNISH AND INSTALL MEDIUM VOLTAGE PULL BOX 62" X 34"	1	EA		
N/A	STAINLESS STEEL BRACKET ASSEMBLY TO SUPPORT UNISTRUT BRACKET SPACED EVERY 2.5 FT	790	EA		

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

N/A	INSTALL 6" DIAMETER FIBERGLASS CONDUIT, PROVIDED BY FPL	1,000	EA		
ELECTRICAL PAY ITEMS SUB-TOTAL=					

TOTAL BASE BID PRICE (TOTAL OF BID ITEMS I THROUGH III) =

Written

(Contractor)

(Date)

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following Total Base Bid Price as itemized above:

\$ _____
 (Total Base Bid Price: Total for items I through II)

Written Total Base Bid Price Amount (in Words):

\$ _____ (Dollars) _____ (cents)

Name of Bidder

Signature of Bidder



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

ZAYAS, FRANK M

ENGINEER CONTROL SYSTEMS CORPORATION

1281 NE 83 STREET
MIAMI FL 33138-4140

LICENSE NUMBER: CGC007494

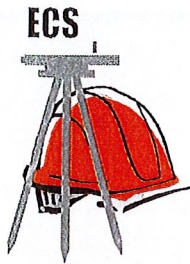
EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.





Engineer Controls Systems, Corp.

12550 Biscayne Blvd. Ste. 800 PMB 206, North Miami, FL 33181 - Tel #: (305) 895-4376 - Fax #: (305) 895-0019

Broward Co. CC# 00-1649 – W Florida DBPR CGC 007494

August 29 2022

CORPORATE RESOLUTION

Be it resolved that Mr. Frank Zayas is hereby authorized to represent Engineer Control Systems, Corporation and to present and sign the Bid for the Town Of Bay Harbor Islands, Florida Project No. -BC-158.

Rehabilitation of Broad Causeway Bridge No. 875010

In this City of Miami on this date August 29 2022.

Angie Zayas, Secretary/Treassurer.



ENGICON-01

CRODRIGUEZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Butler, Buckley, Deets, Inc. 6505 Blue Lagoon Dr Suite 250 Miami, FL 33126	CONTACT NAME: CECILIA RODRIGUEZ PHONE (A/C, No, Ext): (305) 262-0086 215 FAX (A/C, No): (305) 262-0187 E-MAIL ADDRESS: CRODRIGUEZ@BBDINS.COM
	INSURER(S) AFFORDING COVERAGE INSURER A: New York Marine and General INSURER B: STARSTONE NATIONAL INS CO INSURER C: INSURER D: INSURER E: INSURER F:
INSURED ENGINEER CONTROL SYSTEMS 12550 BISCAYNE BLVD SUITE 800 NORTH MIAMI, FL 33181	NAIC # 16608 25496

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ MARINE LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PROJECT ☐ LOC OTHER:	X		ML202200002346	6/1/2022	6/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 MARINE LIABILITY \$ 1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y ☒ N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		T10220910	5/19/2022	5/19/2023	PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

TOWN OF BAYHARBOR ISLANDS
9665 Bay Harbor Terrace
Bay harbor Islands, FL 33154

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

PERFORMANCE BOND

THIS PERFORMANCE BOND IS TO BE ISSUED BY ENGINEER CONTROL SYSTEMS CORPORATION UPON NOTIFICATION BY THE TOWN OF BAY HARBOR ISLANDS OF CONTRACT AWARD. *Travel days 08-30-2022*

KNOWING ALL MEN BY THESE PRESENTS, that _____,
As Principal, and _____, as Surety, are held and firmly bound
unto Bay Harbor Islands, Florida (herein "the Oblige") in the penal sum of
_____ (\$ _____) dollars lawful money of the United
States of America for the payment of which sum of money, the principal and the Surety bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally and
firmly by these presents:

WHEREAS, the principal has contracted with the Oblige to provide
_____, pursuant to contract of _____, 2022, (the
"Contractor");

WHEREAS, pursuant to the Contract, the Principal is required to provide to Oblige a
guarantee for the full and faithful performance by Principal of the Obligations imposed by this
contract.

NOW, THEREFORE, the conditions of this Bond are such, that if the above bounded
Principal shall in all respects comply with the terms and conditions of the Contract and principal's
obligations thereunder, and shall indemnify and save harmless the said Oblige against or from all
costs, expense, damage, injury, or loss to which the said Oblige may be subjected by reason of
any wrongdoing, misconduct, want or care of skill, negligence or default on the part of said
Principal, its agents or employees, in the performance of the Contract, then this Bond shall be void,
otherwise to remain in full force in effect.

This Bond shall remain in full force and effect for a period commencing upon the
effective date of the Contract and ending one (1) year after termination or expiration of the
Contract. All suits at law or in equity to recover on this Bond must be instituted within twelve
(12) months after the expiration of the Bond as referred to hereinabove.

IN WITNESS WHEREOF, the said _____,
As Principal herein has caused these presents to be signed in its name by _____
_____, it's President or Vice President and attested by
_____, its Secretary or Assistant Secretary under its
Corporate Seal, and the said _____, as
Surety herein has caused these presents to be signed in its name by _____
_____, its Attorney-in-Fact, and its Corporate Seal duly
attached by _____, it's Attorney-in-Fact,
hereunto affixed this day of _____, in the year 2022.

REQUEST FOR PROPOSALS (RFP) BC 158
REHABILITATION OF BROAD CAUSEWAY
BRIDGE NO. 875101

ATTEST

CONTRACTOR

BY: _____

TITLE BY: _____

(SEAL)

ATTEST:

BY: _____

TITLE BY: _____
SURETY

(SEAL) BY:

ATTORNEY-IN-FACT

BY _____
Registered Florida
Agent for Surety

Approved as to form and sufficiency
By Town Attorney on behalf of the
Town of Bay Harbor Islands this _____ day of
_____, 2022.

BY: _____



PRE-BID MEETING MINUTES

Date: July 15, 2022 | 10:00 AM
Meeting Location: Town of Bay Harbor Islands Building Department
Meeting called by: Town of Bay Harbor Islands
Type of Meeting: Pre-Bid Meeting
Note Taker: Jose Custodio, P.E. - Town Engineer
Other Town Attendees: Jorge A. Rodriguez, PE– EOR – BCC Engineering, Inc.
Attendees: Please see sign-in Sheet Attached

Project Information: PROJECT NO. – BC-158 | REHABILITATION OF THE BROAD CAUSEWAY BRIDGE NO. 875101

AGENDA TOPICS

Meeting Began at 10:10 AM

1. Jose Custodio began the meeting with the Introductions and mentioned the Town's representatives that will be involved with this Project.
 - a. It was indicated that the Bridge owner is the Town of Bay Harbor Islands.
 - b. The Town Representatives for this project are:
 - Jose Custodio, P.E. – Town Engineer – jcustodio@bayharborislands-fl.gov
 - Maria Lasday, Esq. – Town Manager – mlasday@bayharborislands-fl.gov
 - Jorge A. Rodriguez – Engineer of Records – jorge.rodriguez@bcceng.com
2. The issues with the existing bridge were mentioned during the meeting. Among the issues discussed are:
 - a. Structural Damages, spalled concrete sections, exposed rebars, expansion joints and electrical conduits condition.
3. Jose Custodio proceeded to discuss what are the Town's objectives with the Project. These are the following:
 - a. Restore the damaged components of the bridge including the replacement of the electrical conduit, based on the Plans prepared by BCC Engineering, Inc.



- b. Contractor must demonstrate experience in bridge structural repairs projects, bridge surveys, and must demonstrate a level of expertise, technical knowledge, innovation, and overall capacity to provide the structural repairs.
4. The Town mentioned the specific requirements for this project, which are;
 - a. Lane Closures or Bridge Closures should happen during nighttime. The Town will not approve lane/bridge closures during daytime (6AM to 9PM).
 - b. The Town prefers that all work that can be done from the water to be performed from the water to avoid impacts on traffic.
 - c. An Off-duty officer from the Town shall be obtained for lane closures. Two (2) officers are required for bridge closures. If the Town's Police Department cannot cover the shifts, then a State Patrol can be used.
5. Bid documents are available on the Town's website: <https://www.bayharborislands-fl.gov/bids.aspx?bidID=37>
6. It was indicated to the attendees that for the complete instruction to bidder's documents refer to the RFP Document.
7. Jose Custodio mentioned that Contractors shall make sure that the Bid Required Forms are being included as part of their proposals. Among the required forms are the following:
 - a. Bid Form
 - b. Contractor's Qualification Statement
 - c. Bid Bond
 - d. Performance Bond
 - e. Florida Trench Safety Act
 - f. OSHA Standards
 - g. Non-Collusion Affidavit
 - h. Addenda
 - i. Copy of Licenses
 - j. Evidence of Insurability
8. The Deadline for Receipt of Questions is August 3rd, 2022. Questions submitted after the deadline could not be answered/clarified.
9. The Proposals for the Project are Due on August 19, 2022 at 3:00 P.M. Any Bid received after the Deadline will not be accepted.



-
10. It was encouraged to the Contractors to perform a site visit to the bridge area on their own time.
 11. Jose Custodio emphasized to the bidders that all questions shall be made in writing to be official, and a response can be provided to all interested parties.
 12. Workdays to be considered when preparing the schedules is Monday-Friday.
 13. The Town does have a Noise Ordinance, which can be obtained from the Town's Code of Ordinances Chapter 12 – Article II. – Noise.
 14. FPL provided the conduits and the brackets for the conduit's replacement portion.
 15. The Town has a Sunpass toll gantry coming from the West (from North Miami). There is no Sunpass toll for vehicles coming from the East (Bal Harbour and Surfside). These Sunpass fees will not be waived.
 16. It was indicated to all the attendees to make sure they signed the Attendance Sheet.

Meeting Adjourned at 10:45 AM



Project Name:	REHABILITATION OF BROAD CAUSEWAY BRIDGE NO. 875101	
Project Number:	BC - 158	
Consultant:	TBD	
Deliverable:	PRE-BID MEETING	
Date:	JULY 15, 2022	Time: 10:00 AM

Name	Firm Representing	Telephone	E-mail Address	Signature
Nicole Potter	Kiewit	406-281-3164	nicolepotter@kiewit.com	
Leonardo Velando	Kiewit	914 745 6084	leonardo.velando@kiewit.com	
Frank Zayas	Engineer Controls Systems	305 618-5590	fzayas@Engineercontrols.com	
GREGG W. LAMBERT	LAMBERT BROS. INC.	954 491 9390	GL@LAMBERTBROS.NET	
Manny Gonzalez	M & S Construction	254-559-0986	GONZALEZ33 AT AOL.COM	
RODRIGO GARRIDO	MICHAEL BAKER INTERNATIONAL	305.970.7978	RODRIGO.GARRIDO@MBAKER-INTL.COM	
Lee Corrigan	Cone & Graham, Inc.	561-400-6662	L.Corrigan@ConeGraham.com	
Sebastian Loo	MCM	305-399-5491	Sloor@mcm-US.com	
LEO CURIEL	GREEN ENGINEERING & CONSTRUCTION	305-7427845	lcuriel@greeneng.com	
JUAN ANDERSON	Southern Road & Bridge	727-200-0837	estimating@southernrb.com	
Jeff Jones	Jacks Benitez Corp.	305 821 1699	jette.jonesbenitez.com	
JAMES L. LAND	MANHATTAN ROAD & BRIDGE	239-707-6993	JAMES.LAND@MANHATTANRB.COM	
Giacomo Cocinato	Conengineers Builders LLC	954 598 5789	info@conengineers.com	
JORGE RODRIGUEZ	BCC ENGINEERING	954 928 1828	Jorge.rodriguez@bcceng.com	

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Bay Harbor Islands Sanitary Sewer Upgrade** Agreement Number: **LPA0255**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Town of Bay Harbor Islands** Entity Type: **Local Government**
Grantee Address: **9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154** FEID: **59-6000273** (Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Expiration: **March 31, 2025**

4. Project Number: Project Location(s): **Lat/Long (25.8872, -80.1312)**
(If different from Agreement Number)

Project Description: **The Grantee will upgrade approximately 200 LF of 15 inch VCP sanitary sewer main to 18 inch PVC C-900 within the Town of Bay Harbor Islands.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$197,500.00	☒ State ☐ Federal	LP, GAA Line Item 1665A, FY22-23	\$197,500.00
	☐ State ☐ Federal		
	☐ Grantee Match		
Total Amount of Funding + Grantee Match, if any:			\$197,500.00

6. Department's Grant Manager Name: Evan Beitsch or successor Address: 3900 Commonwealth Blvd. Douglas Building, MS 3602 Tallahassee, FL 32399-3000 Phone: (850) 245-2993 Email: evan.beitsch@floridadep.gov	Grantee's Grant Manager Name: Jose Custodio or successor Address: 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154 Phone: (305) 866-6241 Email: jcustodio@bayharborislands-fl.gov
---	--

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☐ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with §215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Town of Bay Harbor Islands

GRANTEE

Grantee Name

By _____
(Authorized Signature) Date Signed

Maria Lasday, Town Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By _____
Secretary or Designee Date Signed

Angela Knecht, Director, Division of Water Restoration Assistance

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

DWRA Additional Signatures

Evan Beitsch, DEP Grant Manager

Michael Barr, DEP QC Reviewer

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to

require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to:
www.myfloridacfo.com/Division/AA/Vendors/default.htm.
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal

Attachment 1

Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.

- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or

- iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.

- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
- i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA).

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

26. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

27. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

28. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of

money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.

- ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
- iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

29. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

30. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

31. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

32. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

33. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

34. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

35. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

36. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

37. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

38. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

39. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. LPA0255**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Bay Harbor Islands Sanitary Sewer Upgrade. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on July 1, 2022 and ends at the expiration of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☐	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☐	☐	a. Fringe Benefits, N/A.
☐	☐	b. Indirect Costs, N/A.
☒	☐	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☐	☐	Rental/Lease of Equipment
☐	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

There is no match required on the part of the Grantee under this Agreement.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Commercial General Liability Insurance.

The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

No retainage is required under this Agreement.

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

The Grantee will identify the expected return on investment for this project and provide this information to the Governor's Office of Policy and Budget (OPB) within three months of execution of this Agreement. For each full calendar quarter thereafter, the Grantee will provide quarterly update reports directly to OPB, no later than 20 days after the end of each quarter, documenting the positive return on investment to the state that results from the Grantee's project and its use of funds provided under this Agreement. Quarterly reports will continue until the Grantee is instructed by OPB that no further reports are needed, or until the end of this Agreement, whichever occurs first. All reports shall be submitted electronically to OPB at env.roi@laspbs.state.fl.us, and a copy shall also be submitted to the Department at legislativeaffairs@floridaDEP.gov.

14. Build America, Buy America Act (BABA).

Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States-this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

15. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution] If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808

16. Additional Terms.

None.

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Bay Harbor Islands Sanitary Sewer Upgrade

PROJECT LOCATION: The Project will be located in the Town of Bay Harbor Islands within Miami-Dade County; Lat/Long (25.8872, -80.1312).

PROJECT BACKGROUND: The Town of Bay Harbor Islands (Grantee) will upgrade their sanitary sewer system to accommodate future developments. The existing 15-inch pipe material is vitrified clay pipe (VCP) located near the Grantee's main pump station. The new pipe will be an 18-inch diameter PVC pipe which is a more resistant material and will provide additional capacity to the system.

PROJECT DESCRIPTION: The Grantee will upgrade approximately 200 linear feet of 15-inch VCP sanitary sewer main to 18-inch PVC C-900 pipe. The project includes replacement of manholes, sewer pipe replacement, and connection of sewer laterals connected to the pipe.

TASKS: All documentation should be submitted electronically unless otherwise indicated.

Task 1: Bidding and Contractor Selection

Deliverables: The Grantee will prepare a bid package, publish a public notice, solicit bids, conduct pre-bid meetings, and respond to bid questions in accordance with the Grantee's procurement process, to select one or more qualified and licensed contractors to complete construction of the sanitary sewer upgrades.

Documentation: The Grantee will submit: 1) the public notice of advertisement for the bid; 2) the bid package; and 3) a written notice of selected contractor(s).

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement following the conclusion of the task.

Task 2: Project Management

Deliverables: The Grantee will perform project management, to include field engineering services, construction observation, site meetings with construction contractor(s) and design professionals, and overall project coordination and supervision.

Documentation: The Grantee will submit interim progress status summaries including summary of inspection(s), meeting minutes and field notes, as applicable.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 3: Connection to Central Sewer

Deliverables: The Grantee will connect approximately four commercial buildings to a central sanitary sewer system for treatment by the wastewater facility.

Documentation: The Grantee will submit: 1) a signed acceptance of the completed work to date, as provided in the Grantee's Certification of Payment Request; 2) a list of addresses and types of the properties connected; and 3) proof of connection for each property, as evidenced by copies of invoices for the connections by a licensed plumber, utility contractor, or building contractor.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

Task 4: Construction

Deliverables: The Grantee will construct sanitary sewer upgrades in accordance with the construction contract documents.

Documentation: The Grantee will submit 1) a copy of the final design; 2) a signed acceptance of the completed work to date, as provided in the Grantee's Certification of Payment Request; and 3) a signed Engineer's Certification of Payment Request.

Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables have been completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by, and all documentation received by, the corresponding task end date. Cost reimbursable grant funding must not exceed the budget amounts as indicated below.

Task No.	Task Title	Budget Category	Grant Amount	Task Start Date	Task End Date
1	Bidding and Contractor Selection	Contractual Services	\$5,000	07/01/2022	06/31/2024
2	Project Management	Contractual Services	\$25,000	07/01/2022	06/31/2024
3	Connection to Central Sewer	Contractual Services	\$10,000	07/01/2022	06/31/2024
4	Construction	Contractual Services	\$157,500	07/01/2022	06/31/2024
Total:			\$197,500		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 6

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	Dept. of Environmental Protection	2022-2023	37.039	Statewide Surface Water Restoration and Wastewater Projects – LI 1665A	\$197,500	140047
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award					\$197,500	
-------------	--	--	--	--	-----------	--

Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit A
Progress Report Form**

DEP Agreement No.:	LPA0255
Project Title:	Bay Harbor Islands Sanitary Sewer Upgrade
Grantee Name:	Town of Bay Harbor Islands
Grantee's Grant Manager:	
Reporting Period:	Select reporting period. Select year.

Provide the following information for all tasks identified in the Grant Work Plan:

Summarize the work completed within each task for the reporting period. Provide an update on the estimated completion date for each task and an explanation for any anticipated delays or problems encountered. Add or remove task sections and use as many pages as necessary to cover all tasks. Use the format provided below.

Task 1: Task Title

- **Progress for this reporting period:** Add Text
- **Identify delays or problems encountered:** Add Text

Task 2: Task Title

- **Progress for this reporting period:** Add Text
- **Identify delays or problems encountered:** Add Text

Task 3: Task Title

- **Progress for this reporting period:** Add Text
- **Identify delays or problems encountered:** Add Text

Task 4: Task Title

- **Progress for this reporting period:** Add Text
- **Identify delays or problems encountered:** Add Text

Task 5: Task Title

- **Progress for this reporting period:** Add Text
- **Identify delays or problems encountered:** Add Text

Indicate the completion status for the following tasks (if included in the Grant Work Plan):

Design (Plans/Submittal): 30% ☐, 60% ☐, 90% ☐, 100% ☐

Permitting (Completed): Yes ☐, No ☐

Construction (Estimated): _____ %

This report is submitted in accordance with the reporting requirements of the above DEP Agreement number and accurately reflects the activities associated with the project.

Signature of Grantee's Grant Manager (Original Ink)

Date

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Exhibit C
Payment Request Summary Form**

The **Payment Request Summary Form** for this grant can be found on our website at this link:

<https://floridadep.gov/wra/wra/documents/payment-request-summary-form>

Please use the most current form found on the website, linked above, for each payment request.

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 5.

ITEM: Consideration and Approval of a Resolution urging Congress to reauthorize the National Flood Insurance Program, sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

DESCRIPTION:

Congress created the National Flood Insurance Program (NFIP) in 1968 to make affordable flood insurance available to homeowners, renters and business owners in exchange for using FEMA generated Flood Insurance Rate Maps for floodplain management by participating communities; and

Congress must periodically renew the NFIP's statutory authority to operate. The NFIP expired on September 30, 2022. The president signed legislation passed by Congress that extends the National Flood Insurance Program's (NFIP's) authorization to December 16, 2022.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

1.	Resolution - Urging Congress to Reauthorize the National Flood Insurance Program
----	--

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, URGING CONGRESS TO REAUTHORIZE THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, floods are the most common and destructive natural disaster in the United States and Florida; and

WHEREAS, Congress created the National Flood Insurance Program (NFIP) in 1968 to make affordable flood insurance available to homeowners, renters and business owners in exchange for using FEMA generated Flood Insurance Rate Maps for floodplain management by participating communities; and

WHEREAS, the Flood Disaster Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of federal or federal-related financial assistance for acquisition or construction purposes with respect to the insurance of buildings; and

WHEREAS, the NFIP provides affordable flood insurance to property owners by encouraging local governments to adopt and enforce floodplain and water management regulations, best practices and techniques; and

WHEREAS, these mitigation efforts reduce and prevent flooding on new and improved structures, thereby saving lives and reducing injuries, reducing economic losses, maintaining and protecting critical infrastructure, and reducing the liability borne by local governments and their elected officials; and

WHEREAS, flooding is a serious risk in Florida due to the state's geography and proximity to water, both coastal and inland; and

WHEREAS, this issue is a critical concern for our state, as Florida has the largest number of participants in the NFIP with more than 1.7 million policies in force; and

WHEREAS, the NFIP expired on September 30, 22; and

WHEREAS, a lack of long-term reauthorization causes uncertainty for beneficiaries and providers; and

WHEREAS, there is still no viable private market for homeowners and businesses to acquire sufficient flood insurance coverage; and

WHEREAS, accurate mapping is fundamental for local governments to assess and communicate risk to their communities and property owners; and

WHEREAS, the current mapping process often results in local governments having to fight inaccurate maps that do not take into account locally built flood protection features and communities building off of outdated mapping, which results in artificially inflated risk. Further, many areas of the country are not mapped or mapped accurately, which results in communities not being aware that they are at risk of flooding; and

WHEREAS, it is incumbent upon all of us to have a long-term, sustainable and viable NFIP with rates that are affordable.

WHEREAS, bi-partisan legislation has been introduced in the House and Senate titled the National Flood Insurance Program Reauthorization and Reform Act of 2019 (NFIP-RE), H.R. 3872 and S. 2187, which would reauthorize the NFIP program for five years; and

WHEREAS, this legislation includes provisions to cap annual rate increases to 9 percent, fund resiliency and mitigation programs and modernize mapping.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

Section 1. The foregoing recitals are hereby ratified as true and correct and incorporated herein by referenced.

Section 2. Bay Harbor Islands supports H.R. 3872 and S. 2187 and urges Congress to reauthorize the NFIP and to keep flood insurance rates affordable for primary, non- primary and business properties while balancing the fiscal solvency of the program; and

Section 3. In order for local governments to help their communities and property owners to adequately prepare for risk, Congress should provide additional resources to FEMA to utilize the best technology and methods available to improve the mapping process, including seeking the input from local government officials prior to approving any flood map that could impact local zoning rules.

Section 4. A copy of this resolution be sent to President Joseph R. Biden, Jr., the Florida Congressional Delegation, the National League of Cities and the membership of the Florida League of Cities, Inc.

Section 5. This resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by the Town of Bay Harbor Islands this 19th day of October 2022.

By: _____
Joshua Fuller, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

Greenspoon Marder

Town Attorney

By: Joseph S. Geller, Esq.

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 6.

ITEM: Consideration and Approval of a Resolution recognizing the week of October 17-23, 2022 as "Florida City Government Week", sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

DESCRIPTION:

Florida City Government Week, sponsored by the Florida League of Cities, is a week-long celebration that raises awareness about the importance of municipal government and its daily impact on residents.

Because city government is the government closest to most citizens, it is important that residents understand how their town operates, the services it provides and the importance of their active involvement.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

1.	Resolution - City Government Week
----	-----------------------------------

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RECOGNIZING THE WEEK OF OCTOBER 17-23, AS "FLORIDA CITY GOVERNMENT WEEK" AND ENCOURAGING ALL CITIZENS TO SUPPORT THE CELEBRATION AND CORRESPONDING ACTIVITIES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

WHEREAS, city government is the government closest to most citizens, and the one with the most direct daily impact upon its residents; and

WHEREAS, city government is administered for and by its citizens, and is dependent upon public commitment to and understanding of its many responsibilities; and

WHEREAS, city government officials and employees share the responsibility to pass along their understanding of public services and their benefits; and

WHEREAS, Florida City Government Week is a very important time to recognize the important role played by city government in our lives; and

WHEREAS the Florida League of Cities and its members have joined together to teach students and other citizens about municipal government through a variety of different projects and information; and

WHEREAS, Florida City Government Week offers an important opportunity to convey to all the citizens of Florida that they can shape and influence government through their civic involvement.

WHEREAS, the Town Council finds that recognizing and supporting Florida City Government Week is in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

Section 1. The foregoing "WHEREAS" clauses are true and correct and hereby ratified and confirmed by the Town Council

Section 2. The Town of Bay Harbor Islands encourages all town officials, town employees school officials, and citizens to participate in events that recognize and celebrate Florida City Government Week.

Section 3. The Town of Bay Harbor Islands encourages educational partnerships between city government and schools, as well as civic groups and other organizations.

Section 4. This resolution shall become effective immediately upon adoption.

By: _____
Joshua Fuller, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

Greenspoon Marder
Town Attorney
By: Joseph S. Geller, Esq.

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 7.

ITEM: Consideration and Approval of a Resolution honoring the Florida League of Cities on its 100th Anniversary, sponsored by Council Member Robert Yaffe. Enclosed is a copy of the draft Resolution.

DESCRIPTION:

When Florida's city officials formed a group of municipal governments for the first time in 1922, they wanted to shape legislation, share the advantages of cooperative action, and exchange ideas and experiences. Growing from a small number of cities and towns, their membership now represents more than 400 cities, towns and villages in Florida.

The League provides members with tailored advocacy tools and training programs designed specifically for municipal officials. It also serves as administrator for the Florida Municipal Insurance Trust, offers innovative financial solutions to Florida's local governments, and provides contractual support services to several statewide municipal and professional associations.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Resolution - Florida League of Cities 100 Year Anniversary
----	--

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RECOGNIZING THE 100TH ANNIVERSARY OF THE FLORIDA LEAGUE OF CITIES; PROVIDING FOR INCORPORATION OF RECITALS; AND SETTING AN EFFECTIVE DATE.

WHEREAS, in 1922 several municipal officials came together in Tampa and formed the Florida League of Municipalities, and stressed the need for a united voice for all cities, towns and villages as well as a forum at which common issues could be discussed and resolved; and

WHEREAS, for one century this association, whose name was changed to the Florida League of Cities in 1970, has been that uniting factor through which leaders have been galvanized on all municipal issues, and through which the League provides a valued forum today, holding fast to both original missions; and

WHEREAS, across the decades League advocates have worked tirelessly in Florida's constitutional, legislative, legal and administrative arenas for reform, rights and action and such advocacy culminated in Home Rule powers being voted into the Constitution in 1968, and such actions continue to be the strongest force for preserving this authority despite efforts to preempt or diminish it or to burden cities with mandates; and

WHEREAS, the dedicated leadership of its officers and boards of directors over the decades have built a foundation of strength, resilience and success for the Association to a level unparalleled among organizations, and these same leaders and devoted FLC staff have had and continue to have the outstanding vision for entrepreneurial programs, products and services for the League to provide to its members and other local governments, and through such actions ensures viable services that benefit local governments every day as well as ensuring for the League a healthy and sustainable fiscal standing; and

WHEREAS, an anniversary of this magnitude is worthy of acknowledgement, celebration and sober reflection upon all that has been accomplished and to also look toward the next century for this Association and its many programs such that a promising, bright and attainable future is planned.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS:

Section 1. The foregoing "WHEREAS" clauses are true and correct and hereby ratified and confirmed by the Town Council

Section 2. The Town of Bay Harbor Islands hereby recognizes the Florida League of Cities for being a united voice for municipalities for the past 100 years.

Section 3. The Town of Bay Harbor Islands hereby further expresses its gratitude and appreciation to the Florida League of Cities for its continuous efforts in support of municipalities, and the principles of Home Rule, throughout its many years of existence."

Section 4. This resolution shall become effective immediately upon adoption.

By: _____
Joshua Fuller, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

Greenspoon Marder
Town Attorney
By: Joseph S. Geller, Esq.

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 8.

ITEM: An application by One Kane Concourse, LLC for approval of site plan development modification and approval of commercial activity on the rooftop, specifically a restaurant associated with the ground floor restaurant, for a Commercial Building, consisting of six (6) stories and two (2) levels of partially below grade parking at 9551 East Bay Harbor Drive, Lots 1 and 2 of Block 1, the Gateway District, which is designated as a Gateway property. Enclosed are the application and other supporting documents.

DESCRIPTION:

The applicant is requesting site plan development modifications from the Town Council to improve the overall design for the office and restaurant uses, with the latter also adding lunchtime operation. Pursuant to Town Code Section 5-23.1(b), the Design Review Board considered the application on September 6, 2022 and the Board's motion for approval resulted in a tie vote with only four members in attendance.

RECOMMENDED ACTION:

Council's Discretion.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	9-30-2022 Letter of Intent
2.	9-30-2022 Application
3.	One Kane Concourse - Valet and Parking Evaluation 09 30 22



ZONING, LAND USE AND ENVIRONMENTAL LAW

200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6236 office
305.377.6222 fax
mamster@brzoninglaw.com

VIA HAND-DELIVERY & ELECTRONIC MAIL

September 30, 2022

Maria Lasday, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Site Development Plan Modification for One Kane Concourse
at Property Located at 9551 East Bay Harbor Drive, Bay Harbor
Islands, FL

Dear Ms. Lasday,

Our law firm represents One Kane Concourse, LLC (the "Applicant"). The Applicant owns the property located at 9551 East Bay Harbor Drive, Bay Harbor Islands (the "Property"). The Property is a waterfront lot located on the east side of East Bay Harbor Drive between 95th and 96th Streets and is zoned Gateway. The Applicant previously received approval to develop a commercial building, consisting of six (6) stories and two (2) levels of partially below grade parking (the "Previously Approved Project") at the prominent entry to the Town from the east.

The purpose of this letter is to request minor site plan development modifications from the Town Council for the Applicant's currently proposed development (the "Project"), specifically to improve the overall design for the office and restaurant uses, with the latter also adding lunchtime operation. Pursuant to Town Code Section 5-23.1(b), the Design Review Board considered the Project on September 6, 2022 and the Board's motion for approval resulted in a tie vote with only four members in attendance. See Pending DRB Resolution, when available. Although the majority of Board members expressed agreement with the Project's overall design, there was some discussion and concern related to the addition of lunchtime restaurant use potentially impacting valet operations and parking. Notably there was no evidence presented that indicated any negative impact. The Applicant has been working with a traffic engineer to verify, as

further discussed below, and plans to address operationally and apply to the Town Council for any associated requests as needed to ensure no negative impacts from adding lunchtime use.

Accordingly, the Applicant is now requesting review by the Town Council for approval of the Project. Pursuant to Town Code Section 5-23.1(b), if the Town Council approves a land development application after consideration by the DRB for a Gateway site, the action of the Town Council shall take precedence over the actions of the board.

Development Approvals. On January 17, 2017, the Planning and Zoning Board approved the Previously Approved Project with conditions through Resolution No. 2112. See Exhibit A – Resolution No. 2112. Since the Property is within the Gateway zoning district, and pursuant to Town Code Section 23-21(d), on April 19, 2017, the Applicant also sought and obtained approval from the Town Council through Resolution No. 2119. See Exhibit B – Resolution No. 2119. The Applicant is presently processing that collective approval through Building Permit No. BP2016-35.

Last year, the Town adopted Ordinance No. 1060 to allow improvements for restaurant uses at ground level and on the roof top, as well as allow a larger porte-cochere (the “2021 Ordinance”). See Exhibit C – Ordinance No. 1060. The present modifications, discussed further below, seek to modify the prior approval to add the elements allowed by the 2021 Ordinance, as well as a few minor modifications, subject to approval through the public hearing process.

Recently, on June 29, 2022, the Town also adopted an ordinance providing regulations to allow and regulate balconies in the Gateway zoning district (the “2022 Ordinance”). See Exhibit D – Proposed Balcony Ordinance. Specifically, the 2022 Ordinance allows balconies to project into the minimum street frontages and rear yard areas by up to four (4) feet. Additionally, balconies may project into the minimum interior side yard areas by up to two (2) feet. The current proposed modifications seek to modify the prior approval by incorporating an extended balcony around the perimeter of the upper floors, in accordance with the 2022 Ordinance.

Proposed Modifications. The Applicant proposes a few modifications that will improve the overall design, allow for more outdoor use by office tenants that meets today’s market demand, and provide improved indoor and outdoor dining areas, including weatherproofing on ground floor and rooftop to ensure a high-quality restaurant experience. Notably, the Applicant’s design maintains the same building height and massing as previously approved and will remain compatible to the surrounding area.

2021 Ordinance. The Applicant has taken a comprehensive review of the 2021 Ordinance and incorporated the newly allowed improvements to the Project. Specifically, the Applicant

wishes to modify the Previously Approved Project by including improvements to the ground floor, second floor, and roof level. With regard to the ground floor, the 2021 Ordinance allows for a ground level restaurant to "extend an enclosed air-conditioned building area closer toward Kane Concourse, but it shall not extend farther than ten (10) feet from the Kane Concourse right-of-way line." Here, the Applicant proposes to add an enclosed air-conditioned space for the restaurant at the north side with a 10' setback and transparent side. The 2021 Ordinance also allows covering and weather protection barriers for restaurant seating areas at the rear and the Applicant provides such elements at the rear. Due to these improvements, the Applicant is relocating the stairs for access to and from the dock and the restaurant seating area.

For better protection at the front drop-off area, the 2021 Ordinance states that "an extended structure covering a drop-off / lobby area may be permitted if approved as part of the site plan." Accordingly, the Applicant also proposes to extend the canopy covering of the porte-cochere encompassing the front drop-off/pick-up/lobby areas.

2022 Ordinance. Moreover, the 2022 Ordinance now permits the extension of balconies into the front, rear and side yard areas for projects in the Gateway District. With appropriate setbacks, multifamily buildings, such as the one to the south of the Property, can have balconies but until now commercial buildings could not. Also, two of the other three Gateway properties, which have hotel uses, have balconies and allowing appropriate balconies on this Project create symmetry for the entrance to the Town. As a result, the Applicant proposes to replace the approved architectural fins with cantilevered balconies along all façades, including behind the porte cochere. These balconies feature glass railings that will complement the façades and streamline the design of the building and allow use of the outdoors by Class A office tenants that is desired in the age of Covid-19. The balconies, just like the fins they are replacing, are well setback from the adjacent property as well as the two streets, therefore, adequately located to prevent any encroachment and to ensure privacy.

FPL Requirements. Due to compliance with FPL requirements, the Applicant needs to change the location of the FPL transformer from the front yard to inside the southwest corner of the building, and to relocate the emergency generator from the first level to an enclosed structure on the roof.

Rooftop. At the roof level, the Applicant proposes adjustments in shade structures and supporting columns, whereby all columns will be located at a minimum of 15' from building edges. As allowed by the 2021 Ordinance, the shade structures will have weather protection barriers. As mentioned above, the required interior FPL vault room results in the emergency generators being relocated to an enclosure on the roof. Notably, the design adds landscaped planters along the perimeter to beautify the area and soften the scale of the building.

Modified Restaurant Use. In addition to the restaurant use at the ground level, the Applicant proposes to extend the restaurant use to include the rooftop. The Applicant also seeks to revise the restaurant hours of operation to include lunch, in addition to the previously approved dinner hours. Specifically, the Applicant seeks to operate the restaurant during the lunch hours between 11:30 am to 2:30 pm, as well as operate during the dinner hours as previously approved from 6:00 pm to 2:00 am. The lunchtime operation of the restaurant would stop at 2:30 pm to begin preparation for dinner.

The Applicant's traffic engineer, Traf Tech Engineering, Inc., has completed an updated valet and parking evaluation report for the modified restaurant use. The report is included with the submitted application documents. Based on ULI shared parking principles, including internal trip capture and anticipated walkers from the nearby commercial corridor, the introduction of lunchtime restaurant use and use of the rooftop for dining will not generate a parking deficiency. The originally approved restaurant did not have any negative impact due to starting operation at 6 PM, which is after the afternoon peak of office tenants departing the Project and freeing up all spaces in the garage. Further, Traf Tech determined that the valet operation will be able to manage lunchtime traffic flow and there remains sufficient queuing at the front to avoid any spillover into East Bay Harbor Drive. In conclusion, the Project can accommodate lunchtime restaurant use and rooftop dining without negative impact to the surrounding area.

Modified Conditions of Approval. Importantly, the proposed modifications to the restaurant use are accompanied by requests to modify certain approved conditions. See again Exhibits A and B. First, the Applicant proposes to modify Condition I and Condition J of Resolution No. 2112 to reflect the requested hours of operation and rooftop restaurant use. Presently, the conditions are as follows:

I. The space on the first floor of the Site Plan designated as the restaurant, (approximately 5,298 square feet (indoor) and 745 square feet (outdoor)), may only operate the restaurant during the hours of 6:00 p.m. and 2:00 a.m., pursuant to Section 23-24(e) of the Code. If Applicant seeks to operate the restaurant earlier than 6:00 p.m., Applicant shall provide additional parking as required by the Code.

J. The roof recreational area shall be for the use of tenants and their invited guests only. The roof recreational area shall not have any table service from the restaurant. No live music or amplified recorded music shall be played on the roof recreational area in a manner that is

inconsistent with the Town's noise ordinances, as it may be amended. Use of the roof recreational area shall close at a time that shall be determined by the Town Council or the Town Manager.

Accordingly, the Applicant requests that Condition I and Condition J of Resolution No. 2112 be modified as follows:

I. The space on the first floor of the Site Plan designated as the restaurant, ~~(approximately 5,298 square feet (indoor) and 745 square feet (outdoor))~~, may only operate the restaurant during the hours of 11:30 a.m. and 2:30 p.m. and again from 6:00 p.m. and 2:00 a.m., pursuant to Section 23-24(e) of the Code. ~~If Since the Applicant seeks to operate the restaurant earlier than 6:00 p.m., and if there is any deficit in required parking, then the Applicant shall provide additional parking either on- or off-site, and/or pay into the parking trust, as required by the Code.~~

J. The roof recreational area shall be for the use of tenants and their invited guests only. ~~The roof recreational area shall not have any table service from the restaurant. The Town's Code provisions listed in Section 23-5(15) related to rooftop activities shall control all rooftop activities.~~ No live music or amplified recorded music shall be played on the roof recreational area in a manner that is inconsistent with Section 23-5(15)(d) or the Town's noise ordinances, as it they may be amended. Use of the rooftop recreational area shall close at a time that shall be determined by the Town Council or the Town Manager 11:00 p.m. Monday through Thursday and 12:00 a.m. midnight Friday and Saturday and holidays.

Second, the Applicant wishes to modify Condition E of Resolution No. 2119 to include the restaurant use on the rooftop. Thus, the Applicant seeks to modify Condition E from the following present language:

E. The First floor shall have a restaurant or non professional office use, unless otherwise approved by the Town Council.

Accordingly, the Applicant wishes to modify the above condition to state the following:

E. The First floor shall have a restaurant or non professional office use, unless otherwise approved by the Town Council, and the rooftop shall be permitted restaurant use.

Compliance with Gateway Criteria. The Project complies with the purpose and intent of the Gateway zoning district code provisions as indicated below:

(1) Whether the site development plan design complies with at least the minimum standards contained in Town Code Section 23-21(g), the Gateway zoning district code provisions;

The site development plan design complies with Code Section 23-21(g). The majority of the proposed modifications to the site development plan are a direct result of previously approved Town Code amendments and the remaining proposed changes are still consistent with the Gateway regulations. The modification, especially to the balconies improve the quality of the Project and make for a more inviting Gateway development.

(2) Whether the application will have a favorable effect on the economy of the town;

The application will have a very favorable effect on the economy of the Town. The proposed development will introduce new Class A office space and employment opportunities for Town residents. Residents will also enjoy the new addition of a pedestrian-friendly and highly reputable restaurant that has origins from New York City and will afford great views from the rooftop. The office tenants and restaurant patrons will also frequent the nearby commercial corridor thus further benefiting the Town.

(3) Whether the application will generate or result in excessive noise or traffic congestion;

The application will not generate or result in excessive noise or traffic congestion. No live music or amplified recorded music will be played on the roof area. The valet and parking evaluation concludes no parking deficiency or any negative impacts from adding lunch service and expanding the restaurant use to the rooftop.

(4) Whether the application will cause an undue or excessive burden on public facilities, including potable water, sanitary sewer, solid waste disposal, community recreation, transportation facilities or other such public facilities which have been constructed or which are planned and budgeted for construction;

The application will not cause an undue or excessive burden on public facilities which have been constructed or which are planned and budgeted for construction.

(5) Whether the application will cause excessive overcrowding or concentration of people or population;

The Application will not cause excessive overcrowding or concentration of people or population.

(6) Whether the application will be compatible with the surrounding area and its development in scale and appearance. The town shall base compatibility on the existing scale of adjoining development and the allowable scale under the applicable zoning district; and

The Application will remain compatible with the surrounding area in scale and appearance, more so with the inclusion of the balconies. Importantly, the majority of the Design Review Board members present at the September 6 hearing were in support of the design modifications as an improvement to the Project.

(7) Whether the application is a reasonable use of property and results in a public benefit including, but not limited to, the enhancement of the subject real property and/or the redevelopment of structures in deteriorated or poor condition.

The Application is a reasonable use of property and results in a public benefit. The Project will provide a new commercial building and restaurant in the Town's Gateway district that will have a synergistic benefit, drawing nearby tenants and patrons from the commercial corridor to the restaurant and vice versa having tenants and restaurant patrons frequent the businesses on the corridor, all with walking trips to minimize vehicular impacts. Further, the Project provides a promenade and viewing area along the waterway. Thus, the project provides economic, safety and environmental benefits.

Summary. The proposed changes to One Kane Concourse improve the original well-designed project and create a signature Gateway development that will be even more compatible with the surrounding area in both scale and appearance. The Project provides great Class A office and a high-quality restaurant for the Town. The submitted plans are consistent with the Gateway regulations and are in alignment with the approved code amendments.

We look forward to your favorable recommendation and the Town Council's approval of this application. Should you have any questions or wish to discuss further you can reach me at 305-377-6236.

Sincerely,



Matthew Amster

Attachments

cc: Michael Miller, Town Planner
Mike Mesa, Building Official
Maritza Haro, Esq.
Shakeyla Flores, Esq.

RESOLUTION NO. 2112

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE ONE KANE CONCOURSE PROJECT.

WHEREAS, on October 11, 2016, One Kane Concourse, LLC (hereinafter the "Applicant"), filed a revised site plan for a property on Lots 1 and 2 zoned Gateway. Applicant's site plan requests approval for a commercial building, consisting of six (6) stories and two (2) levels of below grade parking located thereupon at 9551 East Bay Harbor Drive, Bay Harbor Islands, Florida, and legally described as:

Lots 1 & 2 of Block 1 "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida;

(hereinafter the "Project" or "Site Plan"); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands' Code of Ordinances (hereinafter the "Code"); and

WHEREAS, on January 18, 2017, the Town's Planning and Zoning Board, after Notice of the Public Meeting was properly provided, approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section of 5-23.1 of the Code and approves the Site Plan dated October 11, 2016, subject to the below conditions for approval.
3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the "Effective Date").
4. **Conditions of Approval.**
 - A. This approval is based on the Site Plan, dated October 11, 2016. Any modifications thereto shall require separate approvals from either staff, the Planning and Zoning Board, or the Town Council as specified in the Code.
 - B. A Unity of Title acceptable to the Town Attorney's Office shall be recorded prior to the issuance of building permits.

- C. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff, the Planning and Zoning Board, or the Town Council, as specified in the Code.
- D. The existing overhead power lines shall be relocated underground during the redevelopment of the site at the sole expense of the Applicant. If undergrounding is not permitted by FPL prior to the issuance of a certificate of occupancy, Applicant shall install electric service entrance facilities to accommodate an underground service lateral pursuant to Section 18-22 of the Code.
- E. Applicant shall submit final working plans within 365 days after the Effective date of this Resolution, unless extended by the Town Manager, or his designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- F. Prior to the issuance of a building permit, Applicant shall pay all required impact fees including, but not limited to, those payable to the Town, County, and School Board.
- G. All prior Site Plan approvals for Lots 1 and 2, including Resolution 1121-A, are hereby revoked.
- H. This Site Plan approval is subject to the Town Council's approval of the Applicant's Gateway application.
- I. The space on the first floor of the Site Plan designated as the restaurant, (approximately 5,298 square feet (indoor) and 745 square feet (outdoor)), may only operate the restaurant during the hours of 6:00 p.m. and 2:00 a.m., pursuant to Section 23-24(e) of the Code. If Applicant seeks to operate the restaurant earlier than 6:00 p.m., Applicant shall provide additional parking as required by the Code.
- J. The roof recreational area shall be for the use of tenants and their invited guests only. The roof recreational area shall not have any table service from the restaurant. No live music or amplified recorded music shall be played on the roof recreational area in a manner that is inconsistent with the Town's noise ordinances, as it may be amended. Use of the roof recreational area shall close at a time that shall be determined by the Town Council or the Town Manager.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 17th day of January, 2017.

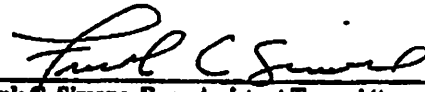
**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: 
Steven Hurwitz, Chair Person

ATTEST:


Marlene M. Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

RESOLUTION NO. 2119**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
APPROVING THE GATEWAY ZONING SITE
DEVELOPMENT PLAN APPLICATION FOR THE
ONE KANE CONCOURSE PROJECT.**

WHEREAS, on October 11, 2016, One Kane Concourse, LLC (hereinafter the "Applicant"), filed a revised site plan for a property on Lots 1 and 2 zoned Gateway. Applicant's site plan requests approval for a commercial building, consisting of six (6) stories and two (2) levels of below grade parking located thereupon at 9551 East Bay Harbor Drive, Bay Harbor Islands, Florida, and legally described as:

Lots 1 & 2 of Block 1 "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida;

(hereinafter the "Project" or "Site Plan"); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands' Code of Ordinances (hereinafter the "Code"); and

WHEREAS, on January 18, 2017, the Town's Planning and Zoning Board, after Notice of the Public Meeting was properly provided, approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth in Resolution No. 2112.

WHEREAS, on February 2, 2017, Applicant filed an Application for Gateway Zoning Site Plan Approval pursuant to the requirements set forth in Section 23-21(i) of the Code, along with a traffic study, as requested by the Town Manager ("Gateway Application").

WHEREAS, on April 19, 2017, the Town Council, after Notice of the Public Meeting was properly provided, approved the Gateway Application and Site Plan pursuant to Section 23-21(g) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. Recitals. The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. Findings. The Town Council finds that the Applicant has met its burden of proof. The Gateway Application and the Site Plan are consistent with the criteria set forth in Section of 23-21(g)(1) through (7) of the Code. Specifically, the Town Council finds that:
 - a. The Site Plan complies with the standards contained in 23-21(g);
 - b. The Application will have a favorable effect on the economy of the Town;
 - c. The Application will not generate or result in excessive noise or traffic congestion;

- d. The Application will not cause an undue or excessive burden on public facilities which have been constructed or which are planned and budgeted for construction;
- e. The Application will not cause excessive overcrowding or concentration of people or population;
- f. The Application will be compatible with the surrounding area and its development in scale; and
- g. The Application is a reasonable use of property and results in a public benefit.

The Town Council therefore approves the Application and Site Plan dated October 11, 2016, pursuant to Section 21-21(g) of the Code, subject to the below conditions.

3. Effective Date. This Resolution shall take effect upon the date of its adoption (the "Effective Date").

4. Conditions of Approval.

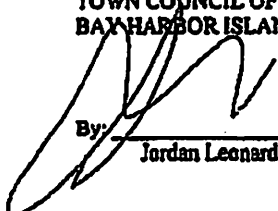
- A. This approval is based on the Gateway Application and Site Plan dated October 11, 2016 that was approved by the Planning and Zoning Board on January 18, 2017, and incorporates conditions A-D, F-G, and I-J set forth in Resolution No. 2112. Any modifications thereto shall require separate approvals from either staff, the Planning and Zoning Board, or the Town Council as specified in the Code.
- B. Applicant shall have one (1) year to submit a building permit. Any request for an extension shall come before the Town Council, regardless of any other legal basis available for an extension.
- C. The building shall be LEED certified.
- D. Applicant shall not demolish the existing building until it receives a building permit.
- E. The First floor shall have a restaurant or non professional office use, unless otherwise approved by the Town Council.
- F. Applicant shall have an adequate amount of valet attendants at all times, and subject to the requirements of the Town Manager.
- G. All conditions shall constitute covenants running with the land and shall be obligations of the present and all future owners of the building.

5. Severability. If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 19th day of April, 2017.

TOWN COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS

By: 

Jordan Leonard, Mayor

ATTEST:


Marlene Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

ORDINANCE NO. 1060

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE TO MODIFY THE GATEWAY (G) ZONING DISTRICT, AMENDING SECTION 23-21(e) OF THE CODE OF ORDINANCES TO MODIFY THE KANE CONCOURSE SETBACK REQUIREMENTS FOR GROUND LEVEL RESTAURANTS AND CERTAIN WEATHERIZATION, PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

WHEREAS, the Town's 1995 Evaluation and Appraisal Report (EAR) of the adopted Comprehensive Plan concluded that the Town should consider strategies to encourage the re-development of lands on the eastern island of the Town; and

WHEREAS, the Town subsequently retained the services of several urban planning professionals to study land development activities and land development regulations and recommend strategies and Code modifications to address identified problems; and

WHEREAS, one of the primary land development issues identified by the urban planning professionals are the so-called "Gateway" properties, being those properties abutting the Kane Concourse at the bridges to the Town's eastern island; and

WHEREAS, the Town's Comprehensive Plan identifies the need to address the "Gateway" properties by studying the land areas and considering special land development regulations for these strategic properties; and

WHEREAS, the Town Council amended the Town's Zoning and Planning Code in 2004 to create a Gateway "G" Zoning District and has occasionally updated certain provisions of the district regulations; and

WHEREAS, the Gateway "G" District regulations have proven to be a successful zoning tool for the Town to guide desired development scale, form and urban design for 3 of 4 gateway sites including two hotels and commercial complex to date; and

WHEREAS, the Town has been approached to consider modifying certain regulations for the commercial gateway site to facilitate desired tenant operations; and

WHEREAS, a meeting was held before the Local Planning Agency for the Town to review the proposed modifications to the Town's Zoning and Planning Code; and

WHEREAS, the Town Council held duly advertised public hearings to consider the proposed modifications to the Town's Zoning and Planning Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to modify provisions in Section 23-21, the Gateway "G" Zoning District to address the unique attributes of the subject sites which provide for a method for the Town to consider land development applications, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2: That is any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections

of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

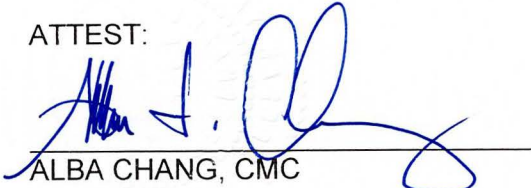
PASSED on First Reading this 10th day of March, 2021.

PASSED on Second Reading this 9th day of June, 2021.



JOSHUA FULLER
Mayor

ATTEST:


ALBA CHANG, CMC
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



SPECIAL COUNSEL
GENOVESE JOBLOVE & BATTISTA, P.A.
By: ALFREDO L. GONZALEZ

Exhibit “A”

Amendments to the Town of Bay Harbor Islands Zoning and Planning Code

Sec. 23-21. Gateway (G) Zoning District.

- (a) *Purpose and intent.* The purpose and intent of the Gateway (G) District is to create a set of design standards for the properties at the entrances to the eastern island of the Town that are to scale with the established and desired urban form and compatible with the Town’s desire to have a substantial and elegant pedestrian promenade along the Kane Concourse roadway frontage; to establish a living and working environment that are responsive to the needs of the Town’s inhabitants; to provide flexibility in planning, design and development; to encourage innovative approaches to the design of the properties; to provide efficient use of land; to provide an environment compatible with surrounding land use; to adapt the zoning process to changes in construction and development technology; and to promote the public health, safety and general welfare of the town.
- (b) *Location of District.* The Gateway District is applicable to the following properties: Lot 1 and 2 of Block 1; Lot 1 of Block 2; Lot 32 of Block 3; and Lot 37 of Block 4.
- (c) *Permitted Uses.* In the Gateway District, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, excepting for one (1) or more of the following uses:
- 1) For Lots 1 and 2 of Block 1 – those uses listed in Section 23-5 of the Town’s Code.
 - 2) For all other Lots referenced in subsection (b) above – those uses listed in Section 23-4 of the Town Code.
- (d) *Town Approval.* The property shall be planned and developed according to detailed plans including site plans, floor plans, phasing plans and elevations showing all proposed development on the property as approved by the Town Council.
- (e) *Building Setbacks, Building Height and Maximum Density.*
- 1) Kane Concourse - All properties shall have a building setback of not less than twenty (20) feet from the Kane Concourse right-of-way line. In addition, for any structure over twenty-five (25) feet in height, the setback shall be increased one (1) foot for each two (2) feet of building height for that portion of the building over 25 feet in height. A pedestal underground parking structure with no more than five (5) feet of the structure above grade (not including an inclined bridge) but completely opaque to the adjoining roadway by earthen berms and landscaping may encroach into the above building setback, but in no case less than fifteen (15) feet from the Kane Concourse right-of-way. Notwithstanding the above provision, a pedestal parking structure may be constructed within the above setback area to the Kane Concourse right-of-way

line for Lot 1 in Block 1 and Lot 37 in Block 4 adjoining the bridge rising eastward towards and across the Indian Creek Waterway, provided that any such development shall provide for a continuous pedestrian environment at least thirty (30) feet in width, including the sidewalk on the bridge, and continuing flush into the adjoining property appearing as a continuous plaza on the roof of a parking garage and tapered to be not visible toward East Bay Harbor Drive, except as otherwise allowed below. The area must appear as a common open plaza with both visual and physical access to the waterway as approved by the Town. Also, notwithstanding the above provision, a ground level restaurant may extend an enclosed air-conditioned building area closer toward Kane Concourse, but it shall not extend farther than ten (10) feet from the Kane Concourse right-of-way line. Any such ground level restaurant building extension may have a solid covered roof, but the exterior façade shall be primarily transparent (fixed or retractable glass / other clear weather barrier). An indemnification and hold-harmless agreement shall be required for any such extension in a form acceptable to the Town Attorney.

- 2) East Bay Harbor Drive / West Bay Harbor Drive – All properties shall have a minimum setback of twenty (20) feet for buildings up to twenty-five (25) feet in height. In addition, for any structure over twenty-five (25) feet in height, the setback shall be increased one (1) foot for each two (2) feet of building height for that portion of the building over 25 feet in height with a maximum setback of thirty (30) feet. A pedestal underground parking structure with no more than five (5) feet of the structure above grade but completely opaque to the adjoining roadway by earthen berms and landscaping may encroach into the above building setback but in no case less than fifteen (15) feet from the adjoining roadway. To accommodate the need to provide access from East Bay Harbor Drive to the top of any parking structure as the bridge rises toward the Indian Creek waterway, stairs, ramps, lifts and/or supportive walls shall be permitted within the fifteen (15) foot setback area specified herein, provided they are located within twenty-five (25) feet of the Kane Concourse right-of-way and provided the design and appearance are approved by the Town during the Site Plan approval process. Notwithstanding the above, an extended structure covering a drop-off / lobby area may be permitted if approved as part of the site plan.
- 3) Side Property Lines - All properties shall have a minimum setback of ten (10) feet for buildings up to twenty-five (25) feet in height. In addition, for any structure over twenty-five (25) feet in height, the setback shall be increased one (1) foot for each two (2) feet of building height for that portion of the building over 25 feet in height with a maximum setback of twenty-five (25) feet. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be twenty (20) feet. Pedestal parking structures must be completely screened to the adjoining property by earthen berms and landscaping.
- 4) Waterfront Property Lines - All properties shall have a minimum setback of twenty (20) feet, regardless of building height. This shall also apply to underground parking structures. Notwithstanding the above, if an exterior seating area for a ground level restaurant is provided, an extended roof canopy over the seating may be provided, but the roof canopy shall not extend farther

than ten (10) feet from the property line. Clear retractable weather barriers may be affixed thereto.

- 5) Flex setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Town Council may allow portions of the building structure over twenty-five (25) feet in height to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of buildings below twenty-five (25) feet in height.
- 6) Building Height - On Lot 1 and 2 in Block 1, Lot 1 in Block 2, Lot 32 in Block 3 and Lot 37 in Block 4, no portion of a building or structure shall exceed twenty-five (25) feet within the minimum principal building setback area but may be increased in height at a ratio of one (1) foot for each two (2) feet of building height over twenty-five (25) feet. The maximum allowable height of buildings or structures is seventy-five (75) feet in Block 1 and in Block 4 and the maximum allowable height of buildings or structures is sixty (60) feet in Block 2 and in Block 3. Notwithstanding the above, if rooftop exterior seating areas for a restaurant located in the building is provided after receiving approval by the Town Council as set forth in the Code, clear vertical retractable weather barriers may be provided over seating areas attached to rooftop canopies, trellis or similar structures.
- 7) The maximum allowable residential density shall be in accordance with the adopted Comprehensive Plan provisions as to the base residential density and any additional allocated density as may be approved by the Town Council.

(f) *Pedestrian Promenade.* The Town desires to continue the established pedestrian promenade along Kane Concourse between East Bay Harbor Drive and West Bay Harbor Drive on the Gateway properties to the adjoining waterways. A minimum ten (10) foot wide waterway access and landscape buffer shall be provided adjoining the Kane Concourse right-of-way. A minimum 8-foot wide pedestrian walkway shall be constructed within the corridor from the adjoining roadways to the seawall and shall connect to the sidewalks along the bridges together with such landscaping deemed compatible and consistent with the overall Kane Concourse promenade appearance. These provisions may be modified as provided for in subsection (e) above.

(g) *Public hearing procedure.* At the public hearing, the applicant shall have the burden of proof in demonstrating how the proposed application complies with the purpose and intent of the Gateway Zoning District code provisions. In determining whether to grant approval of the application with or without appropriate and necessary conditions and safeguards, the Town Council shall determine whether the application complies with the purpose and intent of this section and shall make the following findings:

- (1) Whether the site development plan design complies with at least the minimum standards contained herein;

- (2) Whether the application will have a favorable effect on the economy of the Town;
- (3) Whether the application will generate or result in excessive noise or traffic congestion;
- (4) Whether the application will cause an undue or excessive burden on public facilities, including potable water, sanitary sewer, solid waste disposal, community recreation, transportation facilities or other such public facilities which have been constructed or which are planned and budgeted for construction;
- (5) Whether the application will cause excessive overcrowding or concentration of people or population;
- (6) Whether the application will be compatible with the surrounding area and its development in scale and appearance. The Town shall base compatibility on the existing scale of adjoining development and the allowable scale under the applicable zoning district; and
- (7) Whether the application is a reasonable use of property and results in a public benefit including, but not limited to, the enhancement of the subject real property and/or the redevelopment of structures in deteriorated or poor condition.

The Town Council shall have full authority to approve, approve with modifications, or deny a site development plan application based upon its determination that the application, as proposed or modified, serves and protects or does not serve and protect the public health, safety and welfare. Likewise, the Town Council shall have authority to impose reasonable conditions and safeguards necessary to protect the public health, safety and welfare upon the approval of any development application.

(h) *Ownership requirements.* An applicant for approval shall be the owner(s) of record, a contract purchaser of the property (provide consent from owner of record) or an authorized agent thereof of the entire property encompassed by the application (the "property").

(i) *Application procedure.* The applicant shall submit an application to the Town Manager or his or her designee on a form(s) prescribed by the Town Manager. The Town Manager or his or her designee shall require a least the following information with the application:

- (1) Letter of intent.
- (2) A detailed site development plan showing dimensions of all buildings, structures, setbacks, open spaces, landscaping and off-street parking. In the event that sufficient off-street parking is not available on site to meet existing code requirements, the applicant shall furnish to the Town Manager written documentation of a cross parking agreement or other parking arrangement satisfactory to the Town Attorney, which will provide sufficient parking as determined by the Town Council.

- (3) Proposed floor plans and elevations (including signage) for all buildings and structures. Exterior building materials and colors shall be identified.
- (4) A complete list of uses and the square footage for each use requested.
- (5) A certified copy of a land survey of the property (not more than 6 months old).
- (6) Development review and processing fees as established by the Town Council by Resolution shall be charged for all design review services provided by the Town staff and any consultants. In addition, all costs for advertisements and mailing shall be borne by the applicant.
- (7) Such other documentation as the Town Manager reasonably determines is necessary to properly review the proposed project.

(j) *Legal effect of Town Approval.* Notwithstanding anything in the code to the contrary, the approval of the application shall constitute the approved site development plan and the development regulations applicable to the property. The Town Council shall be prohibited from approving an application that would increase the intensity, density or height of development above that which is allowed by the adopted Comprehensive Plan and any Land Development Regulations to implement the intensity standards.

Any prior land development permits issued by the Town, including but not limited to the PUD Overlay designation on Lots 35 through 37 of Block 4, shall remain in effect until such time as the Town or property owner seeks to remove the designation and/or modify the approved development plan. The development criteria contained in this section shall supercede any other code provisions, however, existing development shall be permitted to remain until re-development is requested.

In the event that the owner wishes to modify an approved site development plan application in any fashion which would increase the amount of square footage of the building(s) or lessen landscaping or open space or create an undue burden on any public facilities, a separate and new application shall be filed and shall be subject to the terms and conditions of this section.

In the further event that the owner does not submit complete plans for building permits of the main building to the Town within twelve (12) months and begin development within eighteen (18) months from the date of approval, the Town's approval shall lapse. For the purposes of this section, the term "begin development" shall mean substantial construction such as land clearing, utility construction, foundation work, etc. The term shall not include property fencing, placement of construction trailers, equipment and materials. Once construction commences, construction activities shall occur continuously with regular inspections. The Town, upon a demonstration of just cause by the owner, may grant a reasonable extension of time to commence development. If construction ceases for more than sixty (60) days, the project shall be deemed abandoned and the Town's approval shall lapse.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO THE REGULATION OF EXTERIOR BALCONIES; AMENDING SECTION 23-12(15)(a) OF THE ZONING AND PLANNING CODE TO ESTABLISH REGULATIONS FOR BALCONIES IN THE GATEWAY "G" DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Town's Land Development Regulations accordingly; and

WHEREAS, the Town Council has studied the current Zoning and Planning Code provisions of the Town and find that certain modifications are necessary and desirable to address the requests of Town property owners, by providing regulations to allow and regulate balconies in the Gateway "G" District, which are currently only allowed in residential developments within the Town; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to modify Section 23-12(15)(a) to establish land development regulations for balconies on buildings constructed in the Gateway "G" District, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 3: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2022.

PASSED on Second Reading this ____ day of _____, 2022.

JOSHUA D. FULLER
MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
ACTING TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JOSEPH S. GELLER, ESQ.
GREENSPOON MARDER, LLP
TOWN ATTORNEYS

EXHIBIT “A”

The Town of Bay Harbor Islands, Florida Code of Ordinances is hereby amended as follows:

CHAPTER 23

ZONING AND PLANNING

ARTICLE I. ZONING REGULATIONS

Sec. 23-12. – General provisions.

(15) Projections into setback areas:

(a) Notwithstanding anything to the contrary set forth in this subsection, the following are permitted:

i. On the West Island in waterfront homes, balconies having accessibility from within the building may project into the front yard setback areas not more than four feet; provided there shall be not less than eight feet clear headroom under such projection and providing that such balconies shall not be screened, shuttered or enclosed in any fashion.

ii. On the West Island in waterfront homes which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the front yard setback area not more than four feet.

iii. On homes on the West Island which are on interior lots, which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the rear yard setback area not to exceed four feet.

iv. None of the foregoing subsections i., ii. or iii. shall permit any portion of the balconies or staircases to project into any side yard setback.

v. On the East Island for RM-1 (waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony

may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

Rear yards. Balconies may project into the minimum rear yard area not more than six feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than six feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

vi. On the East Island for RM-2 (non-waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

Rear yards. Balconies may project into the minimum rear yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than four feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

vii. On the East Island for RM-3 (waterfront) tracts, balconies extending from the exterior walls of the main building into the minimum front, side and rear yard areas shall not be permitted.

viii. On the East Island for Gateway "G" zoned lots, balconies extending from the exterior walls of the main building into the minimum front, side and rear yard areas shall be permitted. Balconies may project into the minimum front (street) yard or rear yard areas by not more than four feet. Balconies may project into the minimum side yard areas by not more than two feet. Notwithstanding the above, the town may approve variations to the above balcony projections, except for road right-of-way encroachments, as part of a site development plan.



TOWN OF BAY HARBOR ISLANDS

(APPLICATION FOR PLAN REVISION)

"PLEASE FILL OUT COMPLETELY"

Application is hereby made for plan revision as indicated below. I certify that all information is accurate. I understand that my plans must be reviewed and approved by staff prior to being placed on the agenda. I am aware that any error in indicating all the descriptive changes may result in the need for further plan revisions or inspection delays.

PROCESS/PERMIT NUMBER BP2016- 35

APPLICANT INFORMATION

Company One Kane Concourse, LLC c/o Matthew Amster
Name Matthew Amster Contact Number 305-374-5300
Address 200 S. Biscayne Blvd. Suite #300
City Miami State Florida Email Address MAmster@brzoninglaw.com

OWNER / PROPERTY INFORMATION

Name One Kane Concourse, LLC Address 1801 NE 123 Street, #300
Folio# 13-2227-001-0010 Lot 1 and 2 Block 1
Contact Number 305-861-8181 Email Address Ltauber@tauberco.com

-TC Approval

DATE OF ORIGINAL APPROVAL ~~~DRC~~~ April 19, 2017 P&Z: January 17, 2017

REVISION # See Comparison Plan Sets REVISION DATE: July 26, 2022

ENTER SHEET # See Comparison Plan Sets

Owner / Applicant given copy of Plan Revision Checklist (☒) Yes (☐) No

REVISION REVIEW FEE: \$350.00 Please make payment payable to The Town of Bay Harbor Islands

NOTE: If any application is disapproved, the Design and Review Board shall detail in its findings the criterion or criteria that are not met. The action taken by the Board shall be reduced to writing, signed by the Chairman, and a copy thereof made available to the applicant upon request. Any action taken by the Design and Review Board may be appealed to the Town Council, whose decision on appeal shall be final.

INCOMPLETE SUBMISSIONS WILL NOT BE PLACED ON THE AGENDA



One Kane Concourse

Bay Harbor Islands, Florida 33154

prepared for:
TAUBCO

valet and parking evaluation

TRAFTECH
ENGINEERING, INC.

September 2022

September 30, 2022

Mr. Irwin Tauber
TAUBCO
1801 NE 123rd Street, Suite 300
North Miami, Florida 33181

**Re: Valet Operation and Parking Needs for One Kane Concourse
Bay Harbor Islands, Florida**

Dear Irwin:

Traf Tech Engineering, Inc. was retained by TAUBCO to address the valet and parking needs associated with adding lunch service and increasing the intensity at the restaurant of the One Kane Concourse office-restaurant development. The site is located at the southeast corner of Kane Concourse and East Bay Harbor Drive in the Town of Bay Harbor Islands. The One Kane Concourse mixed-use project will consist of the following land uses and intensities:

- o 42,302 square feet of leasable office space
- o **9,353** square feet of customer service area for the restaurant use
 - 50% of 7,506 indoor sq. ft. at the ground floor, or **3,753 sf** (70 seats)
 - **1,550** outdoor square feet at the ground floor (32 seats)
 - **4,050** outdoor square feet at the rooftop (84 seats)

A copy of the site plan, including the different levels of the parking garage, is included in Attachment A.

Trip Generation

A trip generation analysis was performed for the project using the trip generation equations published in the Institute of Transportation Engineer's (ITE) report *Trip Generation Manual* (11th Edition). The trip generation analysis was undertaken for daily conditions, for the AM peak hour, and for the PM peak hour. According to ITE's *Trip Generation Manual* (11th Edition), trip generation equations for the office and restaurant uses are:

OFFICE BUILDING (ITE Land Use 710)

Daily Conditions

$$Ln(T) = 0.87 Ln(X) + 3.05$$

Where T = number of daily trips, X = 1,000 square feet

AM Peak Hour

$$Ln(T) = 0.86 Ln(X) + 1.16 \text{ (88\% inbound and 12\% outbound)}$$

Where T = number of AM peak hour trips, X = 1,000 square feet

PM Peak Hour

$$Ln(T) = 0.83 Ln(X) + 1.29 \text{ (17\% inbound and 83\% outbound)}$$

Where T = number of PM peak hour trips, X = 1,000 square feet

RESTAURANT (ITE Land Use 931)

Daily Conditions

$$T = 2.6 (X)$$

Where T = number of daily trips, X = number of seats

AM Peak Hour

$$T = 0.02 (X) \text{ (50\% inbound and 50\% outbound)}$$

Where T = number of AM peak hour trips, X = number of seats

PM Peak Hour

$$T = 0.28 (X) \text{ (67\% inbound and 33\% outbound)}$$

Where T = number of PM peak hour trips, X = number of seats

Using the above-listed equations from the ITE document, a trip generation analysis was undertaken for One Kane Concourse development. The results of this effort are documented in Table 1 on the following page. As indicated in Table 1, the project is projected to generate approximately 743 daily trips, approximately 82 AM peak hour trips (71 inbound and 11 outbound) and approximately 102 trips during the typical afternoon peak hour (39 inbound and 63 outbound).

When compared against the approved One Kane Concourse development, the above daily, AM and PM peak hour trips are less than the approved project trips. The trip reduction is due to more accurate determination of office trips based on the latest edition of the ITE Trip Generation Manual.

TABLE 1
Trip Generation Summary (Proposed Uses)
One Kane Concourse

Land Use	Size	Daily Trips	AM Peak Hour			PM Peak Hour		
			Total Trips	Inbound	Outbound	Total Trips	Inbound	Outbound
Office (LUC 710)	42,302 sf	549	80	70	10	81	14	67
Restaurant (LUC 931)	186 seats	484	4	2	2	52	35	17
- Indoor Ground	70 seats							
- Outdoor Ground	32 seats							
- Outdoor Rooftop	84 seats							
Gross Trips		1,033	84	72	12	133	49	84
Internal/Walk Trips (-30%)		-290	-2	-1	-1	-31	-10	-21
New Trips		743	82	71	11	102	39	63

Source: ITE Trip Generation Manual (11th Edition)

Valet Operation

The valet operation is described below:

- o Office employees will be required to drop-off and pick-up their vehicles at the underground parking garage at a valet station located in the parking structure. Employees will arrive and depart during the typical morning and afternoon peak hours and therefore, the circular driveway will not be used during the peak periods. The entrance to the underground parking garage is located at the southwest corner of the site (refer to Attachment A).
- o Office visitors will drop-off/pick-up their vehicles at the circular driveway located on the east side of East Bay Harbor Drive, just north of the garage's main entrance. The circular driveway will operate in a counterclockwise direction by entering via the south driveway and exiting via the north driveway. The valet drivers will park and un-park the office visitor's vehicles at the underground garage. Since office visitors generally occur during off-peak periods, valet is not anticipated to be a problem for office visitors. At least four (4) vehicles can be accommodated within the circular driveway without encroaching into East Bay Harbor Drive.
- o The proposed restaurant will offer valet service to all restaurant patrons. The restaurant will be closed during the typical AM peak hour and will open at 11:30 AM and again at 6:00 PM after the typical afternoon peak hour.

In order to determine the stacking requirements associated with the valet operation for the restaurant, a queuing analysis was undertaken. As indicated in Table 1, the maximum number of restaurant vehicles, during a one-hour period, is approximately 52 vehicles. Since 30% of the restaurant trips are assumed to be internal/walking trips, the vehicular traffic anticipated for the restaurant is approximately 37 (52–30%). A queuing analysis was conducted to ensure that the dimension of the circular driveway is sufficient to accommodate the maximum vehicular demand anticipated at this facility. The length of queue anticipated was determined using information contained in ITE's *Transportation and Land Development*, Chapter 8 – Drive-In Facilities¹. For this analysis, the following input variables were used:

¹ By Vergil G. Stover and Frank J. Koepke.

- o Service Rate: It was assumed that the average time to park/unpark a vehicle by a valet runner is approximately three minutes, or 20 vehicles per hour per valet runner. The three minutes includes potential wait time to turn left (heading south onto East Bay Harbor Drive) via the north driveway followed by another left-turn to enter the parking garage. Assuming up to four (4) valet runners during the peak restaurant period, the maximum service rate of the valet service is 80 vehicles in a one-hour period.
- o Demand Rate: As indicated previously, a maximum of 37 restaurant vehicles will arrive/depart during the highest hour.

Using equation 8-9b and Table 8-11 of ITE's *Transportation and Land Development*, the maximum length of queue anticipated, at the 95% confidence level, is two (2) vehicle.

Since the circular driveway can accommodate at least four vehicles, stacking is not anticipated to be a problem. Moreover, appropriate way-finding signs should be placed to properly direct employee vehicles into the parking garage and to properly direct restaurant patrons and visitors to the circular driveway. The results of the ITE queuing procedure is contained in Attachment B.

Parking Needs

According to the Town of Bay Harbor Islands, the One Kane Concourse project requires approximately 235 parking spaces without considering shared parking principles, internal trips, and walking trips. The 235 parking spaces are based on the following assumptions:

- o 42,302 square feet of leasable office space and a parking requirement of one (1) parking space per 300 square feet = 141 parking stalls
- o 9,353 square feet of restaurant's customer service area, and a parking requirement of one (1) parking space for every 100 sf = 94 parking stalls

Shared Parking

Shared parking principles were applied to the future office and restaurant uses within the project site. Shared parking is defined as parking spaces that are shared between different land uses, especially when the land uses have parking peaks that occur at different times of the day.

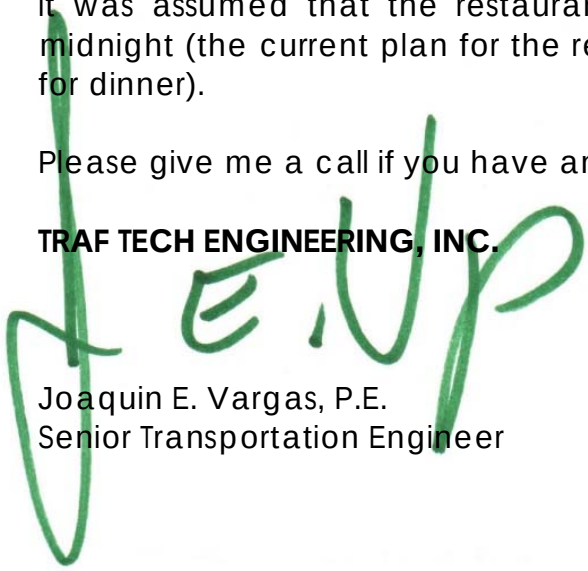
Using the percent parking distribution (shared parking principles), by time of day, as published in the Urban Land Institute (ULI) Shared Parking (Third Edition), the maximum number of shared parking spaces required to serve the land uses located within the project were determined. Table 2 present the parking requirements for the One Kane Concourse project. As indicated in the table, 206 parking spaces are based on the highest parking demand during the day, at noon.

Assuming at least 20% of the office employees and their guests will also use the restaurant, and approximately 10% of the restaurant customers will be walking trips from nearby areas, the One Kane Concourse project requires 144 parking spaces to accommodate its peak parking demand. Since 144 parking stalls are provided, on site, all parking needs can be accommodated on site.

As shown in Table 2, the peak parking needs for the project occur at lunch time. It is important to note that during lunch time, both the ground floor and rooftop seating areas were assumed to be fully occupied (an unlikely event). Moreover, it was assumed that the restaurant will open at 11:30 AM and will close at midnight (the current plan for the restaurant is to open at lunch time and again for dinner).

Please give me a call if you have any questions.

TRAFTech ENGINEERING, INC.

A large, stylized handwritten signature in green ink, which appears to read "J. E. Vargas", is written over the company name and the engineer's name.

Joaquin E. Vargas, P.E.
Senior Transportation Engineer

TABLE 2 One Kane Concourse Shared Parking Analysis - Weekday									
Hour of Day	Spaces = 83 Restaurant (Customer)		Spaces = 11 Restaurant (Employee)		Spaces = 11 Office (Visitor)		Spaces = 130 Office (Employees)		235
	Utilization	Spaces	Utilization	Spaces	Utilization	Spaces	Utilization	Spaces	Total
6:00 AM	0%	0	0%	0	0%	0	3%	4	4
7:00 AM	0%	0	0%	0	1%	0	15%	20	20
8:00 AM	0%	0	0%	0	20%	2	50%	65	67
9:00 AM	0%	0	0%	0	60%	7	90%	117	124
10:00 AM	0%	0	100%	11	100%	11	100%	130	152
11:00 AM	45%	37	100%	11	45%	5	100%	130	183
12:00 PM	100%	83	100%	11	15%	2	85%	111	206
1:00 PM	90%	75	100%	11	45%	5	85%	111	201
2:00 PM	50%	42	100%	11	95%	10	95%	124	186
3:00 PM	45%	37	75%	8	45%	5	95%	124	174
4:00 PM	45%	37	75%	8	15%	2	85%	111	158
5:00 PM	75%	62	95%	10	10%	1	60%	78	152
6:00 PM	80%	66	95%	10	5%	1	25%	33	110
7:00 PM	80%	66	95%	10	2%	0	15%	20	97
8:00 PM	80%	66	95%	10	1%	0	5%	7	83
9:00 PM	60%	50	80%	9	0%	0	3%	4	63
10:00 PM	55%	46	65%	7	0%	0	1%	1	54
11:00 PM	50%	42	65%	7	0%	0	0%	0	49
12:00 AM	25%	21	35%	4	0%	0	0%	0	25

Source: Institute of Transportation Engineers and Urban Land Institute's Shared Parking

Land Use	Size	Pkg Rate	Total Parking Spaces	Employee/Resident % (1)	Spaces	Customer/Visitor % (1)	Spaces
Office	42,302 sq. ft.	1.0 / 300 sf	141 Spaces	92%	130	8%	11
Restaurant	9,353 sq. ft.	1.0 / 100 sf	94 Spaces	12%	11	88%	83
Total			235 Spaces				

- (1) Percentages by Time of Day Per ULI (Blue % Assumed - Closed in the AM)
(2) Internal Trip Capture 20%
(3) Walking Trips 10%

10053
700
9353

Shared Spaces =	206
Internal (2) =	-41
Multimodal (3) =	-21
Parking Required =	144
Parking Provided =	144
Parking Deficit =	0

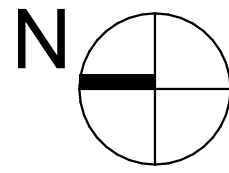
ATTACHMENT A

Site Plan for One Kane Concourse

These Design And Drawing Are The Copyrighted Property Of Revuelta Architecture International, P.A. and May Not Be Reproduced, Copied, or Used in Any Manner Without the Written Consent of the Architect.
This Contractor Must Check And Verify All Dimensions Of The Job And Be Responsible For Same. Reporting Any Discrepancies To The Architects Before Commencing work. Drawings Not to be Stalled.
File: G:\Projects\1338, OFFICE BUILDING BAY HARBOR\1338, WORKSET\1338, BIM\DRB ADA RAMP MODIFICATION\1338, OKC, 2022 NEW DESIGN.pln - By adroust - Date: 7/22/2022



PROPOSED PLANS



revuelta
architecture
international

Miami
Atlanta
Santiago, Chile

revuelta-architecture.com

2950 SW 27TH AVENUE,
SUITE 1115
MIAMI, FL 33133
T: 305.560.5000
F: 305.560.5040

DESIGN BY

Luis O. Revuelta
AR 0007972

PROJECT

ONE KANE CONCOURSE

6551 EAST BAY HARBOR DRIVE
BAY HARBOR ISLANDS, FLORIDA, 33154

OWNER INFORMATION



PLANNING
& ZONING

Revisions

CONSULTANTS

Date
7/22/2022
Scale
As Shown
Project No.
1338

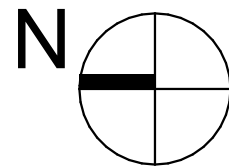
A-108.2

These Design And Drawing Are The Copyrighted Property Of Revuelta Architecture International, P.A. and May Not Be Reproduced, Copied, or Used in Any Manner Without the Written Consent of the Architect.
This Contractor Must Check And Verify All Dimensions Of The Job And Be Responsible For Same. Reporting Any Discrepancies To The Architects Before Commencing work. Drawings Not to be Stalled.
File: G:\Projects\1338_OFFICE BUILDING BAY HARBOR\1338_WORKSET\1338_BIM\DRB ADA RAMP MODIFICATION\1338_OKC_2022 NEW DESIGN.pln - By adroust - Date: 7/22/2022



1 BASEMENT PARKING -1
SCALE: 1/16" = 1'-0"

PROPOSED PLANS



revuelta
architecture
international

Miami
Atlanta
Santiago, Chile

revuelta-architecture.com

2950 SW 27TH AVENUE,
SUITE 1115
MIAMI, FL 33133
T: 305.560.5000
F: 305.560.5040

DESIGN BY

Luis O. Revuelta
AR 0007972

PROJECT

ONE KANE CONCOURSE
6551 EAST BAY HARBOR DRIVE
BAY HARBOR ISLANDS, FLORIDA, 33154

OWNER INFORMATION



PLANNING
& ZONING

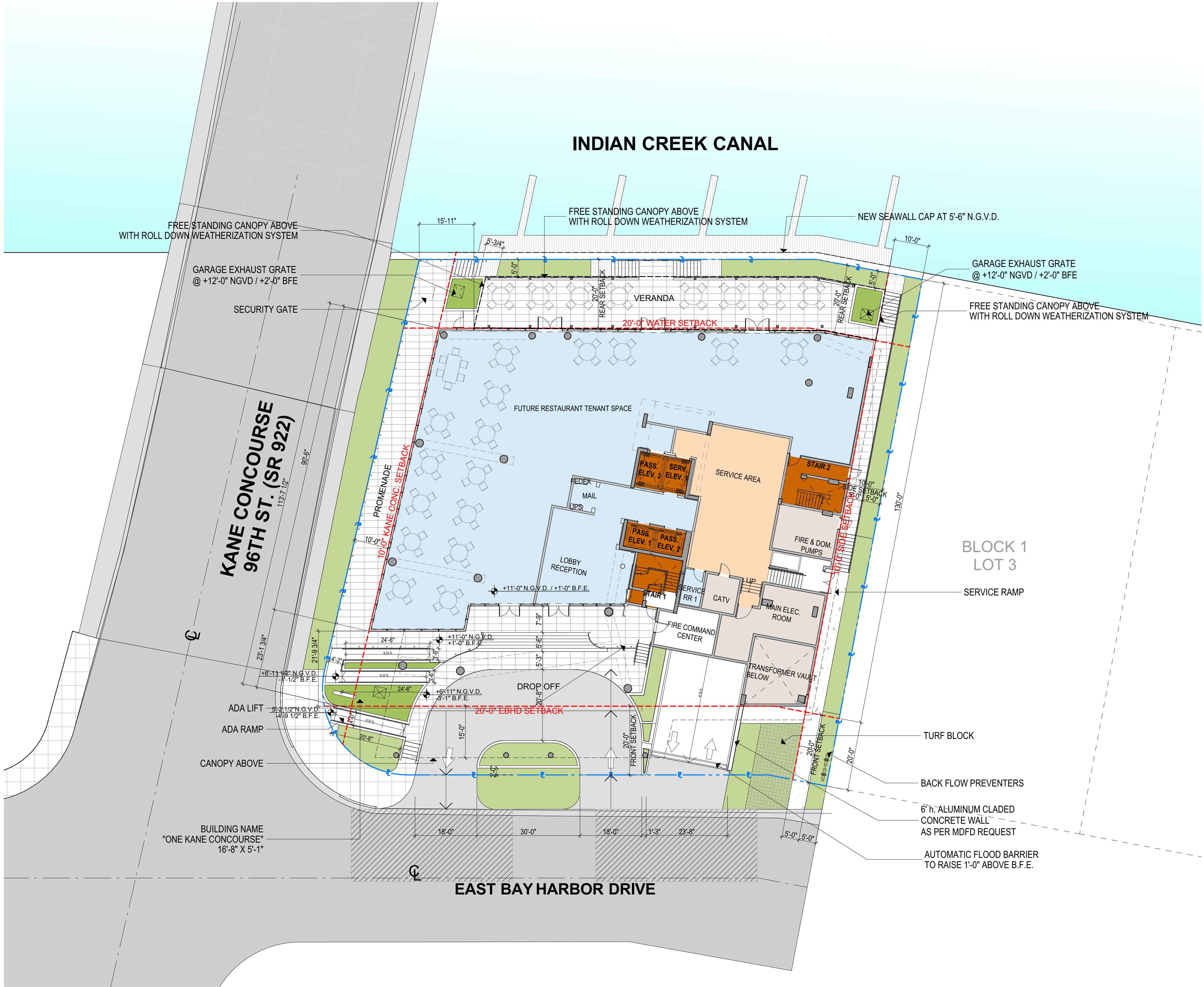
Revisions

CONSULTANTS

Date
7/22/2022
Scale
As Shown
Project No.
1338

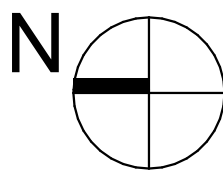
A-109.2

These Design And Drawing Are The Copyrighted Property Of Revuelta Architecture International P.A. and May Not Be Reproduced Except with Specific Written Consent of the Architect.
The Contractor Must Check And Verify All Dimensions Of The Job And Be Responsible For Same. Reporting Any Discrepancies To The Architects Before Commencing work. Drawings Not to be Stalled.
File: G:\Projects\1338 OFFICE BUILDING BAY HARBOR\1338_WORKSET\1338_BIM\DRB ADA RAMP MODIFICATION\1338_OKC_2022 NEW DESIGN.pln - By adroust - Date: 7/22/2022

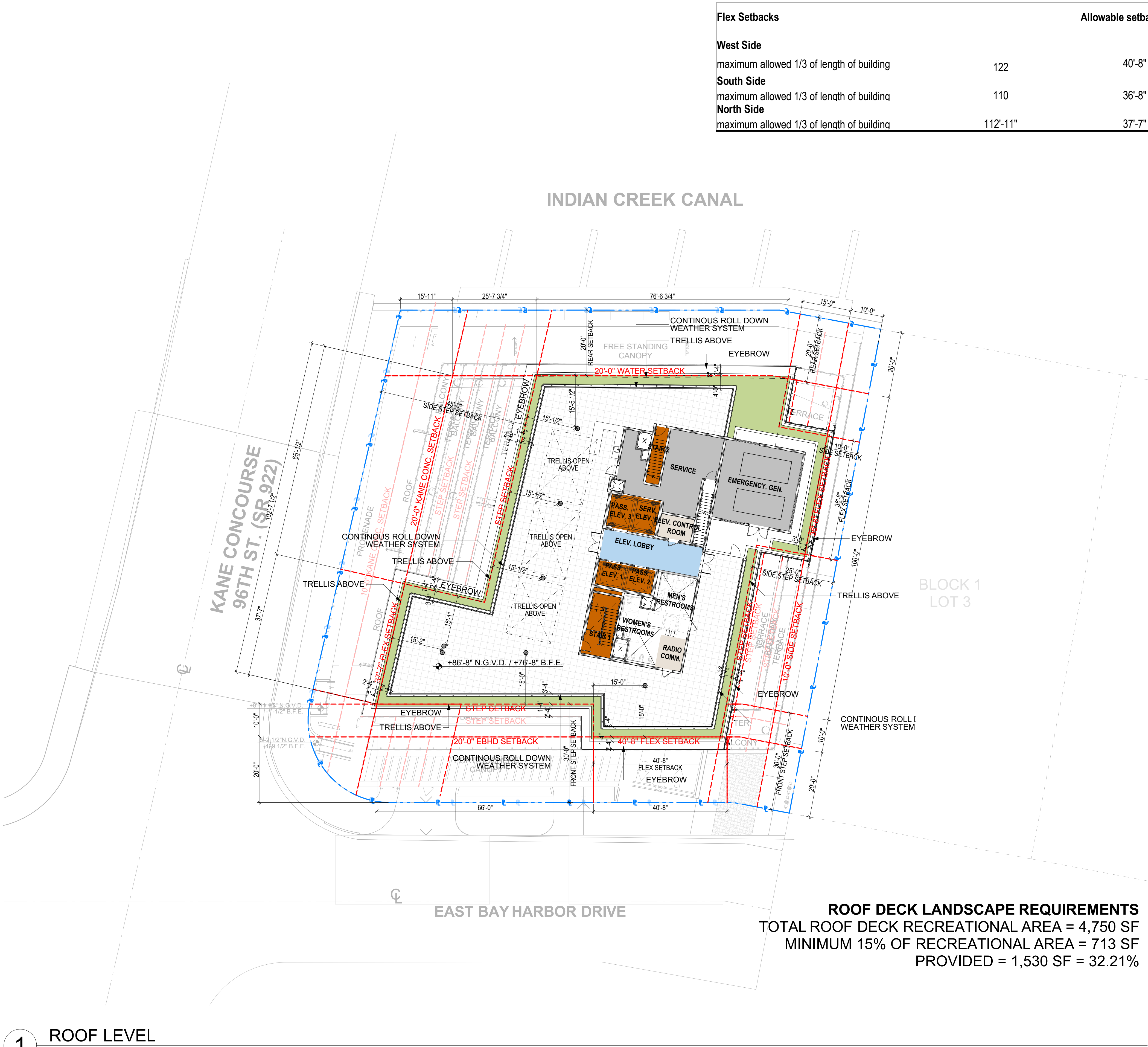


1 LOBBY LEVEL
SCALE: 1/16" = 1'-0"

PROPOSED PLANS



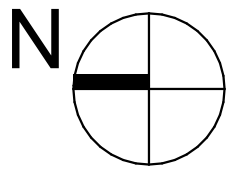
These Design And Drawing Are The Copyrighted Property Of Revuelta Architecture International, P.A. and May Not Be Reproduced, Copied, or Used in Any Manner Without the Written Consent of the Architect.
The Contractor Must Check And Verify All Dimensions Of The Job And Be Responsible For Same. Reporting Any Discrepancies To The Architects Before Commencing work. Drawings Not to be Stalled.
File: G:\Projects\1338 OFFICE BUILDING BAY HARBOR\1338_WORKSET\1338_BIM\DRB ADA RAMP MODIFICATION\1338_DRB ADA RAMP MODIFICATION.dwg - By adroust - Date: 7/22/2022



Flex Setbacks		Allowable setback (Feet)	Proposed (Feet)
West Side			
maximum allowed 1/3 of length of building	122	40'-8"	40'-8"
South Side			
maximum allowed 1/3 of length of building	110	36'-8"	36'-8"
North Side			
maximum allowed 1/3 of length of building	112'-11"	37'-7"	37'-7"

1 ROOF LEVEL
SCALE: 1/16" = 1'-0"

PROPOSED PLANS



revuelta
architecture
international

Miami
Atlanta
Santiago, Chile

revuelta-architecture.com

2950 SW 27TH AVENUE,
SUITE 1115
MIAMI, FL 33133
T: 305.560.5000
F: 305.560.5040

DESIGN BY

Luis O. Revuelta
AR 0007972

PROJECT

ONE KANE CONCOURSE
6551 EAST BAY HARBOR DRIVE
BAY HARBOR ISLANDS, FLORIDA, 33154

OWNER INFORMATION

TAUBCO

PLANNING
& ZONING

Revisions

CONSULTANTS

Date
7/22/2022
Scale
As Shown
Project No.
1338

A-122.2

ATTACHMENT B

ITE Queuing for Valet

Queuing Analysis based on ITE Procedures
One Kane Concourse Restaurant – Valet Parking Analysis

$$q = 37 \text{ veh/hr (demand rate)}$$

$$Q = 80 \text{ veh/hr (service rate)}$$

$$p = \frac{q}{NQ} = 0.4625 \text{ (N = 4 valet runner)}$$

$$Q_M = 0.4625$$

Using Acceptable Probability of 5% (95% Confidence Level)

$$M = \left(\frac{\ln(x > M) - \ln(Q_M)}{\ln(p)} \right) - 1$$

$$M = \left(\frac{\ln(0.05) - \ln(0.4625)}{\ln(0.4625)} \right) - 1$$

$$M = \left(\frac{-2.9957 - (-0.7711)}{-0.7711} \right) - 1$$

$$M = 2.9 - 1 = 1.9, \text{ say 2 vehicles}$$



October 10th, 2022

Jose Custodio PE,
Town of Bay Harbor Islands
Public Works Department
9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154

RE: TOWN OF BAY HARBOR EMERGENCY SERVICES AND PRIMARY PUMP STATION BYPASS

Dear Jose

David Mancini and Sons, Inc would like to express our gratitude for considering us to provide the Town of Bay Harbor with the emergency services to keep the sanitary system operating after the pass of Hurricane Ian

Enclosed is the summary of the change order request costs to perform emergency services for the town of bay harbor due to a sanitary system surcharge as the result of hurricane Ian high tides. Proposal exclusively for services render thru October 7th and rental thru October 21st. Below is a summary of the services rendered

- Emergency mobilization of DMSI crew, equipment and supervision
- Emergency cleaning services of dry well by using vacuum truck
- Tap Existing 10" FM to relocate existing flow meter
- Emergency mobilization of electrical subcontractor
- Electrical work to relocate/reconnect flow meter and flow sonar sensors
- Tap existing 10" force main to install tapping sleeve with gate valve
- 24/7 emergency bypass
- Emergency bypass monitoring overnight to operate pump and monitor system flows
- Assess existing gravity sewer system for proper bypass operations
- Maintain bypass operational throughout the duration of the bypass
- Demobilize equipment

Evelio Gibert
Project Manager



DAVID MANCINI
& SONS, INC.

2655 South Le Jeune Rd, Suite PH2A Coral Gables 33134
PH: (954) 977-3556 FAX: (954) 944-2040

2601 Wiles Rd Pompano Beach Florida 33073
PH: (954) 977-3556 FAX: (954) 944-2040

RCO#1 TOWN OF BAY HARBOR EMERGENCY BYPASS
PROJECT NAME: TOWN OF BAY HARBOR PUMP STATION EMERGENCY SERVICES
PROJECT #: TBD
CONTRACTOR: DAVID MANCINI & SONS (DMSI)
DATE: 10/7/2022

ENCLOSED IS THE SUMMARY OF THE CHANGE ORDER REQUEST COSTS TO PERFORM EMERGENCY SERVICES FOR THE TOWN OF BAY HARBOR DUE TO A SANITARY SYSTEM SURCHARGE AS THE RESULT OF HURRICANE IAN HIGH TIDES

EMERGENCY MOBILIZATION OF DMSI CREW, EQUIPMENT AND SUPERVISION
EMERGENCY CLEANING SERVICES OF DRY WELL BY USING VACUUM TRUCK
TAP EXISTING 10" FM TO RELOCATE EXISTING FLOW METER
EMERGENCY MOBILIZATION OF ELECTRICAL SUBCONTRACTOR
ELECTRICAL WORK TO RELOCATE/RECONNECT FLOW METER AND FLOW SONAR SENSORS
TAP EXISTING 10" FORCE MAIN TO INSTALL TAPPING SLEEVE WITH GATE VALVE
24/7 EMERGENCY BYPASS
EMERGENCY BYPASS MONITORING OVERNIGHT TO OPERATE PUMP AND MONITOR SYSTEM FLOWS
ASSESS EXISTING GRAVITY SEWER SYSTEM FOR PROPER BYPASS OPERATIONS
MAINTAIN BYPASS OPERATIONAL THROUGHOUT THE DURATION OF THE BYPASS
DEMOLIZE EQUIPMENT

SUMMARY OF DIRECT ADDITIONAL COSTS

MOBILIZATION/DEMOLIZATION	\$ 15,000.00
TOTAL LABOR	\$ 73,644.89
TOTAL EQUIPMENT (8" PUMP RENTAL & HOSES)	\$ 26,643.75
TOTAL MATERIAL	\$ 21,938.33
TOTAL SUB-CONTRACTOR	\$ 8,125.00

Subtotal Direct Cost	\$ 145,351.97
-----------------------------	----------------------

TOTAL LUMP SUM COST	\$ 145,351.97
----------------------------	----------------------

RCO#1 TOWN OF BAY HARBOR EMERGENCY BYPASS**LABOR COSTS -**

LABOR BURDEN MULTIPLIER (LBM)		108.20%
Social Security Contributions & Excise and Payroll	6.20%	
Medicate Rate	1.45%	
Unemployment	5.49%	
Workmens Compensation	7.16%	
Health Benefits	14.20%	
Retirement Benefits	23.70%	
Hazard Pay	50.00%	

VACATION MULTIPLIER (VM)		13.00%
Sick Leave (1 week out of 52)		
Vacation (2 weeks out of 52)		
Holiday Pay (1 week out of 52)		

Insurance Schedule		4.35%
Insurance Public Liability and Property Damage		
Insurance	4.35%	

Total Burden Rate	125.55%
--------------------------	----------------



**DAVID MANCINI
& SONS, INC.**

SUMMARY - LABOR COSTS

SUPERVISION			See Below
MAINLINE CREW			See Below
SERVICE CREW			See Below
RESTORATION			See Below
TOTAL LABOR			\$ 73,644.89

SUPERVISION	Hourly Rate	Burden	Hours	Total Cost
Evelio Gibert	\$ 70.00	2.2555	80	\$ 12,630.80
Albert Ramos	\$ 38.00	2.2555	80	\$ 6,856.72
SUBTOTAL				\$ 19,487.52
Emergency Mark-up 25%				\$ 4,871.88
TOTAL LABOR				\$ 24,359.40

MAINLINE CREW						
DMSI LABOR	Hourly Rate	OT- Rate	Burden	Hrs.	OT-Hours	Total Cost
FOREMAN	\$ 40.00	\$ 60.00	2.2555	40.0	30.0	\$ 7,668.70
PIPE LAYER	\$ 35.00	\$ 52.50	2.2555	40.0	30.0	\$ 6,710.11
TAILMAN	\$ 26.50	\$ 39.75	2.2555	40.0	30.0	\$ 5,080.51
SKILL LABORER	\$ 23.00	\$ 34.50	2.2555	40.0	30.0	\$ 4,409.50
LABORER	\$ 21.00	\$ 31.50	2.2555	40.0	30.0	\$ 4,026.07
LABORER	\$ 21.00	\$ 31.50	2.2555	40.0	30.0	\$ 4,026.07
SUBTOTAL						\$ 31,920.96
Emergency Mark-up 25%						\$ 7,980.24
TOTAL LABOR						\$ 39,901.20

BYPASS MONITORING SERVICES						
DMSI LABOR	Hourly Rate	OT- Rate	Burden	Hrs.	OT-Hours	Total Cost
Horasia Richards	\$ 21.00	\$ 31.50	2.2555		32.0	\$ 2,273.54
Reginald Jordan	\$ 21.00	\$ 31.50	2.2555		39.0	\$ 2,770.88
Luis Membreno	\$ 26.00	\$ 39.00	2.2555		14.0	\$ 1,231.50
Jorge Santos	\$ 26.00	\$ 39.00	2.2555		14.0	\$ 1,231.50
SUBTOTAL						\$ 7,507.43
Emergency Mark-up 25%						\$ 1,876.86
TOTAL LABOR						\$ 9,384.29



DAVID MANCINI
& SONS, INC.

EQUIPMENT COST

<u>EQUIPMENT COSTS</u>	WEEKLY RATE	QTY		TOTAL
UNITED RENTALS	\$ 1,600.00	3.00		\$ 4,800.00
JD 85	\$ 4,900.00	1.00		\$ 4,900.00
	HOURLY RATE	QTY		TOTAL
VACCUM TRUCK	\$ 250.00	15.00		\$ 3,750.00
VACCUM TRUCK DECONTAMINATION	\$ 1,000.00	LS 1.00		\$ 1,000.00
<u>ADDITIONAL EQUIPMENT COST</u>	RATE	UM	QTY	TOTAL
RENTAL PROTECTION	\$ 250.00	LS	1.00	\$ 250.00
ENVIROMENTAL CHARGE	\$ 75.00	LS	1.00	\$ 75.00
PUMP DELIVERY	\$ 570.00	LS	1.00	\$ 570.00
PUMP PICK-UP	\$ 570.00	LS	1.00	\$ 570.00
Trucks	Hourly Rate	Running HRS		Total Cost
Utility Truck	15	70		\$ 1,050.00
Utility Truck	15	70		\$ 1,050.00
Utility Truck	15	70		\$ 1,050.00
Fuel Truck	56.25	40		\$ 2,250.00
SUBTOTAL				\$ 21,315.00
Emergency Mark-up 25%				\$ 5,328.75
TOTAL EQUIPMENT				\$ 26,643.75

Material Description	QTY	Unit	Unit Cost	Total Cost
Fuel	459	Gal	\$ 6.38	\$ 2,928.42
PIPE MATERIAL				
TAPPING SLEEVE	1	EA	\$ 2,106.98	\$ 2,106.98
GATE VALVE	1	EA	\$ 1,607.13	\$ 1,607.13
MEGALUGS	2	EA	\$ 76.00	\$ 152.00
ACCESORY KITS	4	EA	\$ 74.00	\$ 296.00
6" DI	6	LF	\$ 135.50	\$ 813.00
FLG ACCESORY KIT	1	EA	\$ 105.12	\$ 105.12
6" Aluminum Adapter	1	EA	\$ 97.32	\$ 97.32
10X8 Reducer	1	EA	\$ 860.00	\$ 860.00
10X1X2 SADDLE	2	EA	\$ 358.11	\$ 716.22
1 1X2 CORP	2	EA	\$ 168.15	\$ 336.30
2 BRASS COUPLING	2	EA	\$ 26.50	\$ 53.00
CAMLOCK FITTINGS	1	LS	\$ 5,331.00	\$ 5,331.00
EXCESS MATERIAL RESTOCKING FEE 10%	1	LS	\$ 1,000.00	\$ 1,000.00
SUBTOTAL				\$ 16,402.49
TTL W/ Tax				\$ 1,148.17
Emergency Mark-up 25%				\$ 4,387.67
TOTAL MATERIAL COST				\$ 21,938.33

SUBCONTRACTOR COST

Description	QTY	Unit	Unit Cost	Total Cost
RANGELINE	1	LS	\$ 2,600.00	\$ 2,600.00
SOUTH FLORIDA ELECTRIC	1	LS	\$ 3,900.00	\$ 3,900.00
SUBTOTAL				\$ 6,500.00
Emergency Mark-up 25%				\$ 1,625.00
TOTAL SUBCONTRACTOR				\$ 8,125.00



FLUID SOLUTIONS
BRANCH I39
280 NW 12TH AVE
POMPANO BEACH FL 33069-2902
954-532-3732



RENTAL AND SERVICE AGREEMENT

211330284

Job Site

BAY HARBOR
9665 BAY HARBOR TER
BAY HARBOR IS FL 33154-2005

Office: 954-977-3556 Cell: 754-264-9594

DAVID MANCINI & SONS
2601 WILES RD
POMPANO BEACH FL 33073-3072

Customer # : 3024456
Agreement Date : 09/29/22
Rental Out : 09/29/22 04:00 PM
Scheduled In : 10/27/22 04:00 PM
UR Job Loc : 9665 BAY HARBOR TER,
UR Job # : 66
Customer Job ID :
P.O. # :
Ordered By : DAVID MANCINI
Reserved By : JOEL PIREZ
Salesperson : JOEL PIREZ

This is not an invoice
Please do not pay from this document

RENTAL ITEMS:								
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.	
1	10494144	PUMP 8" DBA-SILENCER SUPER VACASSIST-DSL Make: PIONEER Model: PP88S12L714045 Serial: PP28547 Meter out: 14857.50	555.00	555.00	1,258.00	3,775.00	3,775.00	
3	538/2230	HOSE 8X20 KANAFLEX SUCTION - QC	55.00	55.00	110.00	215.00	645.00	
1	545/6823	8" QC STRAINER	20.00	20.00	35.00	65.00	65.00	
1	545/6601	6" QC FLG X SOCKET	10.00	10.00	20.00	42.00	42.00	
1	545/6820	8 X 6 QC REDUCER 8" female bauer x 6" male bauer	10.00	10.00	20.00	50.00	50.00	
1	545/1067	BOLT, PACK 6-MOLDED FLG	15.00	15.00	35.00	89.00	89.00	
1	545/6406	4X6 QC ENLARGER 6" FEMALE BAUER X 4" MALE BAUER	13.45	13.45	25.58	51.19	51.19	
1	999/9999	MISCELLANEOUS BULK INVENTORY EQUIPMENT 1-4" FEMALE BAUER X 4" MALE CAMLOCK 1-4" FEMALE BAUER X 4" FEMALE CAMLOCK					N/C	
1	545/6801	8" QC FLG X SOCKET		25.00	50.00	100.00	100.00	
1	545/1068	BOLT, PACK 8-MOLDED FLG		15.00	35.00	90.00	90.00	
					Rental Subtotal:		4,907.19	
SALES/MISCELLANEOUS ITEMS:								
Qty	Item		Price	Unit of Measure	Extended Amt.			
1	ENVIRONMENTAL SERVICE CHARGE	[ENV/MCI]	75.500	EACH	75.50			
					Sales/Misc Subtotal:		75.50	
					Agreement Subtotal:		4,982.69	
					Tax:		348.79	
					Estimated Total:		5,331.48	
COMMENTS/NOTES:								
CONTACT: DAVID MANCINI CELL#: 754-264-9594								
CONTINUED								

OPTIONAL RENTAL PROTECTION PLAN: THE RENTAL PROTECTION PLAN IS NOT INSURANCE. The Rental Protection Plan is only available to direct commercial customers. Upon accepting the optional Rental Protection Plan, Customer agrees to pay a charge equal to 15% of the rental charges on the Equipment Customer wants covered by the Rental Protection Plan. In return, United agrees to waive certain claims for accidental damages to or theft of such covered Equipment occurring during normal and careful use. Customer remains liable for all other damages as set forth in the Rental and Service Terms.

NOTICE FOR RENTAL OF A MOTOR VEHICLE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A DAMAGE WAIVER (or "Rental Protection Plan") TO LIMIT CUSTOMER'S FINANCIAL RESPONSIBILITY FOR DAMAGE TO, OR THEFT OF, THE MOTOR VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE DAMAGE WAIVER, CUSTOMER MAY WISH TO DETERMINE WHETHER CUSTOMER'S OWN INSURANCE GIVES CUSTOMER COVERAGE. THE PURCHASE OF THIS DAMAGE WAIVER IS NOT MANDATORY, AND MAY BE WAIVED OR DECLINED BY CUSTOMER.

A CLEANING CHARGE: WILL APPLY TO EQUIPMENT RETURNED WITH EXCESSIVE DIRT, CONCRETE, AND/OR PAINT. CUSTOMER IS RESPONSIBLE FOR ALL DAMAGE. THERE WILL BE AN ADDITIONAL CHARGE FOR MISSING KEYS AND TOLL TRANSPONDERS.

REFUELING SERVICE CHARGE: Customer is required to return the Equipment with a full tank of fuel. If Customer returns the Equipment with less than a full tank of fuel, Customer agrees to pay a Refueling Service Charge at the per gallon rate applicable at the time Customer returns the Equipment. (The current rate is available from the Store Location; but, the final rate may differ based on market conditions at the time of return). For additional information, see the Rental and Service Terms.

ENVIRONMENTAL SERVICE CHARGE: Due to the hazardous nature of some waste and other products, to comply with federal and state environmental regulations, and to promote a clean environment, United charges an Environmental Service Charge for certain rentals. The Environmental Service Charge is not a government-mandated charge, is not designated for any particular use, and is used at United's discretion. The Environmental Service Charge is 2.00% of the rental charge and will not exceed \$99. Customer acknowledges the items indicated above are subject to the Environmental Service Charge and Customer agrees to pay that Charge.

DELIVERY: If Customer chooses to have United deliver and pick up the Equipment, Customer agrees to pay a Delivery and Pickup Service Charge.

READ BEFORE SIGNING: By signing below, Customer: (i) agrees that Customer has received, read and agreed to the Rental and Service Terms and the optional Rental Protection Plan ("RPP") Terms (if the RPP is applicable) in effect as of the latest date below, both of which are amended from time to time and posted online at <https://www.unitedrentals.com/legal/rental-service-terms-US>, and <https://www.unitedrentals.com/legal/rpp-US>, respectively, and are incorporated by reference into this Agreement; (ii) authorizes United Rentals to charge the payment method provided per the above-referenced terms; and (iii) acknowledges that the Equipment is in the condition as stated on the condition report(s). It is Customer's responsibility to review these terms and conditions from time to time for updates and changes. By agreeing to the Terms, you agree (1) to indemnify United for losses relating to his transaction; (2) that United's liabilities are limited, and (3) that United makes no warranties as the equipment's merchantability, quality or fitness for a particular purpose; as well as other Terms affecting your rights.

X

CUSTOMER SIGNATURE

DATE

CUSTOMER NAME PRINTED

UNITED RENTALS REPRESENTATIVE/DELIVERED BY DATE

NOTICE: By accepting delivery of the Equipment listed above or making payment(s) to United for the Equipment listed above, Customer agrees to be bound by the Rental and Service Terms at the referenced URLs, even if the Rental and Service Agreement has not been fully executed. COPIES OF THE RENTAL AND SERVICE TERMS AND, IF APPLICABLE, THE RPP ARE AVAILABLE IN PAPER FORM UPON REQUEST. The Rental and Service Terms are posted online in Spanish at <https://www.unitedrentals.com/legal/rental-service-terms-us-sp> Los términos del alquiler y del servicio están publicadas en línea en español en <https://www.unitedrentals.com/legal/rental-service-terms-us-sp>



FLUID SOLUTIONS
BRANCH I39
280 NW 12TH AVE
POMPANO BEACH FL 33069-2902
954-532-3732



RENTAL AND SERVICE AGREEMENT

211330284

Job Site

BAY HARBOR
9665 BAY HARBOR TER
BAY HARBOR IS FL 33154-2005

Office: 954-977-3556 Cell: 754-264-9594

DAVID MANCINI & SONS
2601 WILES RD
POMPANO BEACH FL 33073-3072

Customer # : 3024456
Agreement Date : 09/29/22
Rental Out : 09/29/22 04:00 PM
Scheduled In : 10/27/22 04:00 PM
UR Job Loc : 9665 BAY HARBOR TER,
UR Job # : 66
Customer Job ID :
P.O. # :
Ordered By : DAVID MANCINI
Reserved By : JOEL PIREZ
Salesperson : JOEL PIREZ

**This is not an invoice
Please do not pay from this document**

COMMENTS/NOTES:

A CLEANING CHARGE WILL APPLY TO EQUIPMENT RETURNED WITH EXCESSIVE
DIRT, CONCRETE, AND/OR PAINT. CUSTOMER IS RESPONSIBLE FOR ALL
DAMAGE INCLUDING TIRES. THERE WILL BE AN ADDITIONAL CHARGE FOR
MISSING KEYS. A REFUELING SERVICE CHARGE WILL BE APPLIED TO
ALL UNITS NOT RETURNED FULL OF FUEL
SEE BELOW FOR EXPLANATION OF REFUELING SERVICE CHARGE
CUSTOMER HAS RECEIVED THE MANUFACTURER'S TABULATED DATA
FOR SHORING EQUIPMENT RECEIVED
* * * * *



Bid Proposal for BAY HARBOR EMERGENCY REPAIR

DAVID MANCINI & SONS, INC.

Bid Date: 10/10/2022

Core & Main 2572479

Core & Main

18701 SW 108th Ave

Miami, FL 33157

Phone: 786-573-3401

Fax: 786-573-3440

Seq#	Qty	Description	Units	Price	Ext Price
		DUE TO CURRENT SUPPLY CHAIN DISRUPTIONS, MATERIALS ARE SUBJECT TO PRICING AT TIME OF SHIPMENT. MATERIAL AVAILABILITY AND TIMELINESS OF SHIPMENTS CANNOT BE GUARANTEED. THIS TERM SUPERSEDES ALL OTHER CONTRACTUAL PROVISIONS.			
10	1	6 FLGXFLG DI PIPE P401 PR 1' PRIMED IMP PRIMED OR TAR COAT (T/C)	EA	450.00	450.00
30	1	DIXON 600-AL-SS 6" ADAPTER FLG X MALE CAMLOCK 304SS	EA	580.00	580.00
60	1	DIX 6040-DA-SS 6" FEMALE X 4" MALE SS CAMLOCK	EA	870.00	870.00
80	1	CAMLOCK EXT 6" MALE X FEMALE CAMLOCK 12" BLK IRON EXT WITH ALUM MALE & FEMALE ADPTS	EA	295.00	295.00
120	1	6" MALE X FEMALE CAMLOCK 90 ALUMINUM	EA	332.00	332.00
140	1	DIXON 6" DC 600-DC-SS SS DUST CAP DOMESTIC	EA	1,345.00	1,345.00
150	1	DIX 400DA-90SS 4" MALE X FEMALE CAMLOCK SS 90-BND	EA	615.00	615.00
170	1	DIXON 4 G400-DC-SS DUST CAP SS IMPORT	EA	60.00	60.00
180	1	CAMLOCK EXT 4" MALE X FEMALE CAMLOCK 16" 304SS	EA	510.00	510.00
200	2	PIPE SUPPORT GALV FOR 6" PIPE RANGE 18" TO 28"	EA	87.00	174.00
220	1	PIPE SUPPORT GALV FOR 10" PIPE RANGE 8" TO 14"	EA	100.00	100.00
				Sub Total	5,331.00
				Tax	0.00
				Total	5,331.00

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>



EMAIL DUPLICATE INVOICE

FEL-POMPANO BEACH, FL WW #125
PO BOX 100286
ATLANTA, GA 30384-0286

Deliver To: JULIE
From: Matt Briggie
Comments:

Please Contact With Questions:
954-973-8100

Invoice Number	Customer	Page
1172641	43227	1

Please refer to Invoice Number when making payment and remit to:

TOTAL DUE ---> 10683.41

FEL-POMPANO BEACH, FL WW #125
PO BOX 100286
ATLANTA, GA 30384-0286

Sold To:

DAVID MANCINI & SONS INC
2601 WILES ROAD
POMPANO BEACH, FL 33073

Ship To:

COUNTER PICK UP
10810 SW 184TH ST
MIAMI, FL 33157-6737

Ship Whse	Sell Whse	Tax Code	Customer Order Number	Sales Person	Job Name	Invoice Date	Batch
1216	1216	FL2MIA	DAVID JR	MZB	BHIER	09/30/2022	121636

Ordered	Shipped	Item Number	Description	Unit Price	UM	Amount
			BAY HARBOR ISLAND EMERGENC			
1	1	MJTLA16X	16X8 MJ C153 TEE L/A	922.680	EA	922.68
1	1	MJLSLA16	16X15 MJ C153 LONG SLV L/A	639.540	EA	639.54
4	4	SSLDE16	16 DI MJ WDG REST GLND *ONELOK	208.000	EA	832.00
4	4	IMJBG16	16 MJ C153 BLT GSKT PK L/ GLAND	74.000	EA	296.00
1	1	SSLDE8AP	8 DI WDG REST *ONELOK W/A	76.000	EA	76.00
1	1	AFC2508TMLAOL	8 DI MJ RW OL TAPN VLV L/A	1607.130	EA	1607.13
1	1	FNWNBGS61NEF8X	8 316 SS 150# NEOP FF 1/8 FLG PKG	96.000	EA	96.00
1	1	FPPXU	8X6'0 FLGXPE CL BT DI SPL	813.000	EA	813.00
3	3	FNWNBGS61NEF8U	6 316 SS 150# NEOP FF 1/8 FLG SET	105.120	EA	315.36
1	1	R202N121261	10X1-1/2 CC DBL SS STRP NYL SDL	358.110	EA	358.11
1	1	FFB8006NL	LF 1-1/2X2 CC X MIP BALL CORP ST	168.150	EA	168.15
1	1	IBRLFCK	LF 2 BRS COUP	26.080	EA	26.08
1	1	CFP	4 DI C110 125# THRD COMP FLG F/ STL	71.000	EA	71.00
1	1	CFU	6 DI C110 125# THRD COMP FLG F/ STL	112.500	EA	112.50
1	1	W000961	4 PC DP SOC SET	262.910	EA	262.91
1	1	FNWCGFALU	6 ALUM MALE ADPT	97.320	EA	97.32
1	1	FNWNBGS61NEF8P	4 316 SS 150# NEOP FF 1/8 FLG PKG	64.640	EA	64.64
1	1	M6137K	2 SDR9 SS INS STFNR IPS PE	9.900	EA	9.90
1	1	FNWCGDCALU	6 ALUM DUST CAP	97.320	EA	97.32
1	1	SP-PT1401140	V-COUPLER SS DUST CAP	165.000	EA	165.00
1	1	P3490MJ10C10	10X10 SS MJ TAPN SLV 11.10-11.50	2106.980	EA	2106.98
1	1	MJLSP4LA10	10 MJ C153 P-401 LONG SLV L/A	893.900	EA	893.90

ALL ACCOUNTS ARE DUE AND PAYABLE PER THE CONDITIONS AND TERMS OF THE ORIGINAL INVOICE. ALL PAST DUE AMOUNTS ARE SUBJECT TO A SERVICE CHARGE AT THE MAXIMUM RATE ALLOWED BY STATE LAW PLUS COSTS OF COLLECTION INCLUDING ATTORNEY FEES IF INCURRED. FREIGHT TERMS ARE FOR OUR DOCK UNLESS OTHERWISE SPECIFIED ABOVE. COMPLETE TERMS AND CONDITIONS ARE AVAILABLE UPON REQUEST OR CAN BE VIEWED ON THE WEB AT <https://www.ferguson.com/content/website-info/terms-of-sale>
GOVT BUYERS: ALL ITEMS QUOTED ARE OPEN MARKET UNLESS NOTED OTHERWISE.

LEAD LAW WARNING: IT IS ILLEGAL TO INSTALL PRODUCTS THAT ARE NOT "LEAD FREE" IN ACCORDANCE WITH US FEDERAL OR OTHER APPLICABLE LAW IN POTABLE WATER SYSTEMS ANTICIPATED FOR HUMAN CONSUMPTION. PRODUCTS WITH *NP IN THE DESCRIPTION ARE NOT LEAD FREE AND CAN ONLY BE INSTALLED IN NON-POTABLE APPLICATIONS. BUYER IS SOLELY RESPONSIBLE FOR PRODUCT SELECTION.
COVID-19 ORDER: ANY REFERENCE TO OR INCORPORATION OF EXECUTIVE ORDER 14042 AND/OR THE EO-IMPLEMENTING FEDERAL CLAUSES (FAR 52.223-99 AND/OR DFARS 252.223-7999) IS EXPRESSLY REJECTED BY SELLER AND SHALL NOT APPLY AS SELLER IS A MATERIALS SUPPLIER AND THEREFORE EXEMPT UNDER THE EXECUTIVE ORDER.



Invoice Number	Customer	Page
1172641	43227	2

Invoice Sub-Total	10031.52
Tax	651.89
Total Amt	10683.41

	TOTAL DUE --->	10683.41
--	--------------------------	-----------------

ALL ACCOUNTS ARE DUE AND PAYABLE PER THE CONDITIONS AND TERMS OF THE ORIGINAL INVOICE. ALL PAST DUE AMOUNTS ARE SUBJECT TO A SERVICE CHARGE AT THE MAXIMUM RATE ALLOWED BY STATE LAW PLUS COSTS OF COLLECTION INCLUDING ATTORNEY FEES IF INCURRED. FREIGHT TERMS ARE FOR OUR DOCK UNLESS OTHERWISE SPECIFIED ABOVE. COMPLETE TERMS AND CONDITIONS ARE AVAILABLE UPON REQUEST OR CAN BE VIEWED ON THE WEB AT <https://www.ferguson.com/content/website-info/terms-of-sale>
GOVT BUYERS: ALL ITEMS QUOTED ARE OPEN MARKETUNLESS NOTED OTHERWISE.

LEAD LAW WARNING: IT IS ILLEGAL TO INSTALL PRODUCTS THAT ARE NOT "LEAD FREE" IN ACCORDANCE WITH US FEDERAL OR OTHER APPLICABLE LAW IN POTABLE WATER SYSTEMS ANTICIPATED FOR HUMAN CONSUMPTION. PRODUCTS WITH *NP IN THE DESCRIPTION ARE NOT LEAD FREE AND CAN ONLY BE INSTALLED IN NON-POTABLE APPLICATIONS. BUYER IS SOLELY RESPONSIBLE FOR PRODUCT SELECTION.

COVID-19 ORDER: ANY REFERENCE TO OR INCORPORATION OF EXECUTIVE ORDER 14042 AND/OR THE EO-IMPLEMENTING FEDERAL CLAUSES (FAR 52.223-99 AND/OR DFARS 252.223-7999) IS EXPRESSLY REJECTED BY SELLER AND SHALL NOT APPLY AS SELLER IS A MATERIALS SUPPLIER AND THEREFORE EXEMPT UNDER THE EXECUTIVE ORDER.



9665 Bay Harbor Terrace
Bay Harbor Islands
Miami-Dade County
Florida

Sep 30, 2022 2:27:55 PM



1065 97th Street
Miami Beach
Miami-Dade County
Florida

Sep 29, 2022 6:55:06 PM



1065 97th Street
Miami Beach
Miami-Dade County
Florida

Sep 30, 2022 2:27:40 PM







9665 Bay Harbor Terrace
Bay Harbor Islands
Miami-Dade County
Florida

Sep 29, 2022 6:55:41 PM



67 Bay Harbor Terrace
Bay Harbor Islands
Miami-Dade County
Florida

Sep 29, 2022 6:20:31 PM







1063 96th Street
Bay Harbor Islands
Miami-Dade County
Florida
Sep 29, 2022 10:33:10 PM



October 22ND , 2022

Jose Custodio PE,
Town of Bay Harbor Islands
Public Works Department
9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154

RE: TOWN OF BAY HARBOR PUMP STATION PUMPS/PIPING REPLACEMENT AND TEMPORARY BYPASS

Dear Jose

David Mancini and Sons, Inc is pleased to submit its proposal for replacement of the existing pumps and piping. Please refer to the list of items detailed on the proposal table

SITE CONSIDERATIONS:

Existing sanitary sewer to be isolated by the Town of Bay Harbor at the Southernmost manhole from the Pump Station Building to allow DMSI clean and plug gravity sewer going into wet well.

Parking Lot to be used only exclusively by DMSI for material and equipment.

Inclusions:

Proposed bypass to be one single 8" Pump (Same one as used last time)

Exclusions:

1. Final As-builts are Excluded.
2. Permitting
3. Final Mill & Overlay of parking lot
4. Project Specific Bond or Insurance
5. 16" Piping Manifold
6. Check Valves
7. Tankering
8. Furnishing new hatches
9. Excludes disconnects and major electrical components
10. Painting of existing and proposed piping and drywell/valve vault
11. Overtime or Night Work. Proposal is based on normal working hours. If an outstanding circumstance requires overtime and night work we will do our very best to accommodate.

Sincerely,

Evelio Gibert
Project Manager



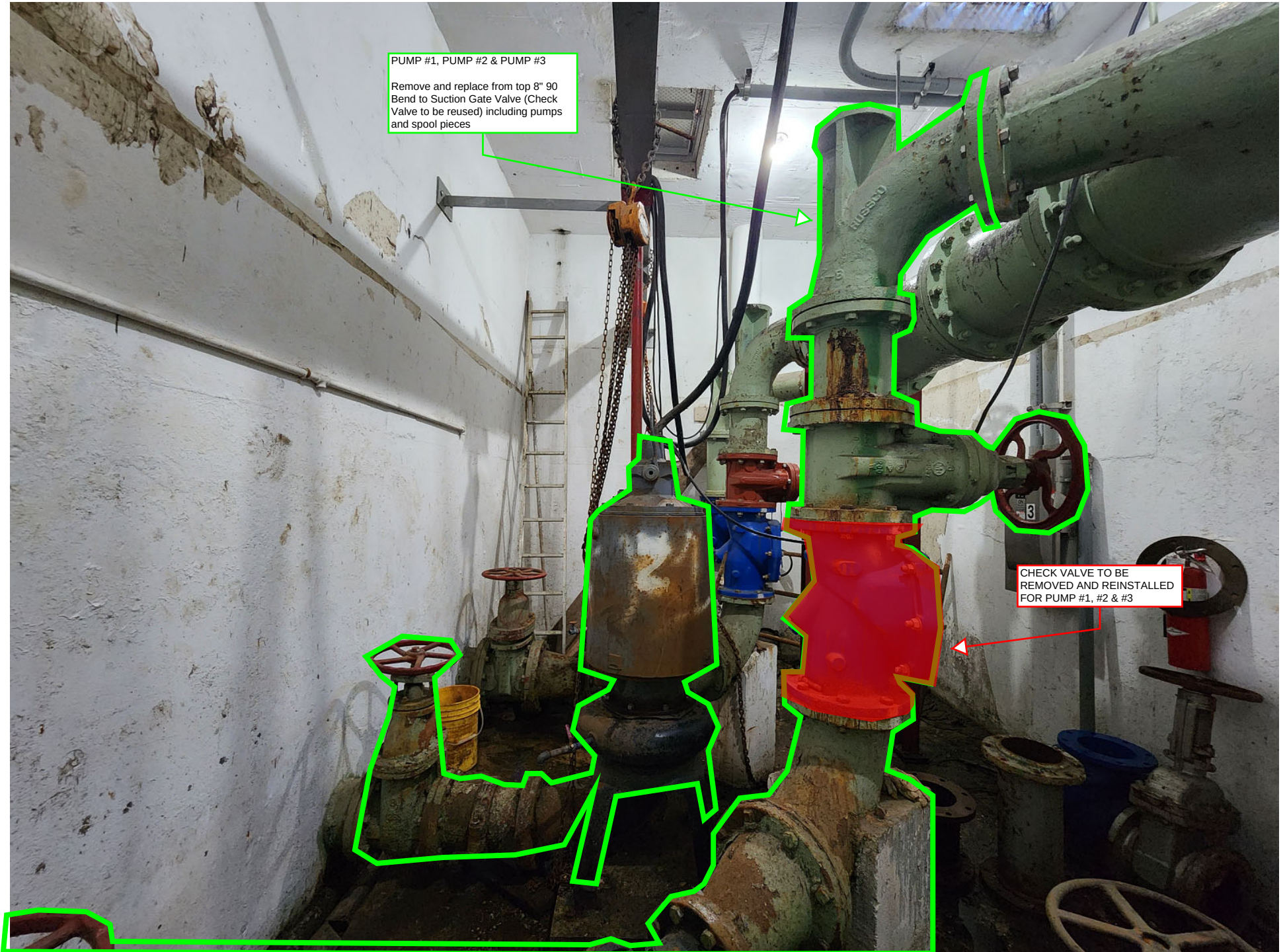
PROPOSAL

TOWN OF BAY HARBOR PUMP STATION PUMPS AND PIPING REPLACEMENT					
Item No.	Description	Quantity	Unit	Unit Price	Total
1	MOBILIZATION	1	LS	\$ 44,900.00	\$ 44,900.00
2	ENGINEERING	1	LS	\$ 16,000.00	\$ 16,000.00
3	UTILITY VERIFICATION	1	LS	\$ 5,900.00	\$ 5,900.00
4	SITE PREP	1	LS	\$ 18,000.00	\$ 18,000.00
5	TAP EXISTING 16" FM	1	LS	\$ 29,000.00	\$ 29,000.00
6	CLEAN AND PLUG EXISTING MANHOLE	1	LS	\$ 15,600.00	\$ 15,600.00
7	SETUP BYPASS	1	LS	\$ 68,000.00	\$ 68,000.00
8	BYPASS MONITORING AND MAINTENANCE	1	LS	\$ 75,000.00	\$ 75,000.00
9	SAW CUT EXISTING FLOOR & REMOVE HATCHES	1	LS	\$ 15,000.00	\$ 15,000.00
10	CLEAN/PREP EXISTING DRYWELL/SETUP RIGGING EQUIPMENT	1	LS	\$ 28,500.00	\$ 28,500.00
11	REMOVAL OF EXISTING PIPING AND PUMPS	1	LS	\$ 81,000.00	\$ 81,000.00
12	CLEAN DRYWELL AFTER PIPING REMOVAL	1	LS	\$ 12,000.00	\$ 12,000.00
13	INSTALL NEW PIPING	1	LS	\$ 165,850.00	\$ 165,850.00
14	INSTALL PUMPS/BASES	1	LS	\$ 498,000.00	\$ 498,000.00
15	RESTORE HATCHES	2	EA	\$ 13,500.00	\$ 27,000.00
16	ELECTRICAL WORK	1	LS	\$ 25,000.00	\$ 25,000.00
17	TEST PUMPS	1	LS	\$ 10,000.00	\$ 10,000.00
18	REMOVE RIGGING EQUIPMENT	1	LS	\$ 9,500.00	\$ 9,500.00
19	BYPASS REMOVAL	1	LS	\$ 18,200.00	\$ 18,200.00
20	SITE RESTORATION	1	LS	\$ 31,900.00	\$ 31,900.00
				LUMP SUM TOTAL	\$ 1,194,350.00
CONTINGENT					
21	PAINT DRYWELL/PIPING/VALVE VAULT	1	LS	\$ 100,000.00	\$ 100,000.00
				CONTINGENT TOTAL	\$ 100,000.00

PUMP #1, PUMP #2 & PUMP #3

Remove and replace from top 8" 90
Bend to Suction Gate Valve (Check
Valve to be reused) including pumps
and spool pieces

CHECK VALVE TO BE
REMOVED AND REINSTALLED
FOR PUMP #1, #2 & #3



TOWN OF BAY HARBOR ISLANDS



Project No. – BHI –

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

Request for Qualifications

October 24, 2022

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____
TABLE OF CONTENTS

- 1. INVITATION TO BID**
- 2. INSTRUCTIONS TO BIDDERS**
- 3. SCOPE OF WORK**
- 4. EVALUATION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS**
- 5. BID FORM**
- 6. CONSULTANT'S QUALIFICATION STATEMENT**
- 7. NON-COLLUSION AFFIDAVIT**
- 8. ADDENDUM**
- 9. SAMPLE AGREEMENT**
- 10. GENERAL CONDITIONS**
- 11. SUPPLEMENTARY CONDITIONS**

EXHIBIT A – TOWN'S SANITARY SEWER SYSTEM ATLAS

**INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____**

INVITATION TO BID

Issue Date: October 24, 2022

All interested parties are hereby notified that the Town of Bay Harbor Islands (the “Town”) is accepting sealed bids for the Project “**INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT**” Project, No. **BHI-_____**.

Work under this Project includes but is not limited to the evaluation of the Town of Bay Harbor Islands wastewater flow of the entire sanitary sewer network (East and West Islands) to determine the extent of the rainfall-derived infiltration and inflow (I&I), sanitary sewer overflows (SSOs), evaluate the Town’s five (5) ejector’s stations capacity and provide a list of priority projects to address any issues discovered during the evaluation.

A **Pre-Bid Conference** will be held on **November 10, 2022, at 10:00 A.M.**, in the Town Hall Council Chambers. The address of Town Hall is 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154.

Contract Documents may be downloaded and printed as required from the Town’s Website at www.bayharborislands-fl.gov. Enquiries regarding this contract may be e-mailed to the Town Engineer, Jose Custodio, P.E., jcustodio@bayharborislands-fl.gov.

All bids shall be clearly marked:

**TOWN OF BAY HARBOR ISLANDS
CONTRACT NO. BHI-_____
INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT**

All bids must be submitted in sealed envelopes to the Town Clerk on or before December 9, 2022, at 3:00 P.M., local time (the “Bid Submittal Deadline”). Immediately thereafter, Bids will be opened publicly and read aloud. The Town assumes no responsibility for Bids not properly marked. **Any Bids received after the Bid Submittal Deadline will not be accepted.**

The Town reserves the right to reject any or all bids and to waive informalities, except timely submission of bids, in any bids received, to re-advertise for bids or to take any other such actions that may be deemed in the best interests of the Town.

Town of Bay Harbor Islands, Florida
Yvonne P. Hamilton, CMC - Town Clerk

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

INSTRUCTIONS TO BIDDERS

1.0 DEFINED TERMS

Terms used in these Instruction to Bidders which are defined in the Standard General Conditions of the Construction Contract, prepared by the Engineer's Joint Contract Documents Committee (EJCDC) and NSPE-ASCE Document 1910-8-A-1, CSI 56465 (1996 Edition) have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom Town (on the basis of the Town's evaluation as hereinafter provided) makes an award and whose Bid the Town determines is in its best interest.

2.0 EXAMINATION OF DOCUMENTS, SITE AND DRAWINGS AND SPECIFICATIONS

- 2.1 Prior to Bid submission, Bidders shall examine the Site and surrounding area, including but not limited to subsurface, water and soil conditions, utilities, and streets to determine all conditions that will affect the Work and become familiar with the nature and extent of Work to be performed and local conditions that may affect the Work. Bidders should perform a Site visit and inspection to get familiar with the site conditions.
- 2.2 It is the Bidder's responsibility to become fully informed as to the existing conditions at the Site and to factor any and all costs of these conditions and/ or risks associated therewith into the Bid.
- 2.3 Bidders shall thoroughly examine the Bidding Documents, General Conditions, Drawings and Specifications, Technical Specifications and any other documents which may be applicable to the Work or Project. All drawings and specifications prepared for this Project are provided in pdf format with this Bid.

3.0 INTERPRETATION OF BIDDING DOCUMENTS

- 3.1 All inquiries, clarifications or interpretations of the Bidding Documents shall be made in writing to the Town Engineer, Jose Custodio, P.E. on or before November 30, 2022, with a copy to the Town Manager, by mail, fax, or by e-mail to the following addresses:

Jose Custodio, P.E

Town Engineer Town of Bay Harbor Islands, Project No. BHI-____

Telephone No. (305) 866-6241

Email: jcustodio@bayharborislands-fl.gov

With a copy to:

Maria Lasday, Town Manager

Town of Bay Harbor Islands 9665 Bay Harbor Terrace

Bay Harbor Islands, 33154 Florida

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Telephone No.: 305-866-6241

Email: mlasday@bayharborislands-fl.gov

- 3.2 Any modification or interpretation of the Bidding Documents will be made by written Addendum to all who are recorded by the Town as having received a complete set of Bidding Documents. **All Addenda will be issued by December 2, 2022.**
- 3.3 Interpretations or modifications of Bidding Documents made in any manner other than by written Addendum will not be binding. No oral interpretations or clarifications shall be binding.
- 3.4 A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt by enclosing a signed copy of each Addenda with the Bid Form.

4.0 BID PREPARATION AND SUBMITTAL

- 4.1 The Bidder shall prepare Bids on the forms provided by the Town with all blanks on the Bid Form filled in by typewriter or written in ink.
- 4.2 The Bidder shall **submit two (2) originals and three (3) digital (PDF) copies of the Bid**. The Bid shall indicate whether the Bidder is a sole proprietor, a partnership, a corporation, company, or other legal entity. The Bid shall include:
 - 4.2.1 Consultant's Qualification Statement;
 - 4.2.2 Non-Collusion Affidavit
 - 4.2.3 Any Addenda;
 - 4.2.4 Copy of Licenses
 - 4.2.5 Corporate/Company Resolution, or Partnership Resolution, evidencing authorization to Submit Bid; and
 - 4.2.6 Evidence of Insurability.
- 4.3 If the Bid is made by an individual, the Bidder's name and address of place of business shall be shown. If Bid is made by an entity, the name and address of the individual(s) authorized to bind the firm or partnership shall be shown. If Bid is made by a corporation or company, the individual executing the Bid shall show the name of the state under the laws of which the corporation or company is chartered, also the names and business addresses of its corporate or company officers and members. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 4.4 Non-Collusion Affidavit. The Bidder shall include the Non-Collusion Affidavit as set forth in the form included in the Bidding Documents. Bidder's failure to include the affidavit shall result in disqualification.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

- 4.5 **The Bid shall be enclosed in a sealed envelope**, addressed to Attn: Town Clerk, Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor, Florida 33154. **The envelope shall be clearly marked with the Project name “Bid for the Infiltration/Inflow Study and Sanitary Sewer System Assessment” Project No. BHI-____, and the Bidder’s name and address.**
- 4.6 The Bidder shall deposit Bids at the designated location provided on the Invitation to Bid on or before the time and date for submission of Bids (the “Bid Submittal Deadline”). Bids received after the Bid Submittal Deadline indicated for submission of Bids will not be accepted. The Bidder is advised that delivery services may not be timely. It shall be the Bidder’s sole responsibility to ensure delivery prior to the required Bid Submittal Deadline.
- 4.7 The Bidder shall be registered as a vendor with the Town’s Building Department following the Notice of Award by the Town.

5.0 QUALIFICATIONS OF BIDDERS

- 5.1 Each Bidder shall complete the Qualifications Statement provided herewith, along with any other evidence of satisfactory experience, past performance and ability to perform the proposed Work, and shall submit the same with the Bid. Failure to submit the Qualifications Statement and all documents required thereunder together with the Bid Form and all items listed in Section 4.2 will constitute grounds for rejection of the Bid as non-responsive.
- 5.2 The Bidders may be disqualified, and their Bids rejected for any of the following reasons:
 - 5.2.1 The bid is not responsive, and/or responded with errors and omissions.
 - 5.2.2 Reason to believe that collusion exists among Bidders.
 - 5.2.3 Determination of lack of responsibility or competency as may be revealed by qualification statements, financial statements, experience records or other questionnaires.
 - 5.2.4 The Bidder’s uncompleted work load which in the judgment of the Town may cause detrimental impact on prompt completion of this Project.
 - 5.2.5 The Bidder is or has been involved in any litigation against the Town.
 - 5.2.6 The Bidder has defaulted on any previous contract or is in arrears on any existing contract on any public or private matters.
 - 5.2.7 The submittal of more than one bid from an individual, firm, partnership, corporation or association under the same or different names.
 - 5.2.8 The Bidder’s previous work with the Town has resulted in claims from third parties and or subconsultants.
- 5.3 The Town reserves the right to make a pre-award inspection of the Bidder's facilities and equipment prior to award.
- 5.4 It shall be a requirement of this Bid that there are no related party transactions between the Bidder and any employee, agent or consultant of the Town. Any Bidder who is a related party, as noted herein, will be considered non-responsive and the bid and the bid

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

bond will be immediately returned. A Bidder will be considered a related party if the Bidder has an ownership interest or is in any way related to an employee, agent, consultant or consultant, and can influence the management or operating policy of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

- 5.5 PUBLIC ENTITY CRIMES ACT -In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a consultant/contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a consultant/contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Consultant/Contractor shall result in rejection of the Bid, termination of the contract, and may cause Consultant/Contractor debarment.

6.0 MODIFICATION AND WITHDRAWAL OF BID

- 6.1 Prior to the date and time of Bid opening, a Bidder may withdraw his Bid at any time.
6.2 After the Bid opening, no Bid may be withdrawn, canceled or modified.

7.0 OPENING OF BIDS

- 7.1 Bids submitted will be opened publicly and read aloud at the time and place stated in the Invitation to Bid.
7.2 The Bidder agrees to maintain all terms of the Bids available for 120 days from the date and time of bid opening.

8.0 CONTRACT TIME AND PERFORMANCE

- 8.1 The Work to be performed under the Contract Documents shall be commenced upon issuance of a Notice to Proceed by the Town. As part of their proposal, Bidder shall submit a preliminary schedule of deliverables.
8.2 By virtue of the submission of its Bid, Bidder agrees and fully understands that the completion time of the Work of the Contract is an essential and material condition of the Contract and that time is of the essence. The Successful Bidder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. The Consultant/Contractor is expected to provide the necessary manpower and management to meet the time schedule as established.

**INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____**

9.0 LIQUIDATED DAMAGES

- 9.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

10.0 GOVERNING LAWS AND REGULATIONS

- 10.1 Bidders shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that may in any manner affect the Work.

11.0 INSURANCE/EVIDENCE OF INSURABILITY

- 11.1 The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in the General Conditions of the Contract Documents for the life of the Contract. Certificates of Insurance shall be provided by the Bidder upon the Notice of Award, as specified in the General Conditions.
- 11.2 Bidder shall be required to submit with the Bid Form written evidence of insurability from Bidder's insurance company, for the types and amounts of insurance specified in the General Conditions of the Contract Documents.

12.0 SUBCONSULTANT LIST

- 12.1 The Bidder shall submit a list of names and addresses of the subconsultants and major material suppliers proposed for the principal portions of the Work and shall include such information on the Qualifications Statement.
- 12.2 Prior to award of Contract, the Town will notify the Bidder in writing if there is an objection to any person or entity listed. Upon such objection, the Bidder shall propose an acceptable substitute in accordance with the General Conditions.
- 12.3 In Contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to Town those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with Town's written consent.

13.0 LICENSES, PERMITS AND FEES

- 13.1 In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, the Town shall disclose all permit fees associated with the Project. Licenses, permits, and fees which may be required by Miami-Dade County or any State or Federal entities are not included. The Consultant/Contractor shall be responsible for filing and obtaining all permits for the Work. The Consultant/Contractor shall file permit applications with the Town prior to construction. The Town will waive Town permit fees generated by the Town permits. Any delays in obtaining permits must be brought to the attention of the Town without delay. Each license, permit or fee a contractor will have to pay the Town before or during construction as part of the Contract, required by the Town and payable to the Town, is as follows:

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Building Permit – Town of Bay Harbor Islands Building Department

- 13.2 The Bidder shall provide a copy of following license:

Firm - A State of Florida Professional Engineer License

Project Manager and Subs – State of Florida Professional Engineer Licenses

- 13.3 The Successful Bidder shall give all notices and comply with all permit requirements, laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Town shall not be responsible for monitoring the Successful Bidder's compliance with any laws or regulations.

14.0 CONE OF SILENCE

- 14.1 Pursuant to subsection (t) (1) of Section 2-11.1, Conflict of Interest and Code of Ethics Ordinance of the Miami-Dade County Code, a “Cone of Silence” is imposed upon each Bid after advertisement and terminates at the time the Town Manager makes his written recommendation to the Town Council. The Cone of Silence generally prohibits any communication regarding this Bid between Bidders and their agents and the Town. The details of the Cone of Silence and the permitted exceptions to the Cone of Silence are set forth in subsection (t) (1) of Sec. 2-11.1 of the County Code. A copy of subsection (t)(1) is attached to this Bid as Exhibit “A.” In reading that subsection, Bidders are advised that all references to County personnel or boards, as used therein, are construed to mean Town personnel or boards as required by Sec. 2-11.1(a) of the Miami-Dade County Code. Please contact the Town Attorney for any questions concerning the Cone of Silence. The Cone of Silence shall apply to this Bid.
- 14.2 Generally, except for public hearings and scheduled presentations, contact with the Town regarding this Bid or any aspect of a Bid by a Bidder or any representative of a Bidder shall be limited to written communications until such time as a successful bidder is selected by the Council. All questions or requests for additional information must be asked and answered in writing.

15.0 CONFLICT OF INTEREST

- 15.1 The Consultant shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require contracts to insert in each of their subcontractors, the following provisions.

“No member, officer or employee of the firm or of the locality during his tenure of for 2 years thereafter shall have any interest, direct or indirect, in this contract of the proceeds thereof.”

16.0 BID PROTEST PROCEDURE

If a vendor feels that they have been treated unfairly concerning the results of a solicitation, or the resulting recommendation for award, they may protest the Town’s action as follows:

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-___

- 16.1 The vendor must submit a letter to the Procurement Manager detailing the nature of the protest accompanied by two (2) cashier's checks within three (3) working days of the Notice of Intent to Award. The first check will be in the amount of \$500 (hereinafter called "the administrative fee"). The second check will be in the amount of 1% of the bid amount (hereinafter called "the protest bond"). The Town's Notices of Intent to Award are posted on the Town of Bay Harbor Island's website.
- 16.2 If the Procurement Manager receives a bid protest letter, the administrative fee, and the protest bond as described above, the bid award process will be suspended, and the protest will be referred to the Bid Protest Committee. However, if the project is needed to protect the health, safety, and/or welfare of the residents of the Town of Bay Harbor Islands, the award of the project will proceed without interruption. The Bid Protest Committee shall consist of three (3) Town staff member selected by the Town Administrator. The Procurement Manager and the employee that wrote the Recommendation for Award may not sit as a member of the Bid Protest Committee. However, the Procurement Manager and the staff member that wrote the Recommendation for Award shall be present at the hearing of the Bid Protest Committee to answer any questions pertaining to the bid process or the evaluation process.
- 16.3 The Bid Protest Committee shall schedule a hearing within ten (10) working days from receipt of the protest letter. All parties having an interest in the outcome will be notified of the date and time of the hearing. If the bid protest is denied, the vendor will forfeit the protest bond. If the protest is upheld, the protest bond will be returned to the vendor. The administrative fee shall be non-refundable in all cases.
- 16.4 If the Bid Protest Committee denies the protest, the aggrieved vendor may appeal his/her case to the Town Council. In order to appeal, the vendor must notify the Town Administrator within three (3) working days of the Bid Protest Committee's ruling. Upon notification, the Town Administrator will schedule the appeal as an agenda item on the next available Town Council agenda. All bidders will be notified of the agenda date.
- 16.5 Once the bid protest is resolved, the Town will proceed with the bid award, except as exempted in 2, above.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

EXHIBIT "A"

CONE OF SILENCE PROVISION

(t) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefore; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefore; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefore. The County Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to (i) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management; (ii) communications with the County Attorney and his or her staff; (iii) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs; (iv) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure; (v) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation; (vi) any emergency procurement of goods

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

or services pursuant to Administrative Order 3-2; (vii) communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and (viii) communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefore provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. Notwithstanding any other provision of this Section, the imposition of a Cone of Silence on a particular RFP, RFQ or bid shall not preclude staff from obtaining industry comment or performing market research therefore provided all communications related thereto between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff are in writing or are made at a duly noticed public meeting.

(ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reinstated until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to award under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with

Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

(c) Exceptions. The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

SCOPE OF WORK

1. PURPOSE AND SCOPE OF WORK

The Town of Bay Harbor Islands is soliciting proposals from responsible and experienced professional engineering firms to evaluate the Town's wastewater flow of the entire sewer network for both islands, including the five (5) ejectors stations to determine the extent of rainfall-derived infiltration and inflow (I&I), sanitary sewer overflows (SSOs) and create a list of needed projects based on priority.

2. WORK TO BE PERFORMED

The project components and tasks for rainfall-derived infiltration/inflow and sanitary sewer overflows study include: Project Management, Project Meetings and Site Visits, Flow Metering and Monitoring Plan, Data Collection, Analysis and Reporting, Prioritization of Problems areas, Conceptual Plan for Improvements, and a Final Report. Specific intent and scope of work for each individual tasks are as follows:

Project Management

CONSULTANT shall perform its services in accordance with generally accepted standards and practices in effect at the time CONSULTANT's services are performed.

Project Meetings and Site Visit

CONSULTANT will arrange, prepare for and conduct a Project Kickoff Meeting, progress meetings and Site Visits as required for Data Collection. The Kickoff Meeting will correspond with the draft Flow Metering and Monitoring Plan.

Flow Metering and Monitoring Plan

The CONSULTANT shall perform Sanitary Flow and Rainfall Monitoring Methodology practices required to evaluate the status of the I&I throughout the entire network. The entire network consists of 8.20 miles of gravity mains from 8-inch to 18-inch, 129 manholes, 1 Pump station, 5 ejectors stations. As part of the effort, the CONSULTANT will install sewer flow monitoring devices at strategic locations in the gravity sewer system to measure sewer flows, rain gauge(s) to measure rainfall, and piezometer(s) to measure surficial groundwater levels relative to the adjacent sewers.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Data Collection, Analysis and Reporting

The data will be collected and recorded for a period recommended by the Consultant. The CONSULTANT shall analyze pump station SCADA data including run times and number of starts with respect to rainfall events. The Consultant shall analyze the metered data to determine average daily dry-weather flow rates, peak wet-weather flow rates, peak hourly I&I rates. The Consultant shall provide diurnal flow graphs for each wet-weather event analyzed for each meter showing wet-weather flow vs. dry-weather flow along with rain intensities. The Consultant shall use best engineering practices to rank each metered area in terms of I&I and surcharge levels. After the monitoring period is completed, the CONSULTANT will analyze the data to determine the overall efficiency of the system and determine if there are opportunities to reduce the infiltration/inflow.

Prioritization of Problem Areas and Conceptual Plan for Improvements

Consultant will prioritize the problem areas and develop a conceptual plan for addressing these areas to reduce or eliminate infiltration/inflow. The consultant will include a cost benefit analysis based on potential cost savings for reducing infiltration/inflow and conceptual cost of implementation. Consultant shall provide a list of projects with estimated costs.

Final Report

The CONSULTANT shall perform a final report to include the following items:

- Executive Summary
- Table of Contents
- Sanitary Flow and Rainfall Monitoring Methodology
- Results of Monitoring and Data Analysis
- Prioritization of Problem Areas
- Cost Benefit Analysis
- Summary Report
- Consultant Recommendation's

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

EVALUATION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS

1. A Committee has been established to review and evaluate all qualifications submitted in response to this Request for Qualifications (RFQ). The Committee shall conduct a preliminary evaluation of all submittals on the basis of the information provided and other evaluation criteria as set forth in this RFQ or as reasonably determined by the Committee pursuant to Section 287.055, Florida Statutes. The factors to be considered by the Town in making this preliminary finding of qualifications of the respondents are the experience of the firm and the staff, qualifications of the project manager, project understanding and approach, and DBE distribution.
2. The Committee will first review each submittal for compliance with the minimum qualifications and mandatory requirements of the RFQ. Failure to comply with any mandatory requirements will disqualify a submittal.
3. The Town reserves the right to reject any and all submittals and to waive irregularities in the procedures. The Town further reserves the right to seek new submittals when such a procedure is reasonably in the best interest of the Town to do so.
4. The Selection process will be conducted in two (2) phases: (1) Competitive Selection – ranking of the most qualified; (2) Competitive Negotiations – Negotiations of Contract with Top ranked firm; as provided by Section 287.055, Florida Statutes. **The Town may request, accept and consider proposal for the compensation to be paid under the proposed contract only during the competitive negotiations phase, NOT during the competitive selection phase.**

A. Phase I – Competitive Selection Ranking. The evaluation factors used for determining the Qualifications for rankings include:

Criteria	Points
Qualification and Experience of the Firm and Subconsultants	35
Qualifications of the Project Manager	30
Project Understanding and Approach	25
DBE	10
TOTAL OF 100 POSSIBLE POINTS	100 Points

The Committee may require public presentations by firms regarding their qualifications, approach to the project or work, and ability to furnish the required services. All final rankings shall be subject to the Town Council Approval.

B. Phase II – Competitive Negotiations. Following ranking of the most qualified firm, the Town may negotiate a contract with the most qualified firm for the proposed services with the procedures of Section 287.055 (5), Florida Statutes, including the procedures authorizing negotiations with successively ranked firm if negotiations with the highest ranked firm fails. All Contracts shall be subject to approval by the Town Council.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

5. RFQ TIMETABLE AND EVALUATION/SELECTION PROCESS

Activity	Date
RFQ Available to Public	10/24/2022
Pre-Bid Meeting	11/10/2022
Deadline for Receipt of Questions	11/30/2022
Proposal Submission Deadline	12/09/2022

Copies of this RFQ package are available on Town of Bay Harbor Islands' website: <https://www.bayharborislands-fl.gov/>.

Proposers who obtain copies of this solicitation from sources other than the TOWN risk the potential of not receiving addenda, since their names will not be included on the list of firms participating in the process for this solicitation. Such Proposers are solely responsible for those risks.

6. PROPOSAL FORMAT

IT IS THE RESPONSIBILITY OF THE PROPOSER TO ENSURE THAT THE PROPOSAL BEING SUBMITTED IS TIMELY, COMPLETE, INCLUSIVE OF ADDRESSING ALL OF THE REQUIREMENTS AND EVALUATION CRITERIA HEREIN.

To facilitate review and evaluation, the SOQ Document prepared in response to this RFQ shall provide the following information in the **order shown**.

A. Cover Letter:

1. Cover Letter on company letter head signed by person authorized to submit the proposal. Letter must include contact person with their telephone number, e-mail address and mailing address. The type of organization (i.e., individual, partnership, corporation, joint venture, etc.), year established, and address of the company shall also be included in the Cover Letter.

B. Qualifications and Experience of the Firm and Sub-consultants:

1. The history, ownership, organization, and background of the Applicant Firm shall be provided. Include a general statement describing the types of services offered by the firm, location of main and branch offices, number of years in business and number of employees in each department and the location of the office from which this work will be performed.

The firm should demonstrate how it interacts with municipal clients and provides and exchanges information relative to the requirements.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

The Applicant Firm should provide examples of projects similar to those stated in the scope of work. The firm should include the number of projects completed over the last seven (7) years.

Provide an Organizational Chart and Resumes of the Team assigned for this Project including the subconsultants.

List all completed and active projects that Vendor has managed within the past seven years. In addition, list all projected projects that Vendor will be working on in the near future. Projected projects will be defined as a project(s) that Vendor is awarded a contract but the Notice to Proceed has not been issued. Identify any projects that Vendor worked on concurrently. Describe Vendor's approach in managing these projects. Were there or will there be any challenges for any of the listed projects? If so, describe how Vendor dealt or will deal with the projects' challenges.

Provide a list of at least five (5) client references for which the Applicant firm provides similar services to those outlined in this request for qualifications.

- a. Name and address of client.
- b. The nature of the firm's contract.
- c. The owner's representative's name, addresses, and phone number.
- d. Date contract started and ended.
- e. Scope or nature of contract
- f. Present status of the contract.

C. Project Manager's Qualifications:

1. Respondents shall identify the Project Manager who will be responsible for the quality and timeliness of the I&I Study and system assessment, coordinate and conduct meetings with the Town (Elected Officials, Staff, and residents), and regulatory agencies, and ensuring that the adequate personnel and other resources are available for the proposed project. The Project Manager shall have experience working with I&I Projects, DERM, and Miami Dade Water and Sewer Department.
2. Respondents shall provide a summary of the education, experience and qualifications pertaining to the management of all phases of the proposed project. Project Manager shall be a registered Professional Engineer in the State of Florida. License registration shall be submitted as part of the SOQ document.

D. Project Understanding and Approach:

1. The firm should present their approach to accomplishing the strategies to be implemented in delivering the services outlined in the scope of service for the project. Also include the company's overall workload and show the ability to accommodate this project and be able to complete project on a timely basis. Your proposal should

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

also address the topics indicated in the scope of services. Include a proposed schedule for the work.

E. Disadvantage Business Enterprise (DBE) Status:

1. Firms shall identify whether they are or not a DBE Firm. If a DBE Firm, please provide proper certification information. This information pertains to both the Prime Consultant and sub-consultants. Provide in a Table Format (Task Name, Company, % of work, and Total) how the work will be distributed.

F. Bid Forms:

1. Completely Executed Bid Forms.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-_____

BID FORM

BID FROM:

Company: _____

Address: _____

City/St/Zip: _____

Phone/ Fax: _____

To furnish all materials, equipment and labor and to perform all work in accordance with the Bid and Contract Documents for Project:

Infiltration/Inflow Study and Sanitary Sewer System Assessment, Project No. BHI-_____, located in the Town of Bay Harbor Islands, Florida.

TO: TOWN OF BAY HARBOR ISLANDS, FLORIDA

ATTN: TOWN MANAGER

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract for Engineering Services, with the Town to perform all Work and any Additional Services as specified or indicated in the Bidding Documents and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for **120** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Town.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Bidding Documents, Contract for Engineering Services, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

Addendum No.

Addendum Date

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work, including all requirements applicable to the Project, including the provisions, clauses, terms or conditions set forth in Construction Contract (Contract Requirements).

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

- D. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - F. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - G. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - I. Bidder has reviewed and carefully studied the Contract, together with Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.
- 5.01** Bidder's Information:
The Bidder states that he/she is an experienced Engineering Firm and has completed similar projects within the last five years. This information has been provided on the Consultant's Qualifications Statement.
- 6.01** Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Bid and Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Bid Documents and the Contract for Construction, attach a statement to this Bid Form to indicate the number of days required.

**INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____**

7.01 The following documents are attached to and made a condition of this Bid:

- A. Consultant's Qualifications Statement, containing a tabulation of Subcontractors, Suppliers [and other] individuals and entities required to be identified in this Bid;
- B. Non-Collusion Affidavit
- C. Copy of State of Florida's License;
- D. Addenda

8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions, if any.

SUBMITTED on _____, 2022.

State Contractor License No. _____. (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

**INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____**

A Corporation

Corporation Name: _____(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability):_____

By: _____
(Signature --attach evidence of authority to sign)

Name: (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ FAX No.: _____

Date of Qualification to do business is _____.

CONSULTANT'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.
The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your entity/company in detail.

2. The address of the principal place of business is:

3. Entity/Company telephone number, fax number and e-mail addresses:

4. Number of employees:

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

5. Number of employees assigned to this Project:

6. Entity/Company Identification numbers for the Internal Revenue Service:

7. Provide Firm's License, and expiration date:

8. How many years has your organization been in business as an Engineering Firm? Does your organization have a specialty?

9. What is the last project of this nature or magnitude that you have completed? Has this firm ever completed a "public" project? Please provide project description, reference and cost of work completed.

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.

Name

Address

Telephone No.

11.2.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Name _____
Address _____
Telephone No. _____

11.3.

Name _____
Address _____
Telephone No. _____

12. List the following information concerning all contracts or work **in progress** as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the Project site and does the Bidder have a complete plan for its performance?

14. Provide list of subconsultants and subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

SubContractor Name	Address	Work to be Performed

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

The foregoing list of subconsultants(s) may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?

16. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

17. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

- 17.1 The correct name of the Bidder is:

- 17.2 The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

17.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

Only those Bidders and Subconsultants (s) who are qualified will be considered as bona fide bidders. As Bidder, we certify to have work on at least five (5) similar projects in the last seven (7) year period as indicated by the following:

1) NAME OF PROJECT	_____
YEAR OF PROJECT	_____
OWNER OF PROJECT	_____
CONTACT NAME	_____
CONTACT PHONE NO.	_____
CONTACT E-MAIL	_____
LOCATION OF PROJECT	_____
SCOPE OF WORK	_____

APPROXIMATE VALUE	_____

2) NAME OF PROJECT	_____
YEAR OF PROJECT	_____
OWNER OF PROJECT	_____
CONTACT NAME	_____
CONTACT PHONE NO.	_____
CONTACT E-MAIL	_____
LOCATION OF PROJECT	_____
SCOPE OF WORK	_____

APPROXIMATE VALUE	_____

3) NAME OF PROJECT	_____
YEAR OF PROJECT	_____
OWNER OF PROJECT	_____
CONTACT NAME	_____
CONTACT PHONE NO.	_____
CONTACT E-MAIL	_____
LOCATION OF PROJECT	_____
SCOPE OF WORK	_____

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

APPROXIMATE VALUE

CONSULTANT:

Print Name: _____

Print Title: _____

Date: _____

STATE OF FLORIDA)
) S.S.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this ____ day of _____, 2022.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT
TOWN OF BAY HARBOR ISLANDS
BHI-____

NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

- 1 He/She is _____ 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 and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees,
or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly
or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in
connection with the Construction Contract for which the attached Bid has been submitted or to
refrain from proposing in connection with such Construction Contract, or has in any manner,
directly or indirectly, sought by agreement of collusion or communication of conference with any
other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any
other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other
bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage
against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed
Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

ADDENDUM NO. 1

Issued: _____ (Date)

Project: Infiltration/Inflow Study and Sanitary Sewer System Assessment

Project No. BHI - _____

Notice to All Bidders:

ADDENDA TO BE PLACED HERE

Issued By:

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____ 20__, by and between:

TOWN OF BAY HARBOR ISLANDS, a Florida municipality, (hereinafter referred to as "TOWN")

and

_____, a
_____, (hereinafter referred to as "CONSULTANT").

WHEREAS, the Town Council of the Town of Bay Harbor Islands, Florida at its Council meeting of _____, 20__ authorized by motion the execution of this Agreement between CONSULTANT and TOWN authorizing the performance of _____, RFQ No. _____ (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth;

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

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 AGREEMENT: Means this document between the TOWN and CONSULTANT dated _____, 20__ and any duly authorized and executed Amendments to Agreement.
- 1.2 CERTIFICATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that TOWN pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 CHANGE ORDER: A written order to the CONSULTANT approved by the TOWN authorizing a revision of this agreement between the TOWN and the CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.

The CONSULTANT may review and make recommendations to the TOWN on any proposed Change Orders, for approval or other appropriate action by the TOWN.

- 1.4 TOWN: The Town of Bay Harbor Islands, a Florida municipality.
- 1.5 TOWN MANAGER: The Town Manager of the Town of Bay Harbor Islands, Florida.
- 1.6 COUNCIL: The Town Council of the Town of Bay Harbor Islands, Florida, which is the governing body of the TOWN government.
- 1.7 CONSTRUCTION COST: The total construction cost to TOWN of all elements of the Project designed or specified by the CONSULTANT.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the TOWN defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 CONSULTANT: _____, the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the Town of Bay Harbor Islands, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with TOWN ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.16 OMISSION: A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.

- 1.17 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon the CONSULTANT'S final detailed Construction Documents of the Project.
- 1.18 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by TOWN as provided in this Agreement.
- 1.19 PRELIMINARY PLANS: The documents prepared by the CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.20 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the TOWN's discretion.
- 1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of TOWN, in monitoring the Construction Phase of the Project to completion.
- 1.22 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by the CONSULTANT at fixed contract prices in accordance with this Agreement between the TOWN and the CONSULTANT.
- 1.23 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes, TOWN has formed a Committee to evaluate the CONSULTANT's statement of qualifications and performance data to ensure that the CONSULTANT has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform services hereunder.

ARTICLE 3 SCOPE OF SERVICES

- 3.1 Work under this Project includes but is not limited to the evaluation of the Town of Bay Harbor Islands wastewater flow of the entire sanitary sewer network (East and West Islands) to determine the extent of the rainfall-derived infiltration and inflow (I&I), sanitary sewer overflows (SSOs), evaluate the Town's five (5) ejector's stations capacity and provide a list of priority projects to address any issues discovered during the evaluation.
- 3.2 TOWN and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the TOWN in a timely manner before proceeding with the work. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by TOWN to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written TOWN approval is at CONSULTANT's sole risk.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and a committee of TOWN representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include TOWN's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5 TASK ORDERS

- 5.1 The Project will be divided into "Tasks."
- 5.2 Task Orders shall be jointly prepared by the TOWN and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable TOWN code requirements.

- 5.3 Under all Task Orders and Projects, TOWN may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the TOWN, the following items:
- 5.3.1 Providing additional copies of reports, contract drawings and documents; and
- 5.3.2 Assisting TOWN with litigation support services arising from the planning, development, or construction.
- 5.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed from the TOWN. The CONSULTANT must receive the approval of the Contract Administrator or designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.5 If, in the opinion of the TOWN, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the TOWN shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the TOWN shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the TOWN, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the TOWN may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The TOWN may then decide, after Town Council approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

ARTICLE 6

TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 The initial term of this Agreement shall be for two (2) years from the date of this Agreement. The TOWN shall have the option to renew this Agreement for one (1) successive one (1) year terms under the same terms, conditions, and compensation as set forth herein.
- 6.2 CONSULTANT shall perform the services described in Task Orders within the time periods specified in the Task Order. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.3 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables/documents for the Contract Administrator's review.

- 6.4 In the event CONSULTANT is unable to complete any services because of delays resulting from untimely review by TOWN or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, TOWN shall grant a reasonable extension of time for completion of the services. It shall be the responsibility of the CONSULTANT to notify TOWN promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform TOWN of all facts and details related to the delay.
- 6.5 The time for the performance of services described in assigned Task Orders shall be negotiated by the TOWN and the CONSULTANT as the services are requested and authorized by the TOWN.

ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

The method of compensation for each Task Order shall be not to exceed as agreed upon per Task Order and described in Section 7.1.1 below.

7.1.1 Not To Exceed Amount Compensation

TOWN agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in each Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement. As described in Section 8.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

A not to exceed proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including reimbursables; and profit, or as required by individual Task Order.

7.2 REIMBURSABLES

- 7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. TOWN shall not withhold retainage from payments for

Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, TOWN and other third parties retained or employed by any of them or (ii) submitted to TOWN for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs approved by Contract Administrator.

C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.

D. Overnight Delivery/Courier Charges (when TOWN requires/requests this service).

7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of TOWN's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If TOWN or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by TOWN prior to incurring such expenses.

7.3 METHOD OF BILLING

7.3.1 Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

7.4 METHOD OF PAYMENT

7.4.1 TOWN shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 TOWN will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, TOWN will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to TOWN.

7.4.3 Payments are made by TOWN to CONSULTANT using a Checks.

ARTICLE 8 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

8.2 TOWN or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. TOWN shall compensate CONSULTANT for such additional services as provided in Article 7.

- 8.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the Town Manager for resolution. The Town Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 9 CONSULTANT'S RESPONSIBILITIES

- 9.1 The CONSULTANT, following the TOWN's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the TOWN, assist the TOWN in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. If requested, the CONSULTANT shall review and analyze the proposals received by the TOWN, and shall make a recommendation for any award based on TOWN's Purchasing Ordinance.
- 9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, CONSULTANT, at no additional cost to the TOWN, shall meet with the TOWN's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSULTANT shall, at the TOWN's direction, redesign each Project and/or work with the TOWN to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the TOWN. If negotiations between the TOWN and the CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the TOWN after the CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the CONSULTANT shall not be responsible for any redesign without compensation.
- 9.3 The CONSULTANT shall provide the TOWN with a list of recommended, prospective proposers.
- 9.4 The CONSULTANT shall attend all pre-proposal conferences.
- 9.5 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.

- 9.6 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the TOWN, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the TOWN.
- 9.7 The TOWN shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work after receiving a recommendation from the CONSULTANT. The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The CONSULTANT may also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 9.8 The TOWN shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
- 9.8.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the TOWN which would not be incurred without the Error.
- 9.8.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the TOWN which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the TOWN shall not look to the CONSULTANT for reimbursement for Errors and Omissions.
- 9.8.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the TOWN shall recover the full and total additional cost to the TOWN as a result of CONSULTANT's Errors and Omissions from the CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 9.8.4 To obtain such recovery, the TOWN shall deduct from the CONSULTANT's fee a sufficient amount to recover all such additional cost to the TOWN.
- 9.8.5 In executing this Agreement, the CONSULTANT acknowledges acceptance of these calculations and to the TOWN's right to recover same as stated above. The recovery of additional costs to the TOWN under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the TOWN may otherwise incur.

9.8.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida.

ARTICLE 10 TOWN'S RESPONSIBILITIES

- 10.1 TOWN shall assist CONSULTANT by placing at CONSULTANT's disposal all information TOWN has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 TOWN shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 TOWN shall review the itemized deliverables/documents identified per Task Order.
- 10.4 TOWN shall give prompt written notice to CONSULTANT whenever TOWN observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11 MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, plans, studies, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the TOWN.

Drawings, specifications, designs, plans, studies, spreadsheets, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the TOWN whether the Project for which they are made is executed or not, and are subject to reuse by the TOWN in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the TOWN or others on extensions of this Project or on any other project without appropriate

verification or adaptation. This does not, however, relieve the CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle the CONSULTANT to further compensation at rates to be agreed upon by the TOWN and the CONSULTANT. This shall not limit the TOWN's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 Termination for Cause. It is expressly understood and agreed that the TOWN may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 11.27. In the case of termination by the TOWN for cause, the CONSULTANT shall be first granted a 10 working day cure period after receipt of written notice from the TOWN. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of TOWN and shall be delivered by CONSULTANT to the TOWN within five (5) days of TOWN's request. Upon payment of such sum by TOWN to CONSULTANT, TOWN shall have no further duties or obligations pursuant to or arising from this Agreement.

11.2.2 This Agreement may also be terminated by TOWN upon such notice as TOWN deems appropriate in the event TOWN or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the TOWN. Upon being

notified of TOWN's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall TOWN make payment for services which have not been performed.

11.2.5 Termination by Consultant. CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the TOWN of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSULTANT shall have no right to terminate this Agreement for convenience of the CONSULTANT

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

TOWN shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by TOWN all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

CONSULTANT shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the TOWN in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the TOWN would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the TOWN, all public records in possession of the CONSULTANT upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must

be provided to the TOWN in a format that is compatible with the information technology systems of the TOWN.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by TOWN, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

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

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY PARTICIPATION

Historically, the TOWN has been able to achieve great participation levels by MBE/WBE firms in TOWN projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the TOWN maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the TOWN with this documentation at the end of the Project, or in cases where projects are longer than one year, each TOWN fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of work to subconsultant. The parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including subconsultant's scope of work and fees, for review and approval by the TOWN prior to sub-consultants proceeding with any work.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

(or attach as an exhibit if more appropriate)

11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to TOWN's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of TOWN shall meet or exceed all professional standards of the State of Florida.

11.9 INDEMNIFICATION OF TOWN

11.9.1 CONSULTANT shall defend, counsel being subject to TOWN's approval, and indemnify and hold harmless TOWN, and TOWN's officers and employees from any and all claims, liabilities, damages, losses, penalties, fines, judgments, and costs, including, but not limited to, any award of attorneys' fees and any award of litigation costs, in connection with or arising directly or indirectly out of any act or omission by the CONSULTANT or by any officer, employee, agent, invitee, subcontractor, or subconsultant of the CONSULTANT. The provisions of this Section shall survive the expiration or early termination of this Agreement. To the extent considered necessary by Contract Administrator and TOWN attorney, any sums due the CONSULTANT under this Agreement may be retained by TOWN until all of TOWN's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by TOWN.

11.9.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.9.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

11.10 LIMITATION OF TOWN'S LIABILITY

The TOWN desires to enter into this Agreement only if in so doing the TOWN can place a limit on the TOWN'S liability for any cause of action arising out of this Agreement, so that the TOWN'S liability for any breach never exceeds the sum of \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT'S recovery from the TOWN to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the TOWN to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this

Agreement that may suggest otherwise, the CONSULTANT agrees that the TOWN shall not be liable to the CONSULTANT for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the TOWN to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the TOWN'S liability as set forth in Section 768.28, Florida Statutes, or to extend the TOWN'S liability beyond the limits established in said Section 768.28; and no claim or award against the TOWN shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the TOWN under the provisions of this Agreement.

11.11 INSURANCE

- 11.11.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to transact business and issue insurance policies in the State of Florida and having agents upon whom service of process may be made in the State of Florida.
- A. The Commercial General Liability insurance policy shall name the Town of Bay Harbor Islands, a Florida municipality, as additional insured. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT. Any exclusions or provisions in the insurance maintained by the CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.
- B. The CONSULTANT shall provide the TOWN an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the TOWN shall be given thirty (30) days' notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the TOWN, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the TOWN may carry in its own name.
- C. CONSULTANT shall as a condition precedent of this Agreement, furnish to the Town of Bay Harbor Islands, Public Works Director, 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154, Certificate(s) of Insurance upon

execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability:
- | | |
|---|-------------|
| Bodily Injury and Property Damage Liability Combined Single Limit | |
| Each Occurrence | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Personal Injury | \$1,000,000 |
| Products/Completed Operations | \$1,000,000 |
- B. Endorsements Required:
- Town of Bay Harbor Islands included as an Additional Insured
 - Employees included as insured
 - Broad Form Contractual Liability
 - Waiver of Subrogation
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors

AUTOMOBILE BUSINESS

- A. Limits of Liability:
- | | |
|---|-------------|
| Bodily Injury and Property Damage Liability Combined Single Limit | \$2,000,000 |
| Any Auto | |
| Including Hired, Borrowed or Non-Owned Autos | |
- B. Endorsements Required:
- Waiver of Subrogation

WORKERS' COMPENSATION

Limits of Liability: Statutory-State of Florida

PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

Combined Single Limit	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Deductible not to exceed 10%	
Must be in effect for at least five (5) years after Project completion	

- 11.11.3 All insurance policies required above shall be issued by companies authorized to transact business and issue insurance policies under the laws of the State of Florida, with the following qualifications:

The Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Town's Risk Manager. Any exclusions or provisions in the insurance maintained by the Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the TOWN at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the TOWN shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the TOWN.
- B. The TOWN may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

11.12 REPRESENTATIVE OF TOWN AND CONSULTANT

11.12.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more TOWN employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

11.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

11.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

11.17 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

11.18 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision the TOWN shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.19 WAIVER OF BREACH AND MATERIALITY

Failure by TOWN to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

TOWN and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of TOWN and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement,

requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

11.24 APPLICABLE LAW AND VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Miami Dade County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. . BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.26 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

11.27 NOTICES

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

TOWN: Town Engineer
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

With a copy to: Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

Town Attorney
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

CONSULTANT: _____

11.28 ATTORNEY FEES

If TOWN or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the TOWN determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

11.31 EVALUATION

The TOWN maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the TOWN and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in TOWN projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

11.32 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Miami Dade County, the Town of Bay Harbor Islands, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

11.33 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The TOWN may terminate this Contract at the TOWN's option if the CONSULTANT is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

TOWN

TOWN OF BAY HARBOR ISLANDS, a
municipal corporation of the State of Florida

By _____
MARIA LASDAY, Town Manager

(CORPORATE SEAL)

ATTEST:

YVONNE P. HAMILTON
Town Clerk

CONSULTANT

WITNESSES:

(Witness print name)

By _____
Name: _____
Title: _____

(Witness print name)

ATTEST:

By _____

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____ as _____ of
_____. They are ☐ personally known to me or ☐ have
produced _____ as identification.

(SEAL)

Notary Public, State of
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

DRAFT

EXHIBIT "A"

HOURLY BILLING RATES FOR TASK ORDERS

DRAFT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



AMERICAN CONSULTING
ENGINEERS COUNCIL



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



Advancement
of Construction
Technology

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

Copyright ©1996

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	
1.01 <i>Defined Terms</i>	00700 - 6
1.02 <i>Terminology</i>	00700 - 6
ARTICLE 2 - PRELIMINARY MATTERS	00700 - 8
2.01 <i>Delivery of Bonds</i>	00700 - 9
2.02 <i>Copies of Documents</i>	00700 - 9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	00700 - 9
2.04 <i>Starting the Work</i>	00700 - 9
2.05 <i>Before Starting Construction</i>	00700 - 9
2.06 <i>Preconstruction Conference</i>	00700 - 9
2.07 <i>Initial Acceptance of Schedules</i>	00700 - 10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	00700 - 10
3.01 <i>Intent</i>	00700 - 10
3.02 <i>Reference Standards</i>	00700 - 10
3.03 <i>Reporting and Resolving Discrepancies</i>	00700 - 10
3.04 <i>Amending and Supplementing Contract Documents</i>	00700 - 11
3.05 <i>Reuse of Documents</i>	00700 - 11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	00700 - 11
4.01 <i>Availability of Lands</i>	00700 - 11
4.02 <i>Subsurface and Physical Conditions</i>	00700 - 11
4.03 <i>Differing Subsurface or Physical Conditions</i>	00700 - 12
4.04 <i>Underground Facilities</i>	00700 - 12
4.05 <i>Reference Points</i>	00700 - 13
4.06 <i>Hazardous Environmental Condition at Site</i>	00700 - 13
ARTICLE 5 - BONDS AND INSURANCE	00700 - 14
5.01 <i>Performance, Payment, and Other Bonds</i>	00700 - 15
5.02 <i>Licensed Sureties and Insurers</i>	00700 - 15
5.03 <i>Certificates of Insurance</i>	00700 - 15
5.04 <i>CONTRACTOR's Liability Insurance</i>	00700 - 15
5.05 <i>OWNER's Liability Insurance</i>	00700 - 15
5.06 <i>Property Insurance</i>	00700 - 16
5.07 <i>Waiver of Rights</i>	00700 - 16
5.08 <i>Receipt and Application of Insurance Proceeds</i>	00700 - 17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	00700 - 18
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	00700 - 18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	00700 - 18
6.01 <i>Supervision and Superintendence</i>	00700 - 18
6.02 <i>Labor; Working Hours</i>	00700 - 18
6.03 <i>Services, Materials, and Equipment</i>	00700 - 19
6.04 <i>Progress Schedule</i>	00700 - 19
6.05 <i>Substitutes and "Or-Equals"</i>	00700 - 19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	00700 - 19
6.07 <i>Patent Fees and Royalties</i>	00700 - 20
6.08 <i>Permits</i>	00700 - 21
6.09 <i>Laws and Regulations</i>	00700 - 21
6.10 <i>Taxes</i>	00700 - 22
6.11 <i>Use of Site and Other Areas</i>	00700 - 22
6.12 <i>Record Documents</i>	00700 - 22
6.13 <i>Safety and Protection</i>	00700 - 22
6.14 <i>Safety Representative</i>	00700 - 23
6.15 <i>Hazard Communication Programs</i>	00700 - 23

6.16	Emergencies	00700 - 23
6.17	Shop Drawings and Samples	00700 - 23
6.18	Continuing the Work	00700 - 24
6.19	CONTRACTOR's General Warranty and Guarantee	00700 - 25
6.20	Indemnification	00700 - 25
ARTICLE 7 - OTHER WORK		00700 - 26
7.01	Related Work at Site	00700 - 26
7.02	Coordination	00700 - 26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		00700 - 26
8.01	Communications to Contractor	00700 - 26
8.02	Replacement of ENGINEER	00700 - 26
8.03	Furnish Data	00700 - 26
8.04	Pay Promptly When Due	00700 - 26
8.05	Lands and Easements; Reports and Tests	00700 - 26
8.06	Insurance	00700 - 27
8.07	Change Orders	00700 - 27
8.08	Inspections, Tests, and Approvals	00700 - 27
8.09	Limitations on OWNER's Responsibilities	00700 - 27
8.10	Undisclosed Hazardous Environmental Condition	00700 - 27
8.11	Evidence of Financial Arrangements	00700 - 27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		00700 - 27
9.01	OWNER'S Representative	00700 - 27
9.02	Visits to Site	00700 - 27
9.03	Project Representative	00700 - 27
9.04	Clarifications and Interpretations	00700 - 28
9.05	Authorized Variations in Work	00700 - 28
9.06	Rejecting Defective Work	00700 - 28
9.07	Shop Drawings, Change Orders and Payments	00700 - 28
9.08	Determinations for Unit Price Work	00700 - 28
9.09	Decisions on Requirements of Contract Documents and Acceptability of Work	00700 - 28
9.10	Limitations on ENGINEER's Authority and Responsibilities	00700 - 28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		00700 - 29
10.01	Authorized Changes in the Work	00700 - 29
10.02	Unauthorized Changes in the Work	00700 - 29
10.03	Execution of Change Orders	00700 - 29
10.04	Notification to Surety	00700 - 29
10.05	Claims and Disputes	00700 - 30
ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK		00700 - 30
11.01	Cost of the Work	00700 - 30
11.02	Cash Allowances	00700 - 32
11.03	Unit Price Work	00700 - 32
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		00700 - 33
12.01	Change of Contract Price	00700 - 33
12.02	Change of Contract Times	00700 - 33
12.03	Delays Beyond CONTRACTOR's Control	00700 - 33
12.04	Delays Within CONTRACTOR's Control	00700 - 34
12.05	Delays Beyond OWNER's and CONTRACTOR's Control	00700 - 34
12.06	Delay Damages	00700 - 34
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		00700 - 34
13.01	Notice of Defects	00700 - 34
13.02	Access to Work	00700 - 34
13.03	Tests and Inspections	00700 - 34
13.04	Uncovering Work	00700 - 35
13.05	OWNER May Stop the Work	00700 - 35
13.06	Correction or Removal of Defective Work	00700 - 35

13.07	<i>Correction Period</i>	00700 - 35
13.08	<i>Acceptance of Defective Work</i>	00700 - 36
13.09	<i>OWNER May Correct Defective Work</i>	00700 - 36
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		00700 - 36
14.01	<i>Schedule of Values</i>	00700 - 36
14.02	<i>Progress Payments</i>	00700 - 36
14.03	<i>CONTRACTOR's Warranty of Title</i>	00700 - 37
14.04	<i>Substantial Completion</i>	00700 - 38
14.05	<i>Partial Utilization</i>	00700 - 38
14.06	<i>Final Inspection</i>	00700 - 39
14.07	<i>Final Payment</i>	00700 - 39
14.08	<i>Final Completion Delayed</i>	00700 - 39
14.09	<i>Waiver of Claims</i>	00700 - 40
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION		00700 - 40
15.01	<i>OWNER May Suspend Work</i>	00700 - 40
15.02	<i>OWNER May Terminate for Cause</i>	00700 - 40
15.03	<i>OWNER May Terminate For Convenience</i>	00700 - 40
15.04	<i>CONTRACTOR May Stop Work or Terminate</i>	00700 - 41
ARTICLE 16 - DISPUTE RESOLUTION		00700 - 41
16.01	<i>Methods and Procedures</i>	00700 - 41
ARTICLE 17 - MISCELLANEOUS		00700 - 41
17.01	<i>Giving Notice</i>	00700 - 42
17.02	<i>Computation of Times</i>	00700 - 42
17.03	<i>Cumulative Remedies</i>	00700 - 42
17.04	<i>Survival of Obligations</i>	00700 - 42
17.05	<i>Controlling Law</i>	00700 - 42

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it 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 ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

- A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

- A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

- A. **CONTRACTOR's Review of Contract Documents:** Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

- B. **Preliminary Schedules:** Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 Reference Standards

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

5.04 *CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operation under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amount as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal (or submittal) made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or area resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or a law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

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

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on OWNER's Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations, thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

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

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

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

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee*: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the 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. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

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

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR's Fee:** The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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

13.01 Notice of Defects

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

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

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. Reduction in Payment

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:
 - a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling OWNER to a set-off against the amount recommended; or
 - d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 CONTRACTOR's Warranty of Title

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

14.04 Substantial Completion

- A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

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

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, 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 to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

SUPPLEMENTARY CONDITIONS

1.01 GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

Unless otherwise indicated in these Supplementary Conditions, replace the term "ENGINEER" wherever used in the Standard General Conditions of Contract and in these Supplementary Conditions, with "TOWN". The words "TOWN" and "OWNER" may be used interchangeably throughout these documents.

ARTICLE 1 – DEFINITIONS – Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

ARTICLE 5 – BONDS AND INSURANCE – Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:

Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

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

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
2. Limits:

(a) General Aggregate	\$1,000,000
(b) Each Occurrence	\$1,000,000
(c) Personal Injury	\$1,000,000
3. Coverage is to be written on an "occurrence" basis.
4. Owners and Contractors Protection:
 - (a) Bodily Injury:

Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
 - (b) Property Damage:

Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.

5.04.A.6 Comprehensive Automobile Liability:

- (a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

- (b) Limits:

Combined Single Limit \$2,000,000

5.04.B.1 Umbrella:

- (a) Limits:

Aggregate \$1,000,000

- (b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.

- 5.04.B.8 The Town of Bay Harbor Islands, shall be included as a named insured party under the Contractor's Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Town of Bay Harbor Islands, Florida is hereby named Additional Insured under the terms of this policy."

- 5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

- 5.04.B.10 The Certificate of Insurance shall be issued to the Town of Bay Harbor Islands, Florida at the following address:

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES – INDEMNIFICATION – Page 18

SC-6.01

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

The Contractor shall perform all work in compliance with all applicable safety codes. A competent English-speaking superintendent will be on the job at all times during working hours and will be subject to call during off-duty hours for emergency situations. The superintendent shall overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Add the new paragraphs immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single and multifamily residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 5:00 p.m. Monday through Friday. No work shall be performed on Saturdays or Sundays or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

CONTRACTOR shall not be required to employ any Subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words "Instructions to Bidders" before Supplementary Conditions wherever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

Nor does such acceptable create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraphs 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to pay regular tolls to use the Broad Causeway, and to have identification signs.

SC-6.11

Add the new paragraphs immediately after paragraph 6.11.B of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor. Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's Expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

CONTRACTOR shall maintain in a safe place at the Project one record copy of all drawings, specifications, addenda, written amendments, change orders, work change directives, field orders, as-builts and written interpretations and clarifications in good order and annotated to show changes made during construction.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

Other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph:

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$10.00 dollars to be paid by TOWN to Contractor hereunder- and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the TOWN and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against TOWN or any of their consultants, agents or employees by any CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 shall not be limited in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 – OWNER'S RESPONSIBILITIES - Page 26

Throughout this Article, OWNER is interchangeably with TOWN.

SC-8.01

Amend paragraph 8.01 A by replacing it with the following paragraph:

Except as otherwise provided in these General Conditions, TOWN shall issue all communications to CONTRACTOR through the TOWN MANAGER, STAFF ENGINEER or PROJECT MANAGER.

SC-8.02

Delete paragraph 8.02 A.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

The use of "Engineer" throughout this Article shall mean the Town's "Staff Engineer or Project Manager".

SC-9.03

Delete paragraph 9.03A.

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

If TOWN and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

Without invalidating the Contract and without notice to any Surety, TOWN may, at any time or from time to time, order additions, deletions, or revisions in the

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

Work by a Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation, arbitration or any other dispute resolution forum.

ARTICLE 11 – COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

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

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortage or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay or any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the TOWN such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the STAFF ENGINEER, employed by the TOWN, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, material-man, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, material-man, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the TOWN.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK – Page 34

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by the TOWN, be uncovered for his observation and replaced at CONTRACTOR’S expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

, or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

,or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 – PAYMENTS TO CONTRACTORS AND COMPLETION – Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every material-man, supplier and or laborer (“Potential Lienor”) who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Lien or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the TOWN, CONTRACTOR must furnish the Partial Waiver upon Progress Payment Statutory Waiver and Final Release

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

from each Potential Lienor, in the form prescribed by TOWN, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the TOWN. Further as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide TOWN with a Statutory Waiver and Final Release from each Potential Lienor in the form prescribed by TOWN, together with a Contractor's Affidavit and Final Release. Each Release given to the TOWN shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by TOWN. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the TOWN or the TOWN's property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10-) days following the date of recordation of the Claim_of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, TOWN shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and TOWN may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient.

TOWN shall not be limited to an is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

INFILTRATION/INFLOW STUDY AND SANITARY SEWER SYSTEM ASSESSMENT

TOWN OF BAY HARBOR ISLANDS

BHI-____

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

After CONTRACTOR has, in the opinion of TOWN, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

Or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

A waiver of all Claims by TOWN against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION – Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

SC-15.04

Amend paragraph 15.04.A by deleting the last sentence of the paragraph.

GRAVITY MAIN LINES

— MATERIAL = DUCTILE IRON

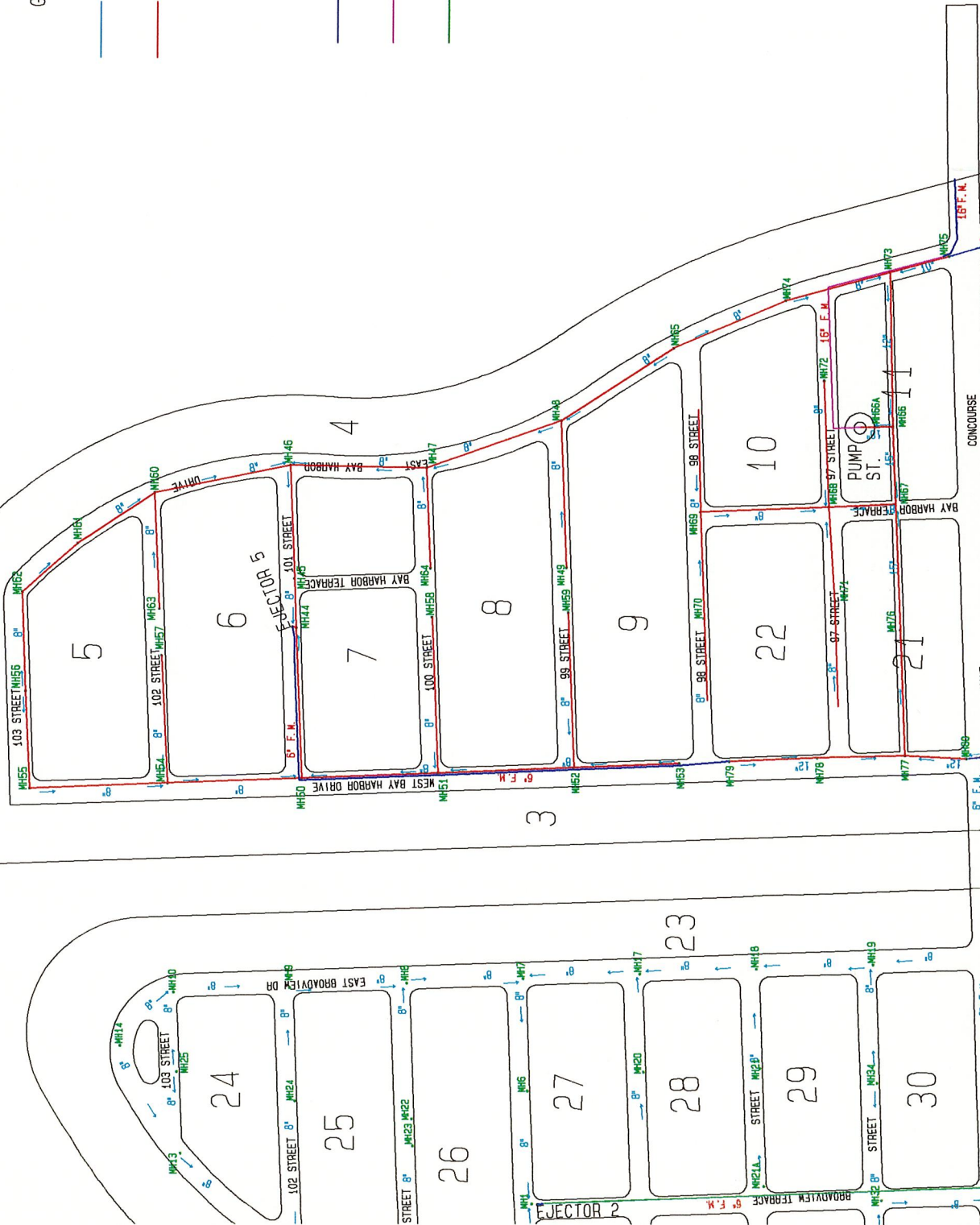
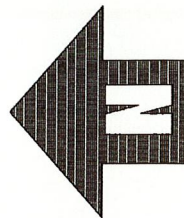
— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = DUCTILE IRON

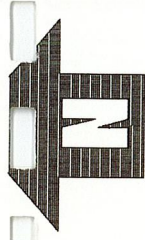
— MATERIAL = PVC C-900 GREEN



TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EAST ISLAND NORTH

INFOCAD

Date:	Drawing no:
02/01/96	E INSEWER
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 400'



GRAVITY MAIN LINES

— MATERIAL = DUCTILE IRON

— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = DUCTILE IRON

— MATERIAL = PVC C-900 GREEN

TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EAST ISLAND SOUTH

INFOCAD

Date:

02/01/96

Drawn by:

WAGNER ALMEIDA

Drawing no:

EISSEWER

Scale:

1" = 400'



FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

— MATERIAL = VCP



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 01

Date:	01/31/96	Drawing no:	SSDET01
Drawn by:	WAGNER ALMEIDA	Scale:	1" = 200'

INFOCAD



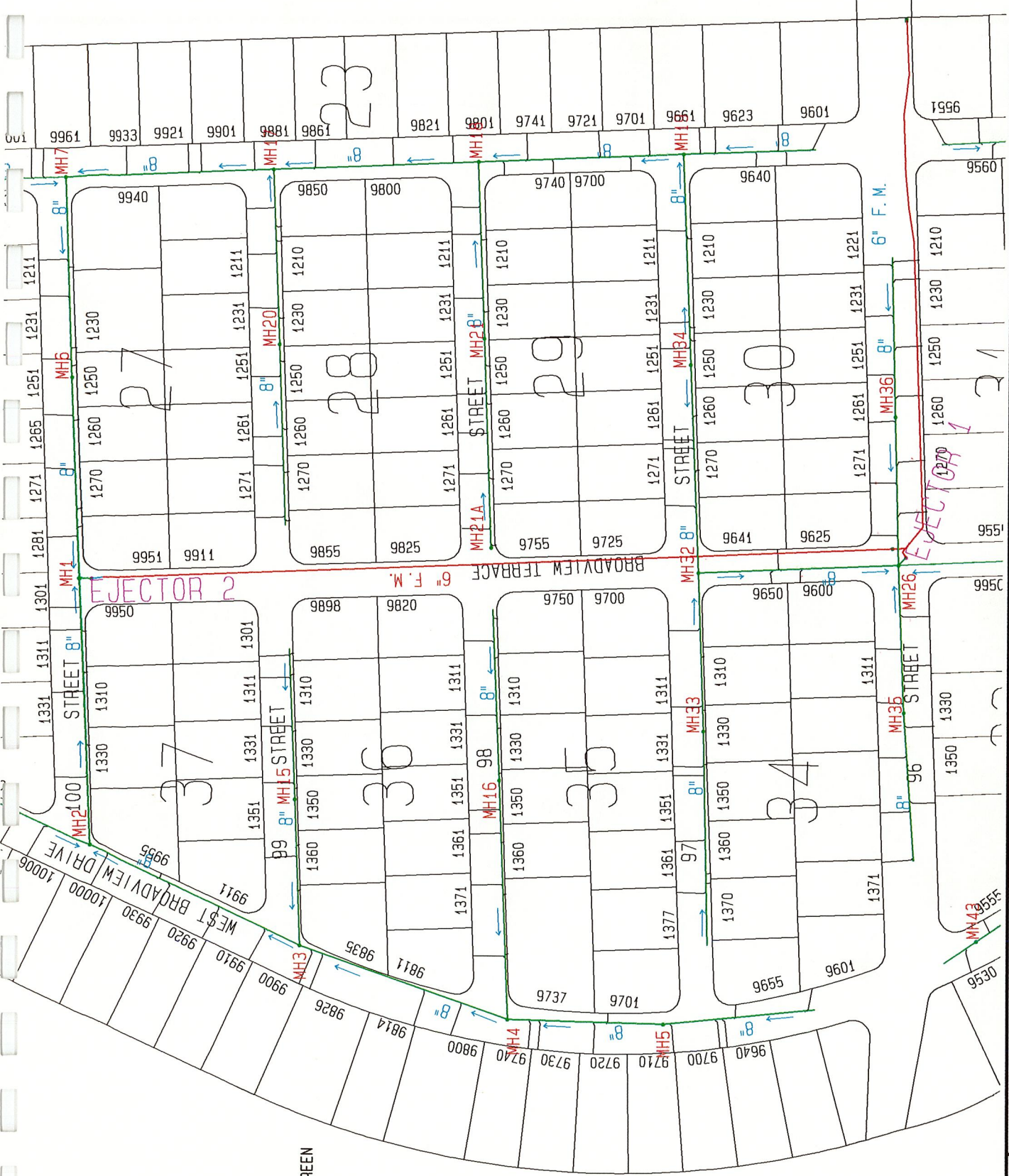
FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

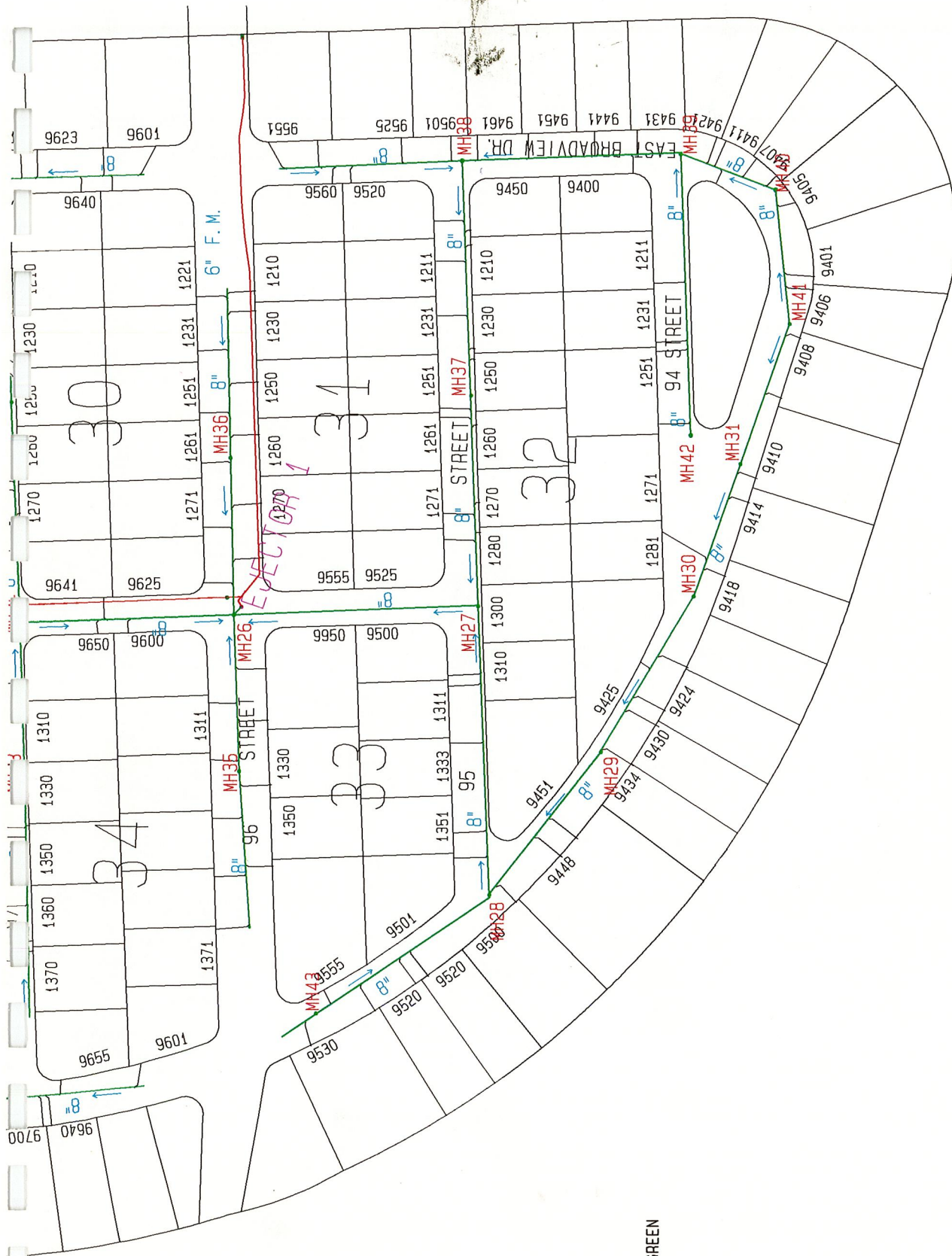
— MATERIAL = VCP



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 02

Drawing no:	SSDET02
Date:	01/31/96
Scale:	1" = 200'
Drawn by:	WAGNER ALMEIDA





FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

— MATERIAL = VCP

TOWN OF BAY HARBOR ISLANDS

SANITARY SEWER DISTRIBUTION

DETAIL 03

INFOCAD

Drawing no:	SSDET03
Date:	01/31/96
Drawn by:	WAGNER ALMEIDA
Scale:	1" = 200'



GRAVITY MAIN LINES

— MATERIAL = DUCTILE IRON

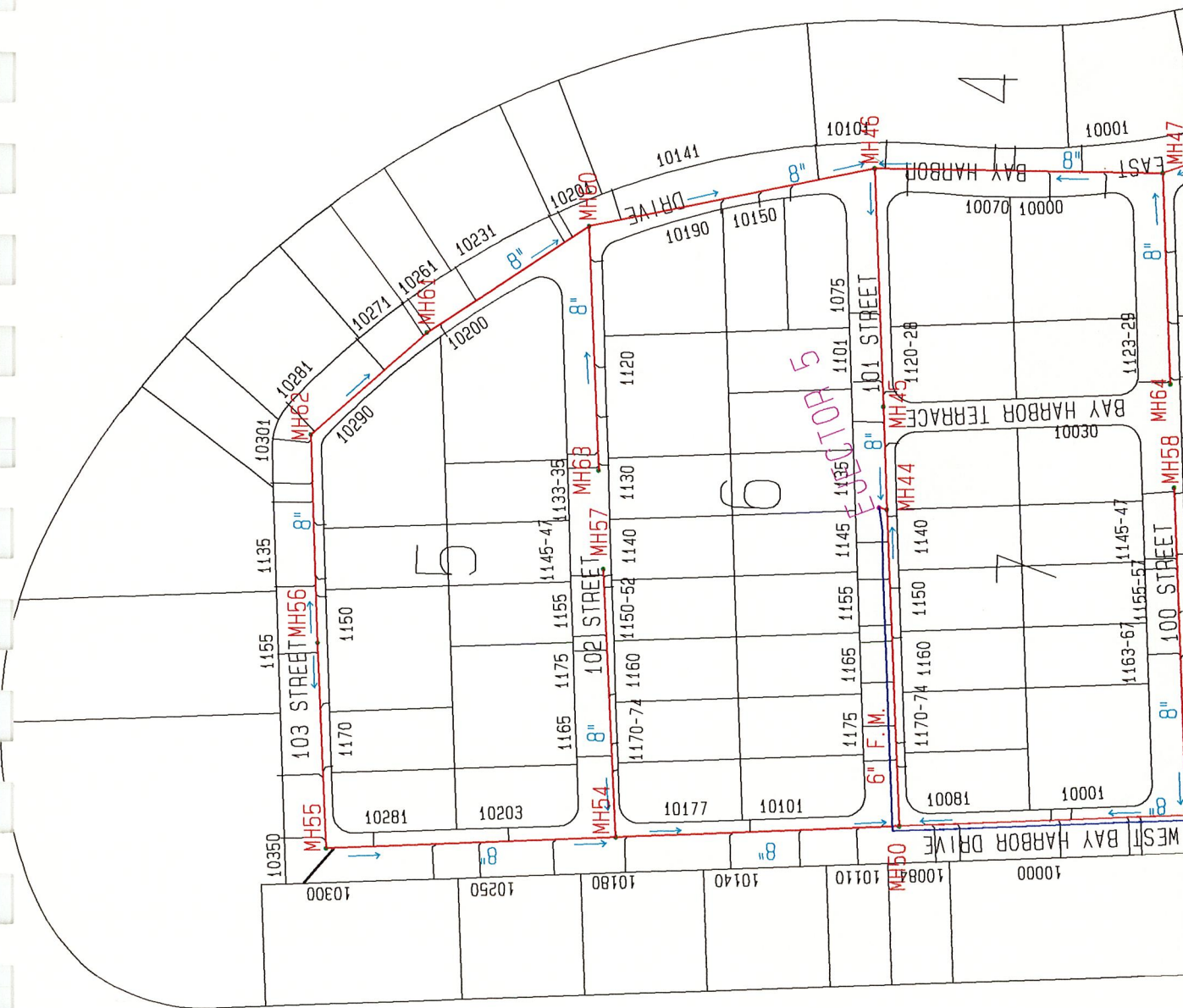
— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = DUCTILE IRON

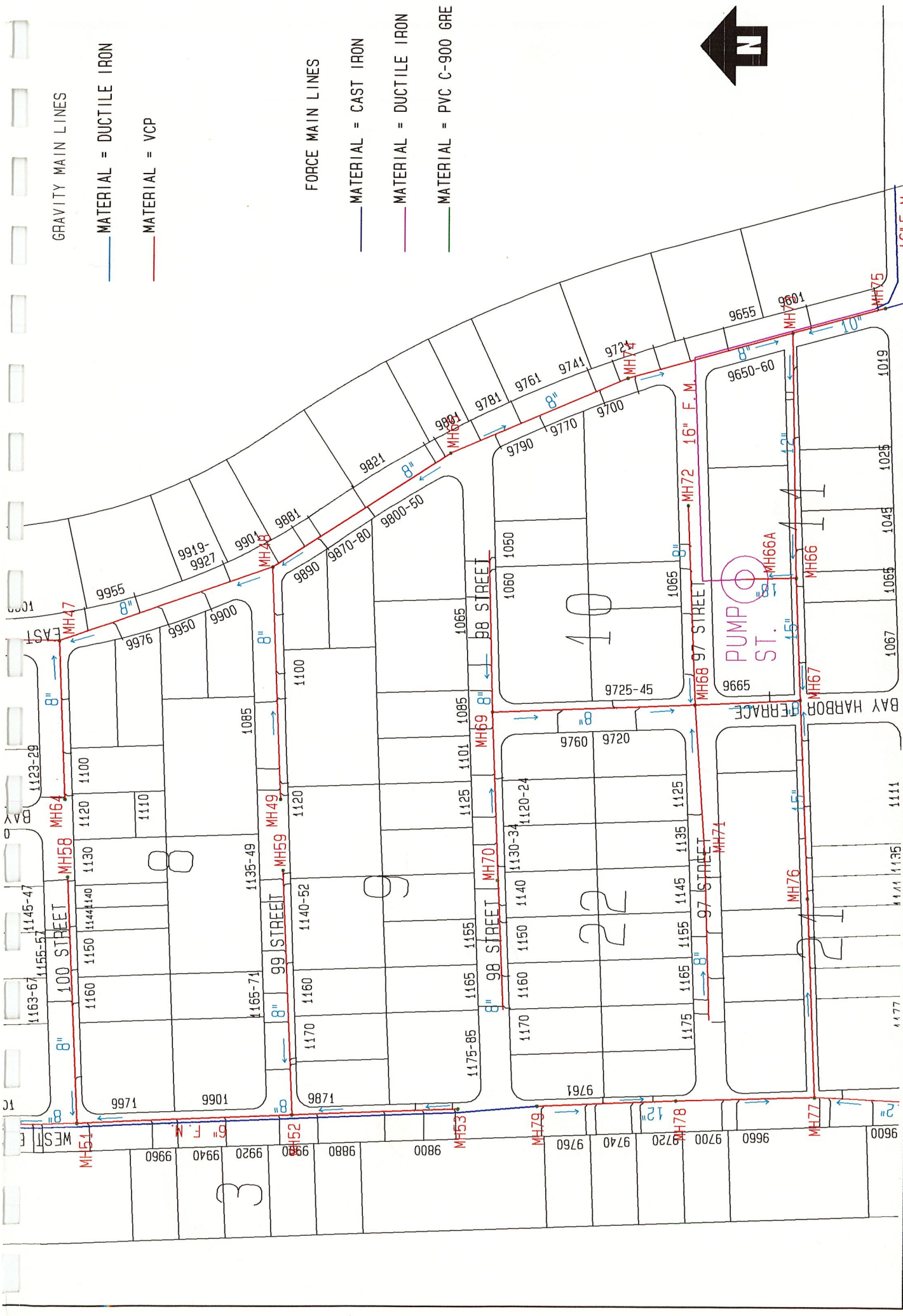
— MATERIAL = PVC C-900 GREEN



TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION DETAIL 04

INFOCAD

Date:	Drawing no:
02/01/96	SSDET04
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 200'



GRAVITY MAIN LINES

— MATERIAL = DUCTILE IRON

— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

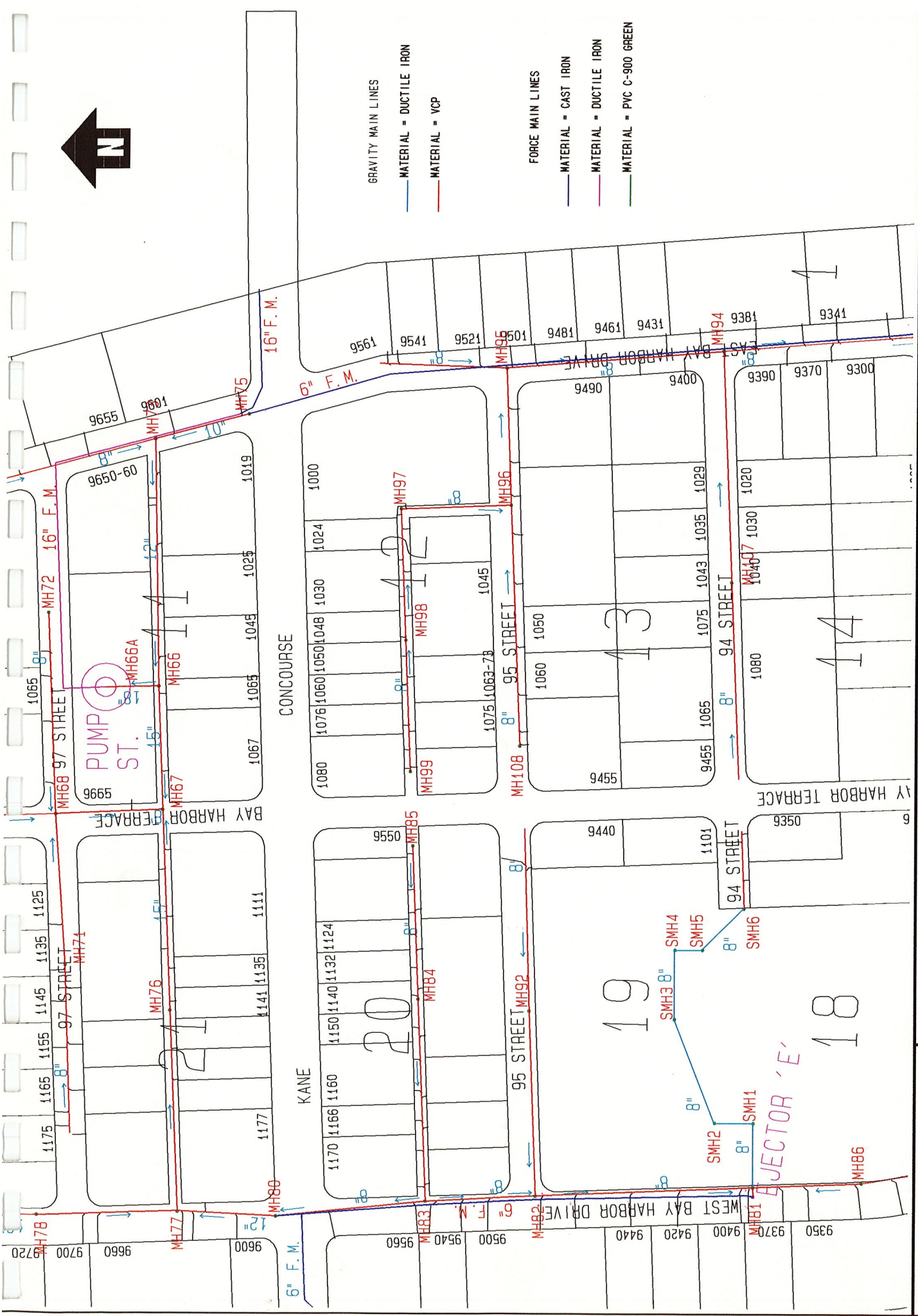
— MATERIAL = DUCTILE IRON

— MATERIAL = PVC C-900 GRE

Date:	02/01/96	Drawing no:	SSDET05
Drawn by:	WAGNER ALMEIDA	Scale:	1" = 200'

TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION DETAIL 05

INFOCAD

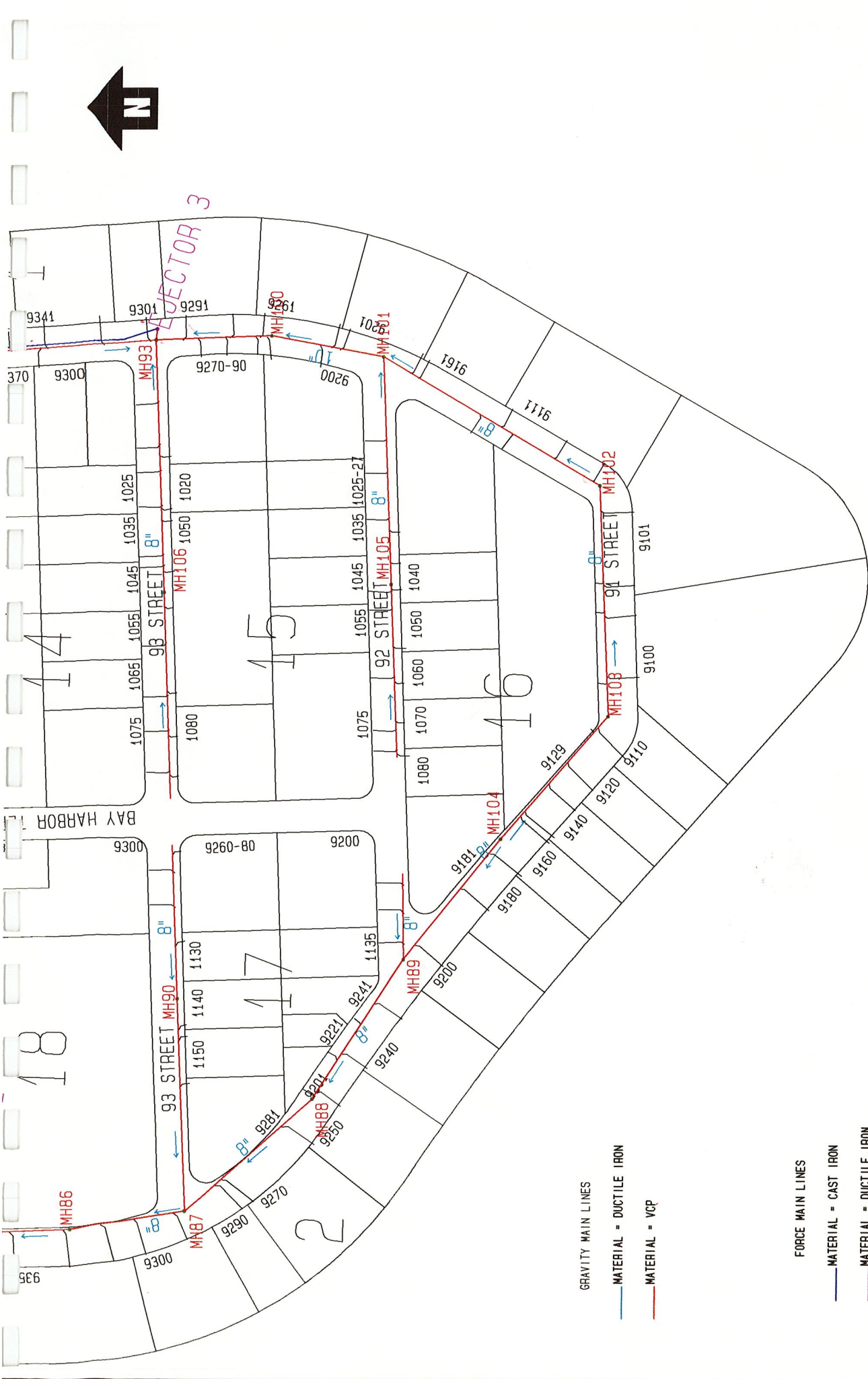


- GRAVITY MAIN LINES
- MATERIAL = DUCTILE IRON
 - MATERIAL = VCP
- FORCE MAIN LINES
- MATERIAL = CAST IRON
 - MATERIAL = DUCTILE IRON
 - MATERIAL = PVC C-900 GREEN

Date:	Drawing no:
02/01/96	SSDET06
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 200'

TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 06

INFOCAD



- GRAVITY MAIN LINES
- MATERIAL = DUCTILE IRON
 - MATERIAL = VCP
- FORCE MAIN LINES
- MATERIAL = CAST IRON
 - MATERIAL = DUCTILE IRON
 - MATERIAL = PVC C-900 GREEN

	TOWN OF BAY HARBOR ISLANDS		Drawing no:	
	SANITARY SEWER DISTRIBUTION		Date:	02/01/96
	DETAIL 07		Drawn by:	WAGNER ALMEIDA
			Scale:	1" = 200'

WAGNER ALMEIDA
1" = 700'



AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EJECTORS AIRLINES

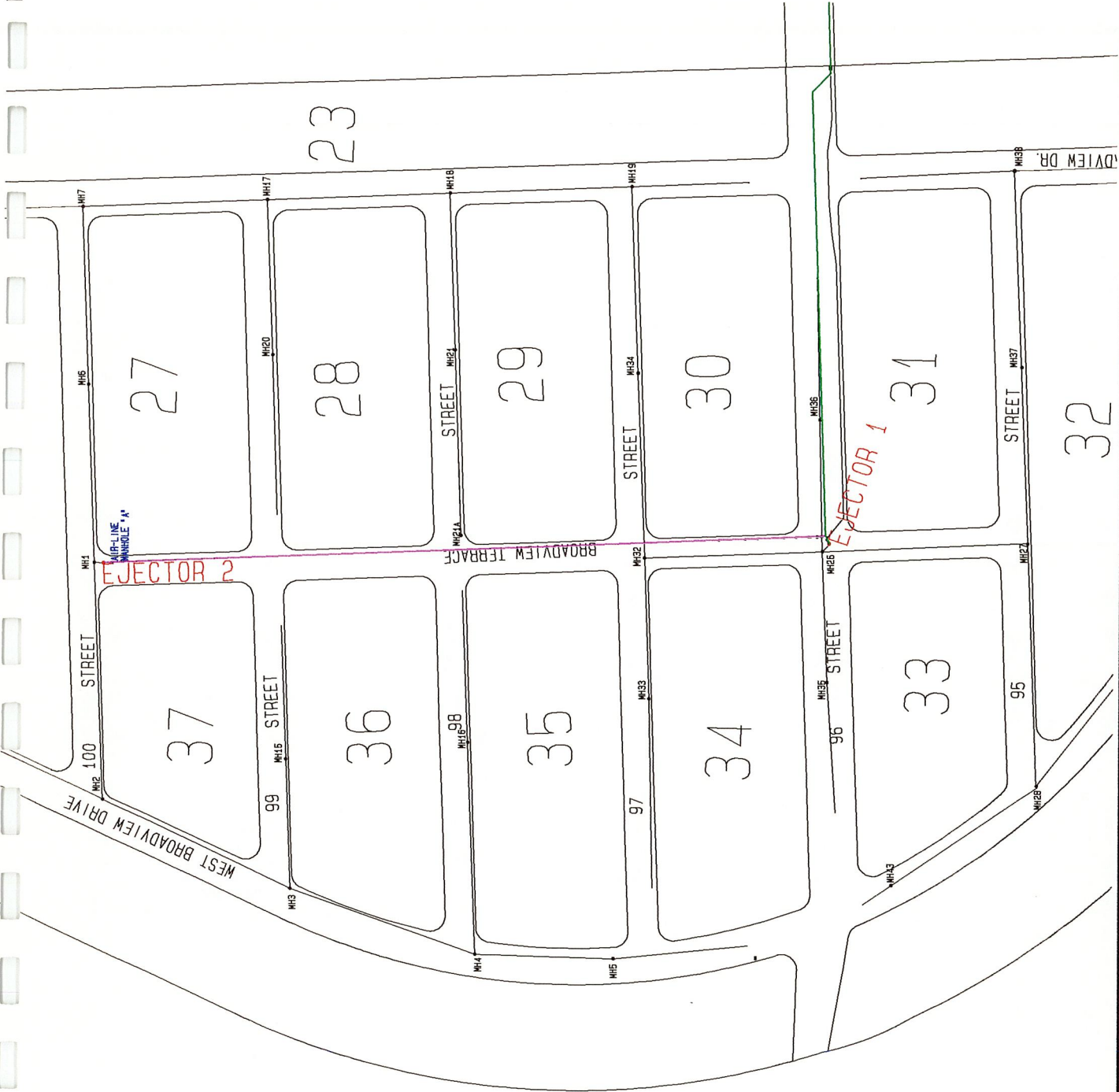
INFOCAD

Date:	02/01/96	Drawing no:	AIR01
Drawn by:	WAGNER ALMEIDA	Scale:	1" = 700'



AIRLINES

- DIAMETER = 1 1/2 "
- DIAMETER = 1 1/4 "
- DIAMETER = 2 "
- DIAMETER = 2 1/2 "
- DIAMETER = 3 "



TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EJECTORS AIRLINES - WEST ISLAND	Drawing no:		AIR02
	Date:		02/01/96
	Drawn by:		WAGNER ALMEIDA
		Scale:	1" = 250'

AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3



INFOCAD	TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EJECTORS AIRLINES - EAST ISLAND			Date: 02/01/96	Drawing no: AIR03
				Drawn by: WAGNER ALMEIDA	Scale: 1" = 250'



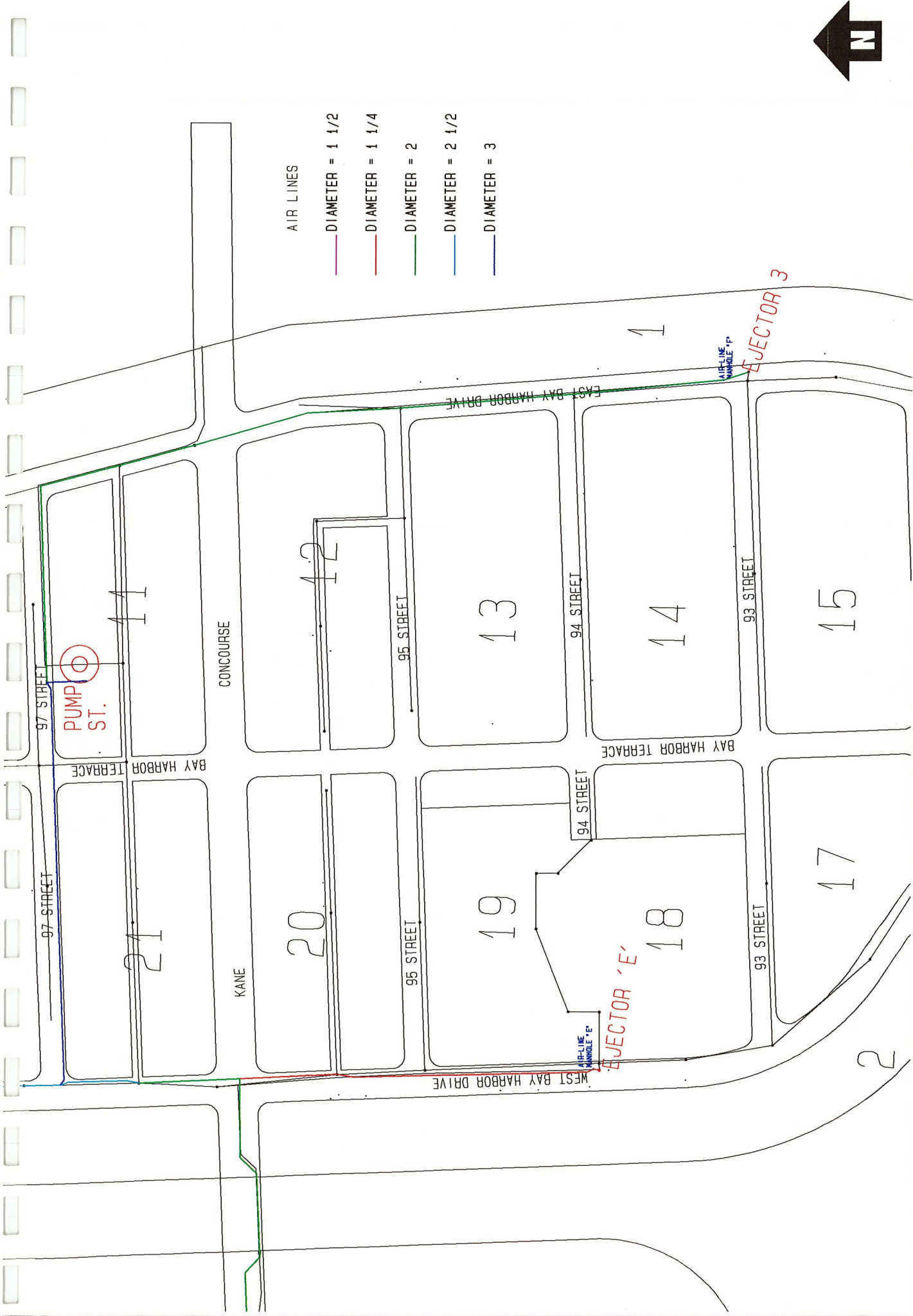
AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3

Date:	02/01/96	Drawing no:	AIR04
Drawn by:	WAGNER ALMEIDA	Scale:	1" = 250'

TOWN OF BAY HARBOR ISLANDS
 SANITARY SEWER DISTRIBUTION
 EJECTORS AIRLINES - EAST ISLAND

INFOCAD



INFOCAD	TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EJECTORS AIRLINES - EAST ISLAND			Date:	Drawing no:
				02/01/96	AIR05
				Drawn by:	Scale:
			WAGNER ALMEIDA	1" = 250'	

TOWN OF BAY HARBOR ISLANDS



Project No. – BHI –

STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE FEASIBILITY EVALUATION

Request for Qualifications

October 24, 2022

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____
TABLE OF CONTENTS**

- 1. INVITATION TO BID**
 - 2. INSTRUCTIONS TO BIDDERS**
 - 3. SCOPE OF WORK**
 - 4. EVALUATION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS**
 - 5. BID FORM**
 - 6. CONSULTANT’S QUALIFICATION STATEMENT**
 - 7. NON-COLLUSION AFFIDAVIT**
 - 8. ADDENDUM**
 - 9. SAMPLE AGREEMENT**
 - 10. GENERAL CONDITIONS**
 - 11. SUPPLEMENTARY CONDITIONS**
- EXHIBIT A – TOWN’S STORMWATER ATLAS**
- EXHIBIT B – EXCERPT FROM TOWN’S MASTER PLAN – INJECTION WELLS**

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

INVITATION TO BID

Issue Date: October 24, 2022

All interested parties are hereby notified that the Town of Bay Harbor Islands (the “Town”) is accepting sealed bids for the Project “**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE FEASIBILITY EVALUATION**” Project, No. **BHI-_____**.

Work under this Project includes but is not limited to the evaluation of the Town of Bay Harbor Islands stormwater system, perform a modeling of the system for 10 year 24-hr storm event, and 25 year 24-hr storm event and evaluate the feasibility of installing stormwater injection wells and/or pump stations in the Town. In addition, to provide a list of priority projects, and concept plans to address any issues discovered during the evaluation.

A **Pre-Bid Conference** will be held on **November 10, 2022, at 10:00 A.M.**, in the Town Hall Council Chambers. The address of Town Hall is 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154.

Contract Documents may be downloaded and printed as required from the Town’s Website at www.bayharborislands-fl.gov. Enquiries regarding this contract may be e-mailed to the Town Engineer, Jose Custodio, P.E., jcustodio@bayharborislands-fl.gov.

All bids shall be clearly marked:

**TOWN OF BAY HARBOR ISLANDS
CONTRACT NO. BHI-_____
STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION**

All bids must be submitted in sealed envelopes to the Town Clerk on or before December 9, 2022, at 3:00 P.M., local time (the “Bid Submittal Deadline”). Immediately thereafter, Bids will be opened publicly and read aloud. The Town assumes no responsibility for Bids not properly marked. **Any Bids received after the Bid Submittal Deadline will not be accepted.**

The Town reserves the right to reject any or all bids and to waive informalities, except timely submission of bids, in any bids received, to re-advertise for bids or to take any other such actions that may be deemed in the best interests of the Town.

Town of Bay Harbor Islands, Florida
Yvonne P. Hamilton, CMC - Town Clerk

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

INSTRUCTIONS TO BIDDERS

1.0 DEFINED TERMS

Terms used in these Instruction to Bidders which are defined in the Standard General Conditions of the Construction Contract, prepared by the Engineer’s Joint Contract Documents Committee (EJCDC) and NSPE-ASCE Document 1910-8-A-1, CSI 56465 (1996 Edition) have the meanings assigned to them in the General Conditions. The term “Successful Bidder” means the lowest, qualified, responsible Bidder to whom Town (on the basis of the Town’s evaluation as hereinafter provided) makes an award and whose Bid the Town determines is in its best interest.

2.0 EXAMINATION OF DOCUMENTS, SITE AND DRAWINGS AND SPECIFICATIONS

- 2.1 Prior to Bid submission, Bidders shall examine the Site and surrounding area, including but not limited to subsurface, water and soil conditions, utilities, and streets to determine all conditions that will affect the Work and become familiar with the nature and extent of Work to be performed and local conditions that may affect the Work. Bidders should perform a Site visit and inspection to get familiar with the site conditions.
- 2.2 It is the Bidder’s responsibility to become fully informed as to the existing conditions at the Site and to factor any and all costs of these conditions and/ or risks associated therewith into the Bid.
- 2.3 Bidders shall thoroughly examine the Bidding Documents, General Conditions, Drawings and Specifications, Technical Specifications and any other documents which may be applicable to the Work or Project. All drawings and specifications prepared for this Project are provided in pdf format with this Bid.

3.0 INTERPRETATION OF BIDDING DOCUMENTS

- 3.1 All inquiries, clarifications or interpretations of the Bidding Documents shall be made in writing to the Town Engineer, Jose Custodio, P.E. on or before November 30, 2022, with a copy to the Town Manager, by mail, fax, or by e-mail to the following addresses:

Jose Custodio, P.E
Town Engineer Town of Bay Harbor Islands, Project No. BHI-____
Telephone No. (305) 866-6241
Email: jcustodio@bayharborislands-fl.gov
With a copy to:

Maria Lasday, Town Manager
Town of Bay Harbor Islands 9665 Bay Harbor Terrace

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

Bay Harbor Islands, 33154 Florida
Telephone No.: 305-866-6241
Email: mlasday@bayharborislands-fl.gov

- 3.2 Any modification or interpretation of the Bidding Documents will be made by written Addendum to all who are recorded by the Town as having received a complete set of Bidding Documents. **All Addenda will be issued by December 2, 2022.**
- 3.3 Interpretations or modifications of Bidding Documents made in any manner other than by written Addendum will not be binding. No oral interpretations or clarifications shall be binding.
- 3.4 A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt by enclosing a signed copy of each Addenda with the Bid Form.

4.0 BID PREPARATION AND SUBMITTAL

- 4.1 The Bidder shall prepare Bids on the forms provided by the Town with all blanks on the Bid Form filled in by typewriter or written in ink.
- 4.2 The Bidder shall **submit two (2) originals and three (3) digital (PDF) copies of the Bid**. The Bid shall indicate whether the Bidder is a sole proprietor, a partnership, a corporation, company, or other legal entity. The Bid shall include:
 - 4.2.1 Consultant's Qualification Statement;
 - 4.2.2 Non-Collusion Affidavit
 - 4.2.3 Any Addenda;
 - 4.2.4 Copy of Licenses
 - 4.2.5 Corporate/Company Resolution, or Partnership Resolution, evidencing authorization to Submit Bid; and
 - 4.2.6 Evidence of Insurability.
- 4.3 If the Bid is made by an individual, the Bidder's name and address of place of business shall be shown. If Bid is made by an entity, the name and address of the individual(s) authorized to bind the firm or partnership shall be shown. If Bid is made by a corporation or company, the individual executing the Bid shall show the name of the state under the laws of which the corporation or company is chartered, also the names and business addresses of its corporate or company officers and members. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 4.4 Non-Collusion Affidavit. The Bidder shall include the Non-Collusion Affidavit as set forth in the form included in the Bidding Documents. Bidder's failure to include the

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

affidavit shall result in disqualification.

- 4.5 **The Bid shall be enclosed in a sealed envelope**, addressed to Attn: Town Clerk, Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor, Florida 33154. **The envelope shall be clearly marked with the Project name “Bid for the Stormwater Injection Wells and Pump Stations – Townwide Feasibility Evaluation” Project No. BHI-____, and the Bidder’s name and address.**
- 4.6 The Bidder shall deposit Bids at the designated location provided on the Invitation to Bid on or before the time and date for submission of Bids (the “Bid Submittal Deadline”). Bids received after the Bid Submittal Deadline indicated for submission of Bids will not be accepted. The Bidder is advised that delivery services may not be timely. It shall be the Bidder’s sole responsibility to ensure delivery prior to the required Bid Submittal Deadline.
- 4.7 The Bidder shall be registered as a vendor with the Town’s Building Department following the Notice of Award by the Town.

5.0 QUALIFICATIONS OF BIDDERS

- 5.1 Each Bidder shall complete the Qualifications Statement provided herewith, along with any other evidence of satisfactory experience, past performance and ability to perform the proposed Work, and shall submit the same with the Bid. Failure to submit the Qualifications Statement and all documents required thereunder together with the Bid Form and all items listed in Section 4.2 will constitute grounds for rejection of the Bid as non-responsive.
- 5.2 The Bidders may be disqualified, and their Bids rejected for any of the following reasons:
- 5.2.1 The bid is not responsive, and/or responded with errors and omissions.
 - 5.2.2 Reason to believe that collusion exists among Bidders.
 - 5.2.3 Determination of lack of responsibility or competency as may be revealed by qualification statements, financial statements, experience records or other questionnaires.
 - 5.2.4 The Bidder’s uncompleted work load which in the judgment of the Town may cause detrimental impact on prompt completion of this Project.
 - 5.2.5 The Bidder is or has been involved in any litigation against the Town.
 - 5.2.6 The Bidder has defaulted on any previous contract or is in arrears on any existing contract on any public or private matters.
 - 5.2.7 The submittal of more than one bid from an individual, firm, partnership, corporation or association under the same or different names.
 - 5.2.8 The Bidder’s previous work with the Town has resulted in claims from third parties and or subconsultants.
- 5.3 The Town reserves the right to make a pre-award inspection of the Bidder's facilities and equipment prior to award.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

- 5.4 It shall be a requirement of this Bid that there are no related party transactions between the Bidder and any employee, agent or consultant of the Town. Any Bidder who is a related party, as noted herein, will be considered non-responsive and the bid and the bid bond will be immediately returned. A Bidder will be considered a related party if the Bidder has an ownership interest or is in any way related to an employee, agent, consultant or consultant, and can influence the management or operating policy of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- 5.5 **PUBLIC ENTITY CRIMES ACT** -In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a consultant/contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a consultant/contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Consultant/Contractor shall result in rejection of the Bid, termination of the contract, and may cause Consultant/Contractor debarment.

6.0 MODIFICATION AND WITHDRAWAL OF BID

- 6.1 Prior to the date and time of Bid opening, a Bidder may withdraw his Bid at any time.
- 6.2 After the Bid opening, no Bid may be withdrawn, canceled or modified.

7.0 OPENING OF BIDS

- 7.1 Bids submitted will be opened publicly and read aloud at the time and place stated in the Invitation to Bid.
- 7.2 The Bidder agrees to maintain all terms of the Bids available for 120 days from the date and time of bid opening.

8.0 CONTRACT TIME AND PERFORMANCE

- 8.1 The Work to be performed under the Contract Documents shall be commenced upon issuance of a Notice to Proceed by the Town. As part of their proposal, Bidder shall submit a preliminary schedule of deliverables.
- 8.2 By virtue of the submission of its Bid, Bidder agrees and fully understands that the completion time of the Work of the Contract is an essential and material condition of the Contract and that time is of the essence. The Successful Bidder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

ensure full completion thereof within the time specified. The Consultant/Contractor is expected to provide the necessary manpower and management to meet the time schedule as established.

9.0 LIQUIDATED DAMAGES

- 9.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

10.0 GOVERNING LAWS AND REGULATIONS

- 10.1 Bidders shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that may in any manner affect the Work.

11.0 INSURANCE/EVIDENCE OF INSURABILITY

- 11.1 The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in the General Conditions of the Contract Documents for the life of the Contract. Certificates of Insurance shall be provided by the Bidder upon the Notice of Award, as specified in the General Conditions.
- 11.2 Bidder shall be required to submit with the Bid Form written evidence of insurability from Bidder's insurance company, for the types and amounts of insurance specified in the General Conditions of the Contract Documents.

12.0 SUBCONSULTANT LIST

- 12.1 The Bidder shall submit a list of names and addresses of the subconsultants and major material suppliers proposed for the principal portions of the Work and shall include such information on the Qualifications Statement.
- 12.2 Prior to award of Contract, the Town will notify the Bidder in writing if there is an objection to any person or entity listed. Upon such objection, the Bidder shall propose an acceptable substitute in accordance with the General Conditions.
- 12.3 In Contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to Town those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with Town's written consent.

13.0 LICENSES, PERMITS AND FEES

- 13.1 In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, the Town shall disclose all permit fees associated with the Project. Licenses, permits, and fees which may be required by Miami-Dade County or any State or Federal entities are not included. The Consultant/Contractor shall be responsible for filing and obtaining all permits for the Work. The Consultant/Contractor shall file permit applications with the

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

Town prior to construction. The Town will waive Town permit fees generated by the Town permits. Any delays in obtaining permits must be brought to the attention of the Town without delay. Each license, permit or fee a contractor will have to pay the Town before or during construction as part of the Contract, required by the Town and payable to the Town, is as follows:

Building Permit – Town of Bay Harbor Islands Building Department

- 13.2 The Bidder shall provide a copy of following license:

Firm - A State of Florida Professional Engineer License

Project Manager and Subs – State of Florida Professional Engineer Licenses

- 13.3 The Successful Bidder shall give all notices and comply with all permit requirements, laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Town shall not be responsible for monitoring the Successful Bidder's compliance with any laws or regulations.

14.0 CONE OF SILENCE

- 14.1 Pursuant to subsection (t) (1) of Section 2-11.1, Conflict of Interest and Code of Ethics Ordinance of the Miami-Dade County Code, a “Cone of Silence” is imposed upon each Bid after advertisement and terminates at the time the Town Manager makes his written recommendation to the Town Council. The Cone of Silence generally prohibits any communication regarding this Bid between Bidders and their agents and the Town. The details of the Cone of Silence and the permitted exceptions to the Cone of Silence are set forth in subsection (t) (1) of Sec. 2-11.1 of the County Code. A copy of subsection (t)(1) is attached to this Bid as Exhibit “A.” In reading that subsection, Bidders are advised that all references to County personnel or boards, as used therein, are construed to mean Town personnel or boards as required by Sec. 2-11.1(a) of the Miami-Dade County Code. Please contact the Town Attorney for any questions concerning the Cone of Silence. The Cone of Silence shall apply to this Bid.
- 14.2 Generally, except for public hearings and scheduled presentations, contact with the Town regarding this Bid or any aspect of a Bid by a Bidder or any representative of a Bidder shall be limited to written communications until such time as a successful bidder is selected by the Council. All questions or requests for additional information must be asked and answered in writing.

15.0 CONFLICT OF INTEREST

- 15.1 The Consultant shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require contracts to insert in each of their subcontractors, the following provisions.

“No member, officer or employee of the firm or of the locality during his tenure of for 2 years thereafter shall have any interest, direct or indirect, in this

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

contract of the proceeds thereof.”

16.0 BID PROTEST PROCEDURE

If a vendor feels that they have been treated unfairly concerning the results of a solicitation, or the resulting recommendation for award, they may protest the Town’s action as follows:

- 16.1 The vendor must submit a letter to the Procurement Manager detailing the nature of the protest accompanied by two (2) cashier’s checks within three (3) working days of the Notice of Intent to Award. The first check will be in the amount of \$500 (hereinafter called “the administrative fee”). The second check will be in the amount of 1% of the bid amount (hereinafter called “the protest bond”). The Town’s Notices of Intent to Award are posted on the Town of Bay Harbor Island’s website.
- 16.2 If the Procurement Manager receives a bid protest letter, the administrative fee, and the protest bond as described above, the bid award process will be suspended, and the protest will be referred to the Bid Protest Committee. However, if the project is needed to protect the health, safety, and/or welfare of the residents of the Town of Bay Harbor Islands, the award of the project will proceed without interruption. The Bid Protest Committee shall consist of three (3) Town staff member selected by the Town Administrator. The Procurement Manager and the employee that wrote the Recommendation for Award may not sit as a member of the Bid Protest Committee. However, the Procurement Manager and the staff member that wrote the Recommendation for Award shall be present at the hearing of the Bid Protest Committee to answer any questions pertaining to the bid process or the evaluation process.
- 16.3 The Bid Protest Committee shall schedule a hearing within ten (10) working days from receipt of the protest letter. All parties having an interest in the outcome will be notified of the date and time of the hearing. If the bid protest is denied, the vendor will forfeit the protest bond. If the protest is upheld, the protest bond will be returned to the vendor. The administrative fee shall be non-refundable in all cases.
- 16.4 If the Bid Protest Committee denies the protest, the aggrieved vendor may appeal his/her case to the Town Council. In order to appeal, the vendor must notify the Town Administrator within three (3) working days of the Bid Protest Committee’s ruling. Upon notification, the Town Administrator will schedule the appeal as an agenda item on the next available Town Council agenda. All bidders will be notified of the agenda date.
- 16.5 Once the bid protest is resolved, the Town will proceed with the bid award, except as exempted in 2, above.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

EXHIBIT “A”

CONE OF SILENCE PROVISION

(t) Cone of Silence.

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefore; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefore; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefore. The County Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to (i) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management; (ii) communications with the County Attorney and his or her staff; (iii) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs; (iv) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure; (v) duly noticed site visits to determine the competency of bidders regarding a

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-___**

particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation; (vi) any emergency procurement of goods or services pursuant to Administrative Order 3-2; (vii) communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and (viii) communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefore provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. Notwithstanding any other provision of this Section, the imposition of a Cone of Silence on a particular RFP, RFQ or bid shall not preclude staff from obtaining industry comment or performing market research therefore provided all communications related thereto between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff are in writing or are made at a duly noticed public meeting.

(ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reinstated until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to award under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with

Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

(c) Exceptions. The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

SCOPE OF WORK

1. PURPOSE AND SCOPE OF WORK

The Town of Bay Harbor Islands is soliciting proposals from responsible and experienced professional engineering firms to evaluate the Town's stormwater system, perform modeling of the system for a 3-day rainfall with 10-year return period, and for a 3-day rainfall with 25-year return period, and evaluate the feasibility of installing stormwater injection wells and/or pump stations in the Town. In addition, to provide a list of priority projects to address any issues discovered during the evaluation. The design shall consider sea level rise projections for the Miami Dade County area.

2. WORK TO BE PERFORMED

The project components and tasks for the evaluation shall include: Project Management, Project Meetings and Site Visits, Modeling, Data Collection, Analysis and Reporting, Prioritization of Problems areas, Conceptual Plan for Improvements, and a Final Report. Specific intent and scope of work for each individual tasks are as follows:

Project Management

CONSULTANT shall perform its services in accordance with generally accepted standards and practices in effect at the time CONSULTANT's services are performed.

Project Meetings and Site Visit

CONSULTANT will arrange, prepare for and conduct a Project Kickoff Meeting, progress meetings and Site Visits as required for Modeling/Data Collection.

Stormwater Modeling

The modeling of the rain events shall be performed using the ICPR4 modeling software. All Data of the modeling (working file and pdfs) shall be provided to the Town for review and evaluation.

Prioritization of Problem Areas and Conceptual Plan for Improvements

Consultant will prioritize the problem areas and develop a conceptual plan for addressing these areas to reduce or eliminate the flooding problems. The consultant will include a cost benefit analysis based on potential cost savings for reducing flooding

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

and conceptual cost of implementation. Consultant shall provide a list of projects with estimated costs.

Final Report

The CONSULTANT shall perform a final report to include the following items:

- Executive Summary
- Table of Contents
- Modeling Methodology (Using ICPR4)
- Results of Modeling and Data Analysis
- Prioritization of Problem Areas (with Projects, costs and permits considerations)
- Cost Benefit Analysis
- Summary Report
- Consultant Recommendation's

STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE

FEASIBILITY EVALUATION

TOWN OF BAY HARBOR ISLANDS

BHI-____

EVALUATION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS

1. A Committee has been established to review and evaluate all qualifications submitted in response to this Request for Qualifications (RFQ). The Committee shall conduct a preliminary evaluation of all submittals on the basis of the information provided and other evaluation criteria as set forth in this RFQ or as reasonably determined by the Committee pursuant to Section 287.055, Florida Statutes. The factors to be considered by the Town in making this preliminary finding of qualifications of the respondents are the experience of the firm and the staff, qualifications of the project manager, project understanding and approach, and DBE distribution.
2. The Committee will first review each submittal for compliance with the minimum qualifications and mandatory requirements of the RFQ. Failure to comply with any mandatory requirements will disqualify a submittal.
3. The Town reserves the right to reject any and all submittals and to waive irregularities in the procedures. The Town further reserves the right to seek new submittals when such a procedure is reasonably in the best interest of the Town to do so.
4. The Selection process will be conducted in two (2) phases: (1) Competitive Selection – ranking of the most qualified; (2) Competitive Negotiations – Negotiations of Contract with Top ranked firm; as provided by Section 287.055, Florida Statutes. **The Town may request, accept and consider proposal for the compensation to be paid under the proposed contract only during the competitive negotiations phase, NOT during the competitive selection phase.**

A. **Phase I – Competitive Selection Ranking.** The evaluation factors used for determining the Qualifications for rankings include:

Criteria	Points
Qualification and Experience of the Firm and Subconsultants	35
Qualifications of the Project Manager	30
Project Understanding and Approach	25
DBE	10
TOTAL OF 100 POSSIBLE POINTS	100 Points

The Committee may require public presentations by firms regarding their qualifications, approach to the project or work, and ability to furnish the required services. All final rankings shall be subject to the Town Council Approval.

B. **Phase II – Competitive Negotiations.** Following ranking of the most qualified firm, the Town may negotiate a contract with the most qualified firm for the proposed services with the procedures of Section 287.055 (5), Florida Statutes, including the procedures authorizing negotiations with successively ranked firm if negotiations with the highest ranked firm fails. All Contracts shall be subject to approval by the Town Council.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

5. RFQ TIMETABLE AND EVALUATION/SELECTION PROCESS

Activity	Date
RFQ Available to Public	10/24/2022
Pre-Bid Meeting	11/10/2022
Deadline for Receipt of Questions	11/30/2022
Proposal Submission Deadline	12/09/2022

Copies of this RFQ package are available on Town of Bay Harbor Islands' website: <https://www.bayharborislands-fl.gov/>.

Proposers who obtain copies of this solicitation from sources other than the TOWN risk the potential of not receiving addenda, since their names will not be included on the list of firms participating in the process for this solicitation. Such Proposers are solely responsible for those risks.

6. PROPOSAL FORMAT

IT IS THE RESPONSIBILITY OF THE PROPOSER TO ENSURE THAT THE PROPOSAL BEING SUBMITTED IS TIMELY, COMPLETE, INCLUSIVE OF ADDRESSING ALL OF THE REQUIREMENTS AND EVALUATION CRITERIA HEREIN.

To facilitate review and evaluation, the SOQ Document prepared in response to this RFQ shall provide the following information in the **order shown**.

A. Cover Letter:

1. Cover Letter on company letter head signed by person authorized to submit the proposal. Letter must include contact person with their telephone number, e-mail address and mailing address. The type of organization (i.e., individual, partnership, corporation, joint venture, etc.), year established, and address of the company shall also be included in the Cover Letter.

B. Qualifications and Experience of the Firm and Sub-consultants:

1. The history, ownership, organization, and background of the Applicant Firm shall be provided. Include a general statement describing the types of services offered by the firm, location of main and branch offices, number of years in business and number of employees in each department and the location of the office from which this work will be performed.

The firm should demonstrate how it interacts with municipal clients and provides and exchanges information relative to the requirements.

STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE

FEASIBILITY EVALUATION

TOWN OF BAY HARBOR ISLANDS

BHI-____

The Applicant Firm should provide examples of projects similar to those stated in the scope of work. The firm should include the number of projects completed over the last seven (7) years.

Provide an Organizational Chart and Resumes of the Team assigned for this Project including the subconsultants.

List all completed and active projects that Vendor has managed within the past seven years. In addition, list all projected projects that Vendor will be working on in the near future. Projected projects will be defined as a project(s) that Vendor is awarded a contract but the Notice to Proceed has not been issued. Identify any projects that Vendor worked on concurrently. Describe Vendor's approach in managing these projects. Were there or will there be any challenges for any of the listed projects? If so, describe how Vendor dealt or will deal with the projects' challenges.

Provide a list of at least five (5) client references for which the Applicant firm provides similar services to those outlined in this request for qualifications.

- a. Name and address of client.
- b. The nature of the firm's contract.
- c. The owner's representative's name, addresses, and phone number.
- d. Date contract started and ended.
- e. Scope or nature of contract
- f. Present status of the contract.

C. Project Manager's Qualifications:

1. Respondents shall identify the Project Manager who will be responsible for the quality and timeliness of the I&I Study and system assessment, coordinate and conduct meetings with the Town (Elected Officials, Staff, and residents), and regulatory agencies, and ensuring that the adequate personnel and other resources are available for the proposed project. The Project Manager shall have experience working with I&I Projects, DERM, and Miami Dade Water and Sewer Department.
2. Respondents shall provide a summary of the education, experience and qualifications pertaining to the management of all phases of the proposed project. Project Manager shall be a registered Professional Engineer in the State of Florida. License registration shall be submitted as part of the SOQ document.

D. Project Understanding and Approach:

1. The firm should present their approach to accomplishing the strategies to be implemented in delivering the services outlined in the scope of service for the project. Also include the company's overall workload and show the ability to accommodate

STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE

FEASIBILITY EVALUATION

TOWN OF BAY HARBOR ISLANDS

BHI-____

this project and be able to complete project on a timely basis. Your proposal should also address the topics indicated in the scope of services. Include a proposed schedule for the work.

E. Disadvantage Business Enterprise (DBE) Status:

1. Firms shall identify whether they are or not a DBE Firm. If a DBE Firm, please provide proper certification information. This information pertains to both the Prime Consultant and sub-consultants. Provide in a Table Format (Task Name, Company, % of work, and Total) how the work will be distributed.

F. Bid Forms:

1. Completely Executed Bid Forms.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____
BID FORM**

BID FROM:

Company: _____

Address: _____

City/St/Zip: _____

Phone/ Fax: _____

To furnish all materials, equipment and labor and to perform all work in accordance with the Bid and Contract Documents for Project:

Stormwater Injection Wells and Pump Stations – Townwide Feasibility Evaluation, Project No. BHI-____, located in the Town of Bay Harbor Islands, Florida.

**TO: TOWN OF BAY HARBOR ISLANDS, FLORIDA
ATTN: TOWN MANAGER**

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract for Engineering Services, with the Town to perform all Work and any Additional Services as specified or indicated in the Bidding Documents and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for **120** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Town.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Bidding Documents, Contract for Engineering Services, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

Addendum No.

Addendum Date

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work, including all requirements applicable to the Project, including the provisions, clauses, terms or conditions set forth in Construction Contract (Contract Requirements).

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS**

BHI-____

- D. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - F. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - G. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - I. Bidder has reviewed and carefully studied the Contract, together with Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.
- 5.01** Bidder's Information:
The Bidder states that he/she is an experienced Engineering Firm and has completed similar projects within the last five years. This information has been provided on the Consultant's Qualifications Statement.
- 6.01** Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Bid and Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Bid Documents and the Contract for Construction, attach a statement to this Bid Form to indicate the number of days required.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

7.01 The following documents are attached to and made a condition of this Bid:

- A. Consultant's Qualifications Statement, containing a tabulation of Subcontractors, Suppliers [and other] individuals and entities required to be identified in this Bid;
- B. Non-Collusion Affidavit
- C. Copy of State of Florida's License;
- D. Addenda

8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions, if any.

SUBMITTED on _____, 2022.

State Contractor License No. _____. (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

A Corporation

Corporation Name: _____(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability):_____

By: _____
(Signature --attach evidence of authority to sign)

Name: (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ FAX No.: _____

Date of Qualification to do business is _____.

CONSULTANT’S QUALIFICATIONS STATEMENT

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.
The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your entity/company in detail.

2. The address of the principal place of business is:

3. Entity/Company telephone number, fax number and e-mail addresses:

4. Number of employees:

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

5. Number of employees assigned to this Project:

6. Entity/Company Identification numbers for the Internal Revenue Service:

7. Provide Firm's License, and expiration date:

8. How many years has your organization been in business as an Engineering Firm? Does your organization have a specialty?

9. What is the last project of this nature or magnitude that you have completed? Has this firm ever completed a "public" project? Please provide project description, reference and cost of work completed.

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.

Name

Address

Telephone No.

11.2.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

Name _____
Address _____
Telephone No. _____

11.3.
Name _____
Address _____
Telephone No. _____

12. List the following information concerning all contracts or work **in progress** as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the Project site and does the Bidder have a complete plan for its performance?

14. Provide list of subconsultants and subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

SubContractor Name	Address	Work to be Performed

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

The foregoing list of subconsultants(s) may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?

16. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

17. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

17.1 The correct name of the Bidder is:

17.2. The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

17.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

Only those Bidders and Subconsultants (s) who are qualified will be considered as bona fide bidders. As Bidder, we certify to have work on at least five (5) similar projects in the last seven (7) year period as indicated by the following:

- | | |
|---------------------|-------|
| 1) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |
| | _____ |
| APPROXIMATE VALUE | _____ |
| | _____ |
| 2) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |
| | _____ |
| APPROXIMATE VALUE | _____ |
| | _____ |
| 3) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

APPROXIMATE VALUE

CONSULTANT:

Print Name: _____

Print Title: _____

Date: _____

STATE OF FLORIDA)
) S.S.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 2022.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____
NON-COLLUSION AFFIDAVIT**

The undersigned individual, being duly sworn, deposes and says that:

- 1 He/She is _____ 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 and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees,
or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly
or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in
connection with the Construction Contract for which the attached Bid has been submitted or to
refrain from proposing in connection with such Construction Contract, or has in any manner,
directly or indirectly, sought by agreement of collusion or communication of conference with any
other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any
other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other
bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage
against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed
Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____
ADDENDUM NO. 1

Issued: _____ (Date)

Project: Stormwater Injection Wells and Pump Stations – Townwide Feasibility Evaluation

Project No. BHI - _____

Notice to All Bidders:

ADDENDA TO BE PLACED HERE

Issued By: _____
Name

PROOF OF RECEIPT

Bidder/Recipient
Signature: _____
Print Name: _____
Firm: _____
Date: _____

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____ 20__, by and between:

TOWN OF BAY HARBOR ISLANDS, a Florida municipality, (hereinafter referred to as "TOWN")

and

_____, a
_____, (hereinafter referred to as "CONSULTANT").

WHEREAS, the Town Council of the Town of Bay Harbor Islands, Florida at its Council meeting of _____, 20__ authorized by motion the execution of this Agreement between CONSULTANT and TOWN authorizing the performance of _____, RFQ No. _____ (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth;

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

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 AGREEMENT: Means this document between the TOWN and CONSULTANT dated _____, 20__ and any duly authorized and executed Amendments to Agreement.
- 1.2 CERTIFICATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that TOWN pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 CHANGE ORDER: A written order to the CONSULTANT approved by the TOWN authorizing a revision of this agreement between the TOWN and the CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.

The CONSULTANT may review and make recommendations to the TOWN on any proposed Change Orders, for approval or other appropriate action by the TOWN.

- 1.4 TOWN: The Town of Bay Harbor Islands, a Florida municipality.
- 1.5 TOWN MANAGER: The Town Manager of the Town of Bay Harbor Islands, Florida.
- 1.6 COUNCIL: The Town Council of the Town of Bay Harbor Islands, Florida, which is the governing body of the TOWN government.
- 1.7 CONSTRUCTION COST: The total construction cost to TOWN of all elements of the Project designed or specified by the CONSULTANT.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the TOWN defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 CONSULTANT: _____, the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the Town of Bay Harbor Islands, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with TOWN ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.16 OMISSION: A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.

- 1.17 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon the CONSULTANT'S final detailed Construction Documents of the Project.
- 1.18 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by TOWN as provided in this Agreement.
- 1.19 PRELIMINARY PLANS: The documents prepared by the CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.20 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the TOWN's discretion.
- 1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of TOWN, in monitoring the Construction Phase of the Project to completion.
- 1.22 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by the CONSULTANT at fixed contract prices in accordance with this Agreement between the TOWN and the CONSULTANT.
- 1.23 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes, TOWN has formed a Committee to evaluate the CONSULTANT's statement of qualifications and performance data to ensure that the CONSULTANT has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform services hereunder.

ARTICLE 3 SCOPE OF SERVICES

- 3.1 Work under this Project includes but is not limited to the evaluation of the Town of Bay Harbor Islands stormwater system, perform modeling of the system for 10 year 72-hr, and 25 year 72-hr storm events, and evaluate the feasibility of installing stormwater injection wells and/or pump stations in the Town. In addition, to provide a list of priority projects to address any issues discovered during the evaluation.
- 3.2 TOWN and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the TOWN in a timely manner before proceeding with the work. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by TOWN to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written TOWN approval is at CONSULTANT's sole risk.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and a committee of TOWN representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include TOWN's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5 TASK ORDERS

- 5.1 The Project will be divided into "Tasks."
- 5.2 Task Orders shall be jointly prepared by the TOWN and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable TOWN code requirements.

- 5.3 Under all Task Orders and Projects, TOWN may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the TOWN, the following items:
- 5.3.1 Providing additional copies of reports, contract drawings and documents; and
- 5.3.2 Assisting TOWN with litigation support services arising from the planning, development, or construction.
- 5.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed from the TOWN. The CONSULTANT must receive the approval of the Contract Administrator or designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.5 If, in the opinion of the TOWN, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the TOWN shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the TOWN shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the TOWN, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the TOWN may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The TOWN may then decide, after Town Council approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

ARTICLE 6 TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 The initial term of this Agreement shall be for two (2) years from the date of this Agreement. The TOWN shall have the option to renew this Agreement for one (1) successive one (1) year terms under the same terms, conditions, and compensation as set forth herein.
- 6.2 CONSULTANT shall perform the services described in Task Orders within the time periods specified in the Task Order. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.3 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables/documents for the Contract Administrator's review.

- 6.4 In the event CONSULTANT is unable to complete any services because of delays resulting from untimely review by TOWN or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, TOWN shall grant a reasonable extension of time for completion of the services. It shall be the responsibility of the CONSULTANT to notify TOWN promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform TOWN of all facts and details related to the delay.
- 6.5 The time for the performance of services described in assigned Task Orders shall be negotiated by the TOWN and the CONSULTANT as the services are requested and authorized by the TOWN.

ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

The method of compensation for each Task Order shall be not to exceed as agreed upon per Task Order and described in Section 7.1.1 below.

7.1.1 Not To Exceed Amount Compensation

TOWN agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in each Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement. As described in Section 8.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

A not to exceed proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including reimbursables; and profit, or as required by individual Task Order.

7.2 REIMBURSABLES

- 7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. TOWN shall not withhold retainage from payments for

Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, TOWN and other third parties retained or employed by any of them or (ii) submitted to TOWN for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs approved by Contract Administrator.

C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.

D. Overnight Delivery/Courier Charges (when TOWN requires/requests this service).

7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of TOWN's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If TOWN or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by TOWN prior to incurring such expenses.

7.3 METHOD OF BILLING

7.3.1 Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

7.4 METHOD OF PAYMENT

7.4.1 TOWN shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 TOWN will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, TOWN will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to TOWN.

7.4.3 Payments are made by TOWN to CONSULTANT using a Checks.

ARTICLE 8 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

8.2 TOWN or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. TOWN shall compensate CONSULTANT for such additional services as provided in Article 7.

- 8.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the Town Manager for resolution. The Town Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 9 CONSULTANT'S RESPONSIBILITIES

- 9.1 The CONSULTANT, following the TOWN's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the TOWN, assist the TOWN in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. If requested, the CONSULTANT shall review and analyze the proposals received by the TOWN, and shall make a recommendation for any award based on TOWN's Purchasing Ordinance.
- 9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, CONSULTANT, at no additional cost to the TOWN, shall meet with the TOWN's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSULTANT shall, at the TOWN's direction, redesign each Project and/or work with the TOWN to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the TOWN. If negotiations between the TOWN and the CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the TOWN after the CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the CONSULTANT shall not be responsible for any redesign without compensation.
- 9.3 The CONSULTANT shall provide the TOWN with a list of recommended, prospective proposers.
- 9.4 The CONSULTANT shall attend all pre-proposal conferences.
- 9.5 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.

- 9.6 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the TOWN, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the TOWN.
- 9.7 The TOWN shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work after receiving a recommendation from the CONSULTANT. The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The CONSULTANT may also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 9.8 The TOWN shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
- 9.8.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the TOWN which would not be incurred without the Error.
- 9.8.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the TOWN which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the TOWN shall not look to the CONSULTANT for reimbursement for Errors and Omissions.
- 9.8.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the TOWN shall recover the full and total additional cost to the TOWN as a result of CONSULTANT's Errors and Omissions from the CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 9.8.4 To obtain such recovery, the TOWN shall deduct from the CONSULTANT's fee a sufficient amount to recover all such additional cost to the TOWN.
- 9.8.5 In executing this Agreement, the CONSULTANT acknowledges acceptance of these calculations and to the TOWN's right to recover same as stated above. The recovery of additional costs to the TOWN under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the TOWN may otherwise incur.

9.8.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida.

ARTICLE 10 TOWN'S RESPONSIBILITIES

- 10.1 TOWN shall assist CONSULTANT by placing at CONSULTANT's disposal all information TOWN has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 TOWN shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 TOWN shall review the itemized deliverables/documents identified per Task Order.
- 10.4 TOWN shall give prompt written notice to CONSULTANT whenever TOWN observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11 MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, plans, studies, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the TOWN.

Drawings, specifications, designs, plans, studies, spreadsheets, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the TOWN whether the Project for which they are made is executed or not, and are subject to reuse by the TOWN in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the TOWN or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle the CONSULTANT to further compensation at rates to be agreed upon by the TOWN and the CONSULTANT. This shall

not limit the TOWN's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 Termination for Cause. It is expressly understood and agreed that the TOWN may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 11.27. In the case of termination by the TOWN for cause, the CONSULTANT shall be first granted a 10 working day cure period after receipt of written notice from the TOWN. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of TOWN and shall be delivered by CONSULTANT to the TOWN within five (5) days of TOWN's request. Upon payment of such sum by TOWN to CONSULTANT, TOWN shall have no further duties or obligations pursuant to or arising from this Agreement.

11.2.2 This Agreement may also be terminated by TOWN upon such notice as TOWN deems appropriate in the event TOWN or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the TOWN. Upon being notified of TOWN's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall TOWN make payment for services which have not been performed.

11.2.5 Termination by Consultant. CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the TOWN of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSULTANT shall have no right to terminate this Agreement for convenience of the CONSULTANT

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

TOWN shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by TOWN all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

CONSULTANT shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the TOWN in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the TOWN would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the TOWN, all public records in possession of the CONSULTANT upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the TOWN in a format that is compatible with the information technology systems of the TOWN.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by TOWN, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

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

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY PARTICIPATION

Historically, the TOWN has been able to achieve great participation levels by MBE/WBE firms in TOWN projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the TOWN maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the TOWN with this documentation at the end of the Project, or in cases where projects are longer than one year, each TOWN fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide

any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of work to subconsultant. The parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including subconsultant's scope of work and fees, for review and approval by the TOWN prior to sub-consultants proceeding with any work.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

(or attach as an exhibit if more appropriate)

11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to TOWN's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of TOWN shall meet or exceed all professional standards of the State of Florida.

11.9 INDEMNIFICATION OF TOWN

11.9.1 CONSULTANT shall defend, counsel being subject to TOWN's approval, and indemnify and hold harmless TOWN, and TOWN's officers and employees from any and all claims, liabilities, damages, losses, penalties, fines, judgments, and costs, including, but not limited to, any award of attorneys' fees and any award of litigation costs, in connection with or arising directly or indirectly out of any act or omission by the CONSULTANT or by any officer, employee, agent, invitee, subcontractor, or subconsultant of the CONSULTANT. The provisions of this Section shall survive the expiration or early termination of this Agreement. To the extent considered necessary by Contract Administrator and TOWN attorney, any sums due the CONSULTANT under this Agreement may be retained by TOWN until all of TOWN's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by TOWN.

11.9.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.9.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

11.10 LIMITATION OF TOWN'S LIABILITY

The TOWN desires to enter into this Agreement only if in so doing the TOWN can place a limit on the TOWN'S liability for any cause of action arising out of this Agreement, so that the TOWN'S liability for any breach never exceeds the sum of \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT'S recovery from the TOWN to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the TOWN to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSULTANT agrees that the TOWN shall not be liable to the CONSULTANT for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the TOWN to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended

either to be a waiver of the limitation placed upon the TOWN'S liability as set forth in Section 768.28, Florida Statutes, or to extend the TOWN'S liability beyond the limits established in said Section 768.28; and no claim or award against the TOWN shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the TOWN under the provisions of this Agreement.

11.11 INSURANCE

11.11.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to transact business and issue insurance policies in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

A. The Commercial General Liability insurance policy shall name the Town of Bay Harbor Islands, a Florida municipality, as additional insured. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT. Any exclusions or provisions in the insurance maintained by the CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.

B. The CONSULTANT shall provide the TOWN an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the TOWN shall be given thirty (30) days' notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the TOWN, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the TOWN may carry in its own name.

C. CONSULTANT shall as a condition precedent of this Agreement, furnish to the Town of Bay Harbor Islands, Public Works Director, 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability:
 Bodily Injury and Property Damage Liability
 Combined Single Limit
 Each Occurrence \$1,000,000
 General Aggregate Limit \$2,000,000
 Personal Injury \$1,000,000
 Products/Completed Operations \$1,000,000
- B. Endorsements Required:
 Town of Bay Harbor Islands included as an Additional Insured
 Employees included as insured
 Broad Form Contractual Liability
 Waiver of Subrogation
 Premises/Operations
 Products/Completed Operations
 Independent Contractors

AUTOMOBILE BUSINESS

- A. Limits of Liability:
 Bodily Injury and Property Damage Liability
 Combined Single Limit \$2,000,000
 Any Auto
 Including Hired, Borrowed or Non-Owned Autos
- B. Endorsements Required:
 Waiver of Subrogation

WORKERS' COMPENSATION

Limits of Liability: Statutory-State of Florida

PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

Combined Single Limit
 Each Occurrence \$1,000,000
 General Aggregate Limit \$2,000,000
 Deductible not to exceed 10%
 Must be in effect for at least five (5) years after Project completion

- 11.11.3 All insurance policies required above shall be issued by companies authorized to transact business and issue insurance policies under the laws of the State of Florida, with the following qualifications:

The Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Town's Risk Manager. Any exclusions or provisions in the insurance maintained by the Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the TOWN at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the TOWN shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the TOWN.
- B. The TOWN may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

11.12 REPRESENTATIVE OF TOWN AND CONSULTANT

11.12.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more TOWN employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

11.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as

necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

11.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

11.17 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

11.18 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this

Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision the TOWN shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.19 WAIVER OF BREACH AND MATERIALITY

Failure by TOWN to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

TOWN and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of TOWN and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

11.24 APPLICABLE LAW AND VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Miami Dade

County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. .
BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN EXPRESSLY
WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL
LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.26 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

11.27 NOTICES

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

TOWN: Town Engineer
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

With a copy to: Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

Town Attorney
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

CONSULTANT: _____

11.28 ATTORNEY FEES

If TOWN or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs

and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the TOWN determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

11.31 EVALUATION

The TOWN maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the TOWN and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in TOWN projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

11.32 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Miami Dade County, the Town of Bay Harbor Islands, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

11.33 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The TOWN may terminate this Contract at the TOWN's option if the CONSULTANT is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

DRAFT

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

TOWN

TOWN OF BAY HARBOR ISLANDS, a
municipal corporation of the State of Florida

By _____
MARIA LASDAY, Town Manager

(CORPORATE SEAL)

ATTEST:

YVONNE P. HAMILTON
Town Clerk

CONSULTANT

WITNESSES:

(Witness print name)

By _____
Name: _____
Title: _____

(Witness print name)

ATTEST:

By _____

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____ as _____ of
_____. They are ☐ personally known to me or ☐ have
produced _____ as identification.

(SEAL)

Notary Public, State of
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

DRAFT

EXHIBIT "A"

HOURLY BILLING RATES FOR TASK ORDERS

DRAFT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



AMERICAN CONSULTING
ENGINEERS COUNCIL



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



Advancement
of Construction
Technology

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

Copyright ©1996

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

TABLE OF CONTENTS

	Page
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	
1.01 <i>Defined Terms</i>	00700 - 6
1.02 <i>Terminology</i>	00700 - 6
ARTICLE 2 - PRELIMINARY MATTERS	00700 - 8
2.01 <i>Delivery of Bonds</i>	00700 - 9
2.02 <i>Copies of Documents</i>	00700 - 9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	00700 - 9
2.04 <i>Starting the Work</i>	00700 - 9
2.05 <i>Before Starting Construction</i>	00700 - 9
2.06 <i>Preconstruction Conference</i>	00700 - 9
2.07 <i>Initial Acceptance of Schedules</i>	00700 - 10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	00700 - 10
3.01 <i>Intent</i>	00700 - 10
3.02 <i>Reference Standards</i>	00700 - 10
3.03 <i>Reporting and Resolving Discrepancies</i>	00700 - 10
3.04 <i>Amending and Supplementing Contract Documents</i>	00700 - 11
3.05 <i>Reuse of Documents</i>	00700 - 11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	00700 - 11
4.01 <i>Availability of Lands</i>	00700 - 11
4.02 <i>Subsurface and Physical Conditions</i>	00700 - 11
4.03 <i>Differing Subsurface or Physical Conditions</i>	00700 - 12
4.04 <i>Underground Facilities</i>	00700 - 12
4.05 <i>Reference Points</i>	00700 - 13
4.06 <i>Hazardous Environmental Condition at Site</i>	00700 - 13
ARTICLE 5 - BONDS AND INSURANCE	00700 - 14
5.01 <i>Performance, Payment, and Other Bonds</i>	00700 - 15
5.02 <i>Licensed Sureties and Insurers</i>	00700 - 15
5.03 <i>Certificates of Insurance</i>	00700 - 15
5.04 <i>CONTRACTOR's Liability Insurance</i>	00700 - 15
5.05 <i>OWNER's Liability Insurance</i>	00700 - 15
5.06 <i>Property Insurance</i>	00700 - 16
5.07 <i>Waiver of Rights</i>	00700 - 16
5.08 <i>Receipt and Application of Insurance Proceeds</i>	00700 - 17
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	00700 - 18
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	00700 - 18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	00700 - 18
6.01 <i>Supervision and Superintendence</i>	00700 - 18
6.02 <i>Labor; Working Hours</i>	00700 - 18
6.03 <i>Services, Materials, and Equipment</i>	00700 - 19
6.04 <i>Progress Schedule</i>	00700 - 19
6.05 <i>Substitutes and "Or-Equals"</i>	00700 - 19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	00700 - 19
6.07 <i>Patent Fees and Royalties</i>	00700 - 20
6.08 <i>Permits</i>	00700 - 21
6.09 <i>Laws and Regulations</i>	00700 - 21
6.10 <i>Taxes</i>	00700 - 22
6.11 <i>Use of Site and Other Areas</i>	00700 - 22
6.12 <i>Record Documents</i>	00700 - 22
6.13 <i>Safety and Protection</i>	00700 - 22
6.14 <i>Safety Representative</i>	00700 - 23
6.15 <i>Hazard Communication Programs</i>	00700 - 23

6.16	Emergencies	00700 - 23
6.17	Shop Drawings and Samples	00700 - 23
6.18	Continuing the Work	00700 - 24
6.19	CONTRACTOR's General Warranty and Guarantee	00700 - 25
6.20	Indemnification	00700 - 25
ARTICLE 7 - OTHER WORK		00700 - 26
7.01	Related Work at Site	00700 - 26
7.02	Coordination	00700 - 26
ARTICLE 8 - OWNER'S RESPONSIBILITIES		00700 - 26
8.01	Communications to Contractor	00700 - 26
8.02	Replacement of ENGINEER	00700 - 26
8.03	Furnish Data	00700 - 26
8.04	Pay Promptly When Due	00700 - 26
8.05	Lands and Easements; Reports and Tests	00700 - 26
8.06	Insurance	00700 - 27
8.07	Change Orders	00700 - 27
8.08	Inspections, Tests, and Approvals	00700 - 27
8.09	Limitations on OWNER's Responsibilities	00700 - 27
8.10	Undisclosed Hazardous Environmental Condition	00700 - 27
8.11	Evidence of Financial Arrangements	00700 - 27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		00700 - 27
9.01	OWNER'S Representative	00700 - 27
9.02	Visits to Site	00700 - 27
9.03	Project Representative	00700 - 27
9.04	Clarifications and Interpretations	00700 - 28
9.05	Authorized Variations in Work	00700 - 28
9.06	Rejecting Defective Work	00700 - 28
9.07	Shop Drawings, Change Orders and Payments	00700 - 28
9.08	Determinations for Unit Price Work	00700 - 28
9.09	Decisions on Requirements of Contract Documents and Acceptability of Work	00700 - 28
9.10	Limitations on ENGINEER's Authority and Responsibilities	00700 - 28
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		00700 - 29
10.01	Authorized Changes in the Work	00700 - 29
10.02	Unauthorized Changes in the Work	00700 - 29
10.03	Execution of Change Orders	00700 - 29
10.04	Notification to Surety	00700 - 29
10.05	Claims and Disputes	00700 - 30
ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK		00700 - 30
11.01	Cost of the Work	00700 - 30
11.02	Cash Allowances	00700 - 32
11.03	Unit Price Work	00700 - 32
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES		00700 - 33
12.01	Change of Contract Price	00700 - 33
12.02	Change of Contract Times	00700 - 33
12.03	Delays Beyond CONTRACTOR's Control	00700 - 33
12.04	Delays Within CONTRACTOR's Control	00700 - 34
12.05	Delays Beyond OWNER's and CONTRACTOR's Control	00700 - 34
12.06	Delay Damages	00700 - 34
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK		00700 - 34
13.01	Notice of Defects	00700 - 34
13.02	Access to Work	00700 - 34
13.03	Tests and Inspections	00700 - 34
13.04	Uncovering Work	00700 - 35
13.05	OWNER May Stop the Work	00700 - 35
13.06	Correction or Removal of Defective Work	00700 - 35

13.07	<i>Correction Period</i>	00700 - 35
13.08	<i>Acceptance of Defective Work</i>	00700 - 36
13.09	<i>OWNER May Correct Defective Work</i>	00700 - 36
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION		00700 - 36
14.01	<i>Schedule of Values</i>	00700 - 36
14.02	<i>Progress Payments</i>	00700 - 36
14.03	<i>CONTRACTOR's Warranty of Title</i>	00700 - 37
14.04	<i>Substantial Completion</i>	00700 - 38
14.05	<i>Partial Utilization</i>	00700 - 38
14.06	<i>Final Inspection</i>	00700 - 39
14.07	<i>Final Payment</i>	00700 - 39
14.08	<i>Final Completion Delayed</i>	00700 - 39
14.09	<i>Waiver of Claims</i>	00700 - 40
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION		00700 - 40
15.01	<i>OWNER May Suspend Work</i>	00700 - 40
15.02	<i>OWNER May Terminate for Cause</i>	00700 - 40
15.03	<i>OWNER May Terminate For Convenience</i>	00700 - 40
15.04	<i>CONTRACTOR May Stop Work or Terminate</i>	00700 - 41
ARTICLE 16 - DISPUTE RESOLUTION		00700 - 41
16.01	<i>Methods and Procedures</i>	00700 - 41
ARTICLE 17 - MISCELLANEOUS		00700 - 41
17.01	<i>Giving Notice</i>	00700 - 42
17.02	<i>Computation of Times</i>	00700 - 42
17.03	<i>Cumulative Remedies</i>	00700 - 42
17.04	<i>Survival of Obligations</i>	00700 - 42
17.05	<i>Controlling Law</i>	00700 - 42

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it 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 ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

- A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

- A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

- A. **CONTRACTOR's Review of Contract Documents:** Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

- B. **Preliminary Schedules:** Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

5.04 *CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operation under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amount as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or area resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or a law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

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

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on OWNER's Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations, thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

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

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

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

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee*: When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the 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. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

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

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR's Fee:** The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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

13.01 Notice of Defects

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

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

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:
 - a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling OWNER to a set-off against the amount recommended; or
 - d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

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

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, 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 to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

SUPPLEMENTARY CONDITIONS

1.01 GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

Unless otherwise indicated in these Supplementary Conditions, replace the term “ENGINEER” wherever used in the Standard General Conditions of Contract and in these Supplementary Conditions, with “TOWN”. The words “TOWN” and “OWNER” may be used interchangeably throughout these documents.

ARTICLE 1 – DEFINITIONS – Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

ARTICLE 5 – BONDS AND INSURANCE – Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:

Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

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

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
2. Limits:

(a) General Aggregate	\$1,000,000
(b) Each Occurrence	\$1,000,000
(c) Personal Injury	\$1,000,000
3. Coverage is to be written on an "occurrence" basis.
4. Owners and Contractors Protection:

(a) Bodily Injury:	
Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
(b) Property Damage:	
Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.

5.04.A.6 Comprehensive Automobile Liability:

(a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

(b) Limits:

Combined Single Limit \$2,000,000

5.04.B.1 Umbrella:

(a) Limits:

Aggregate \$1,000,000

(b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.

5.04.B.8 The Town of Bay Harbor Islands, shall be included as a named insured party under the Contractor's Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Town of Bay Harbor Islands, Florida is hereby named Additional Insured under the terms of this policy."

5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

5.04.B.10 The Certificate of Insurance shall be issued to the Town of Bay Harbor Islands, Florida at the following address:

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES – INDEMNIFICATION – Page 18

SC-6.01

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

The Contractor shall perform all work in compliance with all applicable safety codes. A competent English-speaking superintendent will be on the job at all times during working hours and will be subject to call during off-duty hours for emergency situations. The superintendent shall overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Add the new paragraphs immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single and multifamily residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 5:00 p.m. Monday through Friday. No work shall be performed on Saturdays or Sundays or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

CONTRACTOR shall not be required to employ any Subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words "Instructions to Bidders" before Supplementary Conditions wherever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

Nor does such acceptable create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraphs 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to pay regular tolls to use the Broad Causeway, and to have identification signs.

SC-6.11

Add the new paragraphs immediately after paragraph 6.11.B of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor. Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's Expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

CONTRACTOR shall maintain in a safe place at the Project one record copy of all drawings, specifications, addenda, written amendments, change orders, work change directives, field orders, as-builts and written interpretations and clarifications in good order and annotated to show changes made during construction.

SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

Other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph:

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$10.00 dollars to be paid by TOWN to Contractor hereunder- and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the TOWN and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against TOWN or any of their consultants, agents or employees by any CONTRACTOR, any Subcontractor, any person or organization

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 shall not be limited in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 – OWNER'S RESPONSIBILITIES - Page 26

Throughout this Article, OWNER is interchangeably with TOWN.

SC-8.01

Amend paragraph 8.01 A by replacing it with the following paragraph:

Except as otherwise provided in these General Conditions, TOWN shall issue all communications to CONTRACTOR through the TOWN MANAGER, STAFF ENGINEER or PROJECT MANAGER.

SC-8.02

Delete paragraph 8.02 A.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

The use of "Engineer" throughout this Article shall mean the Town's "Staff Engineer or Project Manager".

SC-9.03

Delete paragraph 9.03A.

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

If TOWN and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

Without invalidating the Contract and without notice to any Surety, TOWN may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation, arbitration or any other dispute resolution forum.

ARTICLE 11 – COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

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

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortage or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay or any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the TOWN such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the STAFF ENGINEER, employed by the TOWN, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, material-man, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, material-man, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the TOWN.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK – Page 34

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by the TOWN, be uncovered for his observation and replaced at CONTRACTOR’S expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

, or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

,or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 – PAYMENTS TO CONTRACTORS AND COMPLETION – Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every material-man, supplier and or laborer (“Potential Lienor”) who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Line or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the TOWN, CONTRACTOR must furnish the Partial Waiver upon Progress Payment Statutory Waiver and Final Release from each Potential Lienor, in the form prescribed by TOWN, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the TOWN. Further as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide TOWN with a Statutory Waiver and Final Release from each Potential Lienor in the form prescribed by TOWN, together with a Contractor's Affidavit and Final Release. Each Release given to the TOWN shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by TOWN. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the TOWN or the TOWN's property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10-) days following the date of recordation of the Claim_of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, TOWN shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and TOWN may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient.

TOWN shall not be limited to an is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

After CONTRACTOR has, in the opinion of TOWN, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

Or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

A waiver of all Claims by TOWN against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION – Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

**STORMWATER INJECTION WELLS AND PUMP STATIONS – TOWNWIDE
FEASIBILITY EVALUATION
TOWN OF BAY HARBOR ISLANDS
BHI-____**

SC-15.04

Amend paragraph 15.04.A by deleting the last sentence of the paragraph.

STORM WATER LINES

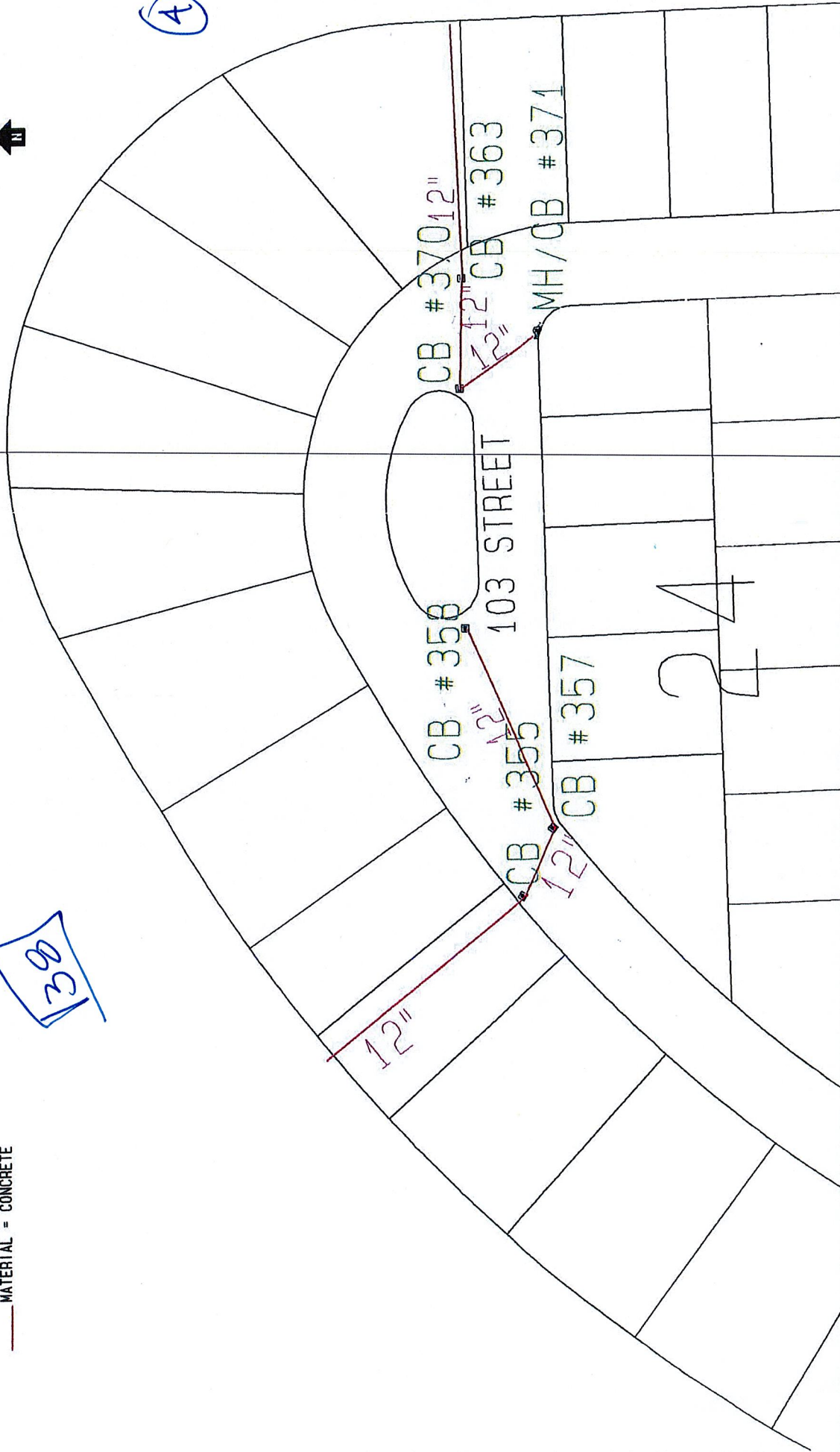
— MATERIAL = CAST IRON

— MATERIAL = CONCRETE

300



A



TOWN OF BAY HARBOR ISLANDS
STORMWATER COLLECTION SYSTEM

Drawing no:	swdet03
Date:	02/02/96
Drawn by:	
Scale:	

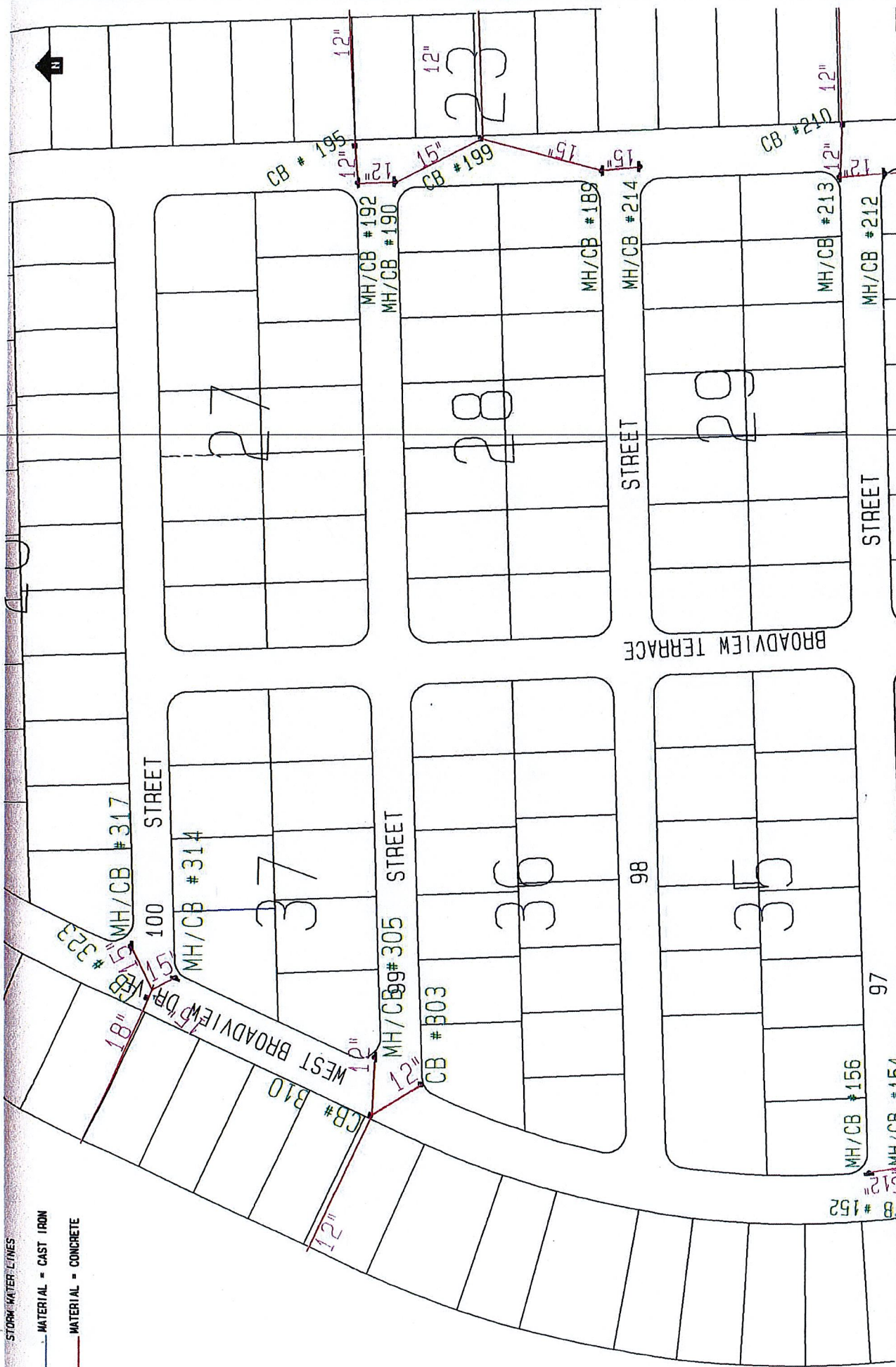


infocap	TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Date: 02/02/96	Drawing no: swdet04
	Drawn by: ALMEIDA		Scale: 1" = 140'

STORM WATER LINES

— MATERIAL = CAST IRON

— MATERIAL = CONCRETE



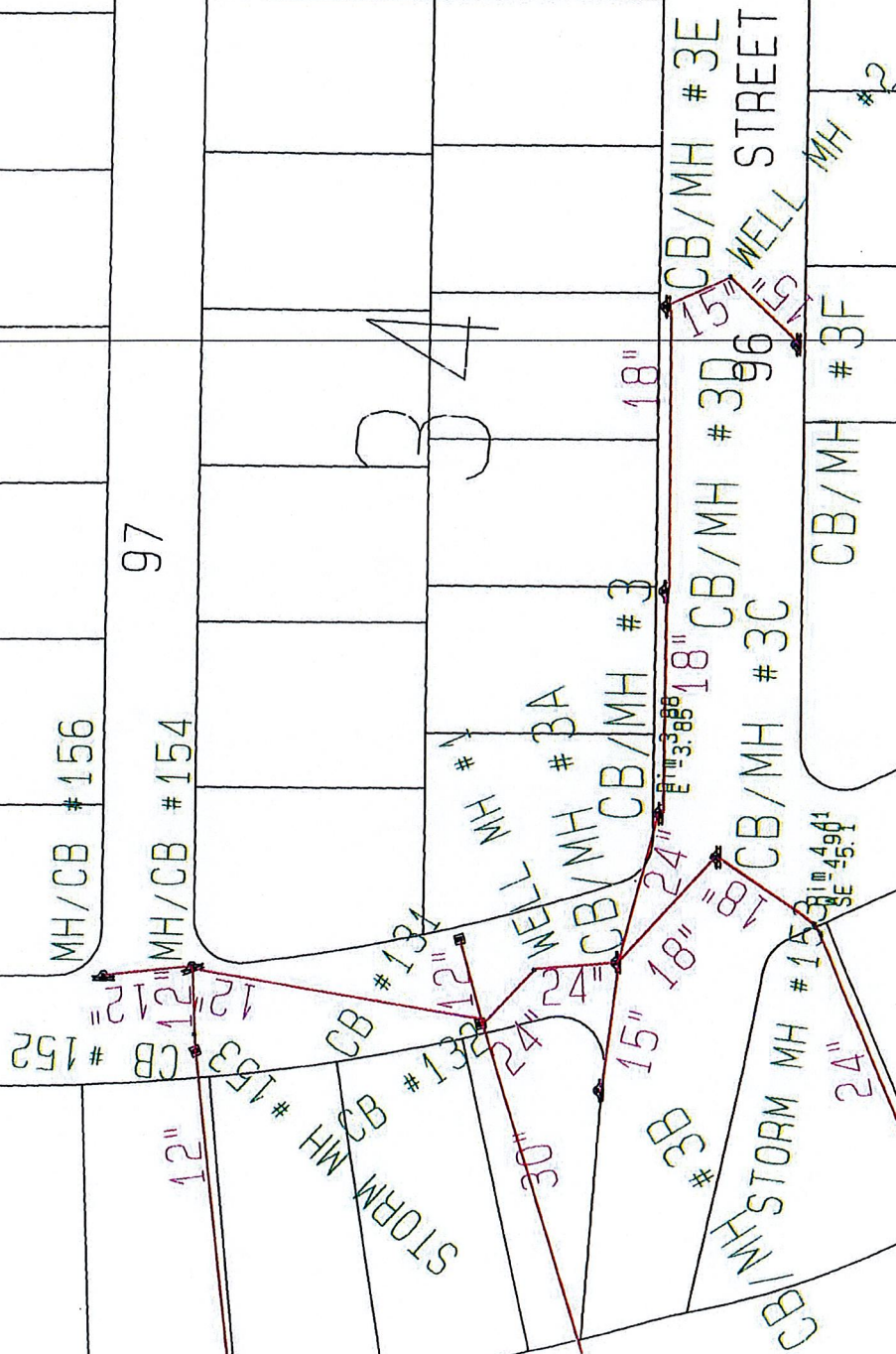
INFOCAD	TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM			Drawing no: swdet05
	Date: 02/02/96	Drawn by: ALMEIDA	Scale: 1" = 160'	



STORM WATER LINES

— MATERIAL - CAST IRON

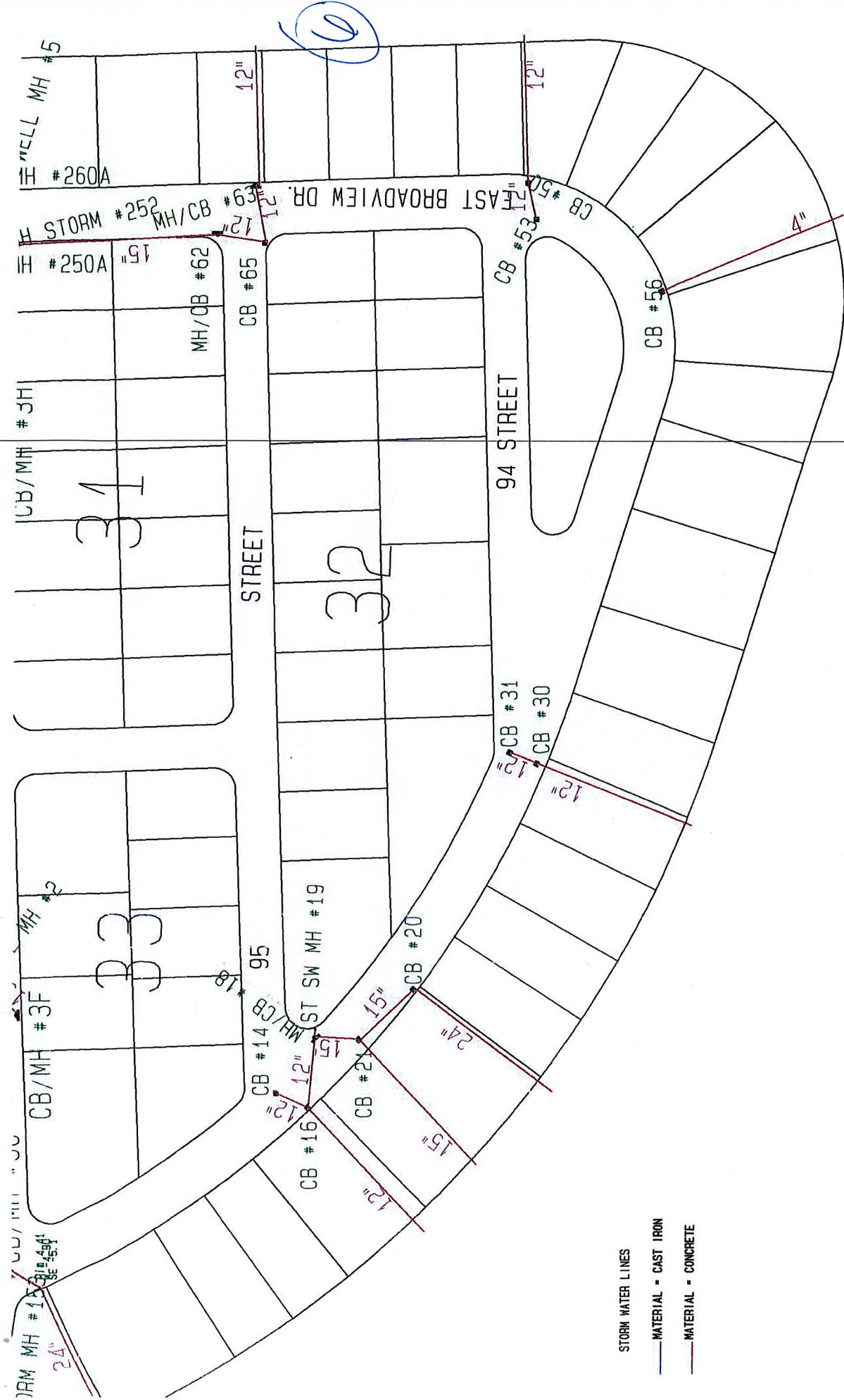
— MATERIAL - CONCRETE



infoCAD

TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM

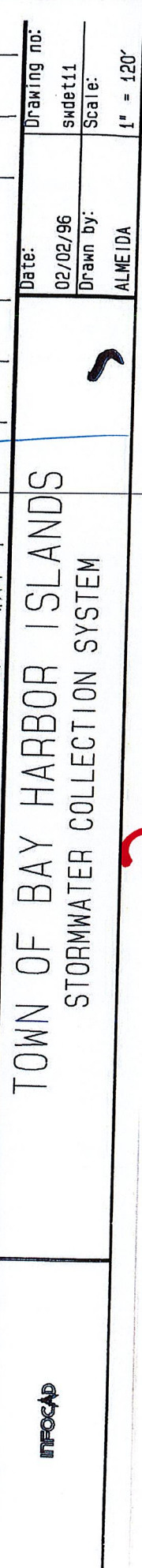
Date:	Drawing no:
02/02/96	swdet06
Drawn by:	Scale:
ALMEIDA	1" = 100'

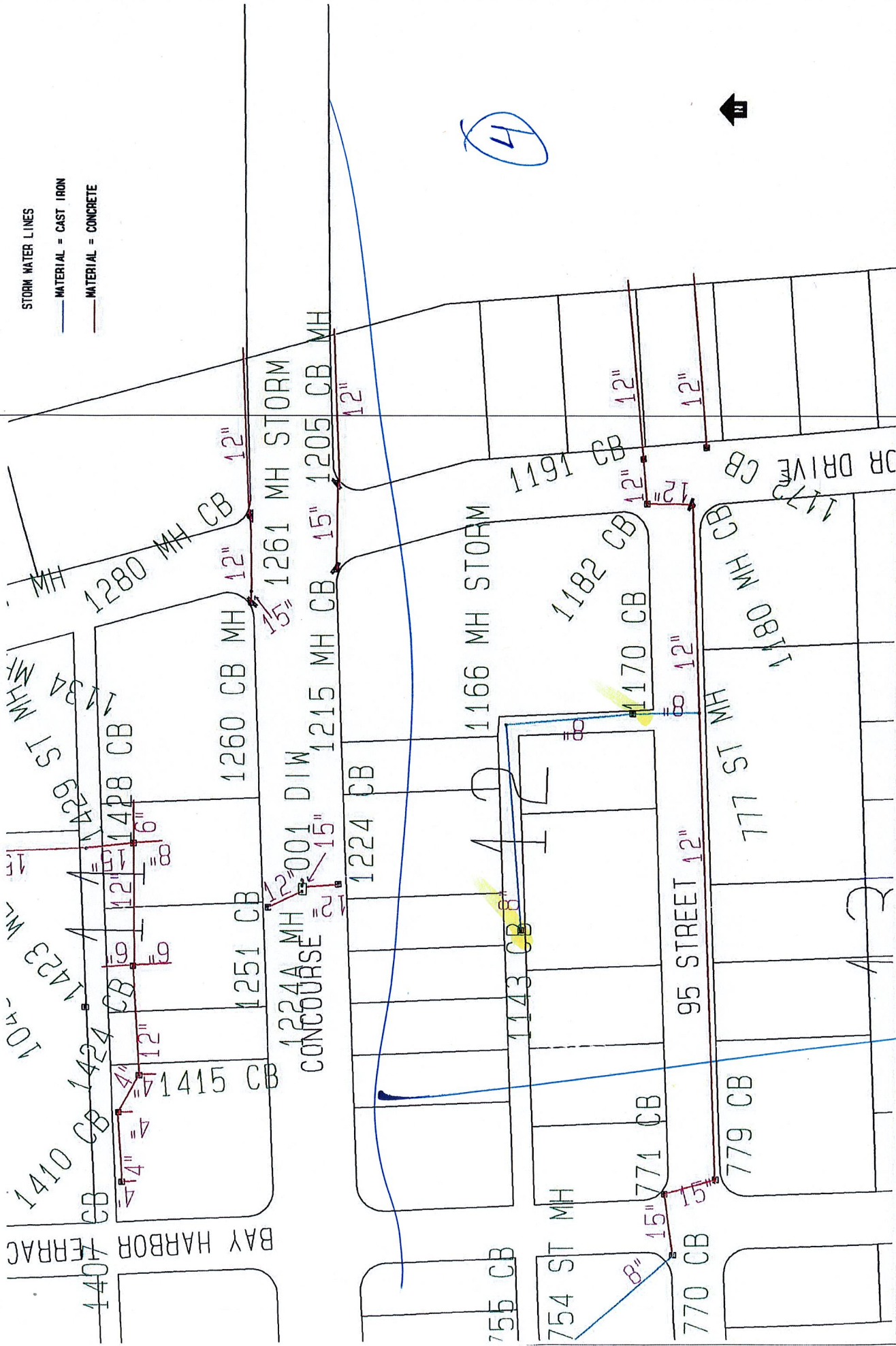


TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM

Drawing no:	swdet08
Date:	02/02/96
Drawn by:	ALWEIDA
Scale:	1" = 150'

infoCAD

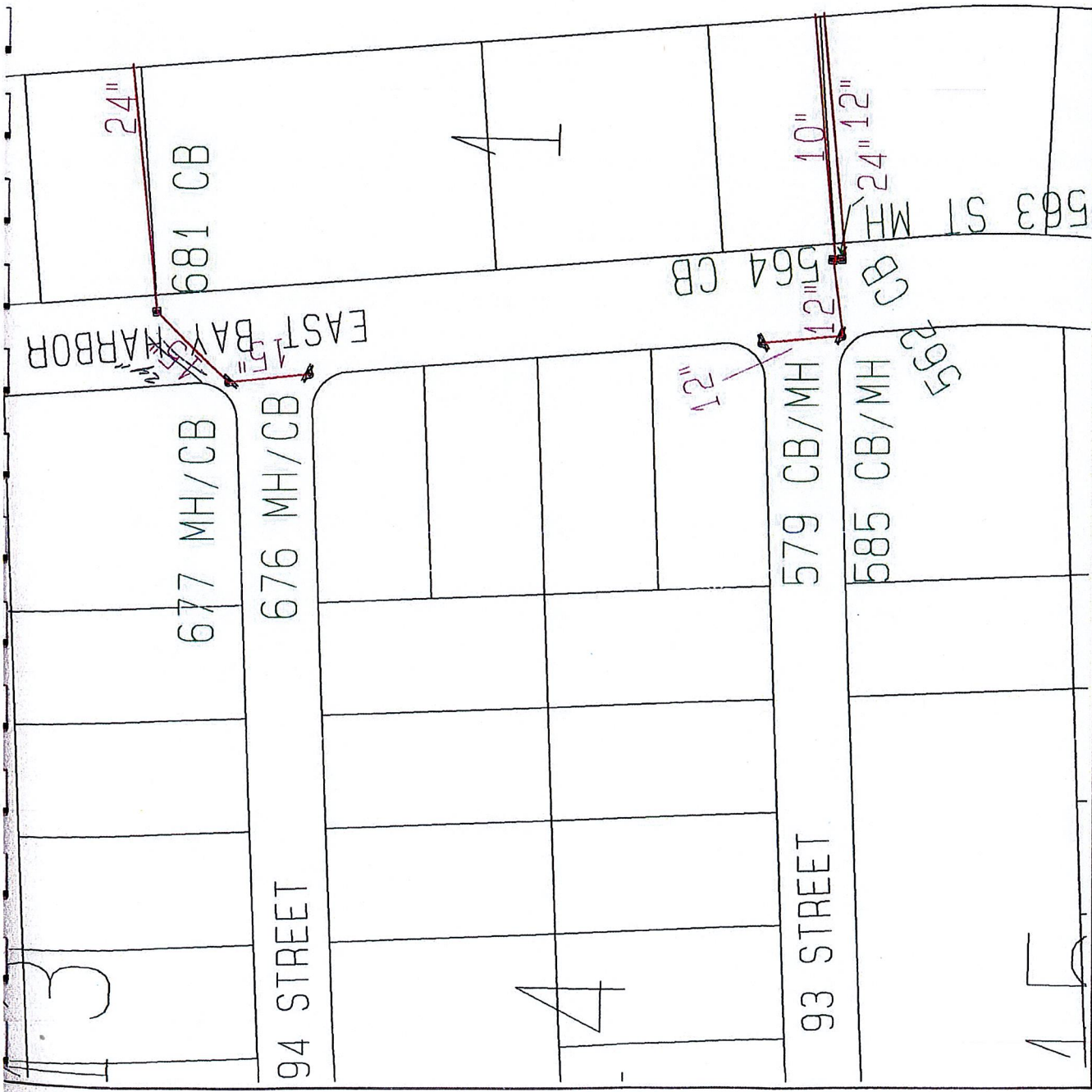




TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Drawing no:		swdet13
	Date:		02/02/96
	Drawn by:		ALMEIDA
	Scale:		1" = 120'



INFOCAD	TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Date: 02/02/96 Drawing: swdet15 Drawn by: ALMEIDA Scale: 1" = 120'
-----------------------	---	--

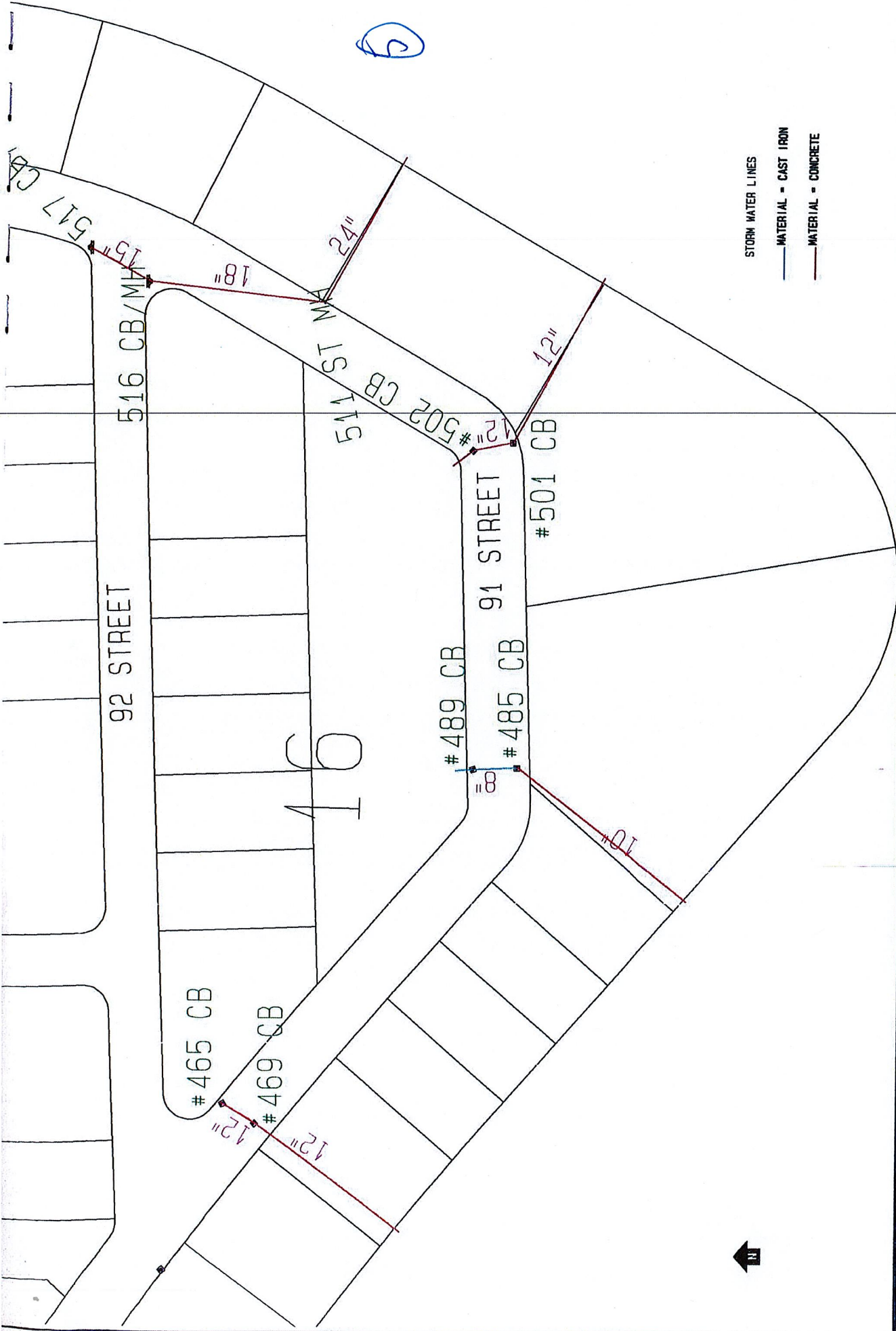


STORM WATER LINES

— MATERIAL - CAST IRON

— MATERIAL - CONCRETE

	TOWN OF BAY HARBOR ISLANDS		Date:	Drawing no:
	STORMWATER COLLECTION SYSTEM		02/02/96	swdet16
			Drawn by:	Scale:
			ALMEIDA	1" = 100'



INFOCAD TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Date: 02/02/96		Drawing no.: swdet17
	Drawn by: ALMEIDA		Scale: 1" = 120'

Drainage Wells Introduction

Drainage Wells, also known as Deep Injection Wells, are used to inject surface water directly into an aquifer or transfer shallow ground water directly into a deeper aquifer. By design, drainage wells are bored, drilled, or driven shaft systems that act as a fluid distribution system. Drainage wells in Florida are grouped into two general types: Surface-Water Injection wells (*also known as Floridian Aquifer Drainage Wells*) and Inter-Aquifer Connector Wells (*also known as Biscayne Aquifer Drainage Wells*).

Floridan Aquifer Drainage Wells (FADW) are mainly utilized to address drainage concerns in urban areas where the topography is higher in nature. This type of drainage well is best suited for the central and northern regions of Florida and best effective for urban drainage and lake level controls. The unfortunate side to FADWs is that they often inject surface runoff directly into the same aquifer by which public water is obtained for drinking purposes. Applications of water quality are heavily advised in the design of this type of well.

Biscayne Aquifer Drainage Wells (BADW) are mainly utilized to address stormwater runoff and surplus water received. The applications of this drainage well are mainly in the southeast Florida region. These wells are best known for disposal of swimming pool water and heated water from air-conditioning units, however, they are also best used to address stormwater runoff from commercial businesses, industrial sites and residential uses in the urban areas of southeast Florida. Applications of water quality are required in the design of this well.

Drainage Well Design Criteria

Per the Florida Department of Transportation's (FDOT) Drainage Design Guide, the design of a stormwater system that utilizes drainage wells requires the analysis and determination of the design peak runoff rate of water discharge leaving a site or area. The discharge rates are generally guided by the municipality and permitting agency authority having jurisdiction. All water quality requirements must be met prior to discharging through any drainage well as well. Typically, retention basins, detention/retention swales and/or underground exfiltration trench systems are designed to address said water quality requirements.

The design of drainage wells, in the coastal areas of Florida, must also consider the density between fresh water and saline water. In coastal conditions, an interface is known as the location by which fresh water and saline water meet subsurface. A typical design, with 60-foot of casing to the interface, requires 1.5-feet of freshwater height above the Mean Sea Level (MSL) to the water table. Most coastal drainage well designs use this criterion as a rule of thumb prior to discharging into the Biscayne aquifer.

By design, drainage wells are typically 24-inch in diameter and 100-feet to 150-feet in depth and are required to be 75-feet to 100-feet of separation between any existing well.

Existing Drainage Wells

As part of The Town of Bay Harbor Island's Contract No. BHI-90, Community Enhancement Project – Phase I, the Town of Bay Harbor Islands contracted with Kimley-Horn and Associates to prepare Community Enhancement plans for the south section of the west island. As part of said enhancement plans, the design of a stormwater pump sump and valve pit connecting to a drainage injection well were proposed for construction. The excess drainage was designed to enter the valve pit and stage up to three different pump control float switches inside. When toggled, the switches ignite a submersible stormwater pump, depending on the level of the drainage in the pit, which pushes water through a 32-inch discharge pipe at a rate of 9,000-gallons per minute. Drainage is then directed from the 32-inch discharge pump can to a system of spool pieces, check valves and wafer style baffles prior to discharging through a 24-inch iron casing deep well injection.

Drainage Wells

As demonstrated, discharge wells are and can be an integral part of the Town's stormwater improvements. The main issue that prohibits their use is the fact that space is very limited to provide any type of water quality controls without acquiring additional land. There is also the issue of the cost of these to drain certain areas, and the number of them that would be needed to be effective on both islands.

Project No.:BHI-228

Project Name.:92nd Street Dog Park Extension Design-Build

Bids Evaluation Meeting Date:9/12/2022

RATER #1 - MARIA LASDAY															
	Statement of Interest			General Firm and Project Team Information			List of Projects and References			Cost and Schedules			Project Approach and Concept Design		
PROPOSING FIRM	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal
TADEOS ENGINEERING, INC.	0.05	2	0.10	0.20	2	0.40	0.20	2	0.40	0.25	2	0.50	0.30	1	0.30
WAYPOINT CONTRACTING, INC.	0.05	1	0.05	0.20	1	0.20	0.20	1	0.20	0.25	1	0.25	0.30	2	0.60

TOTAL POINTS AWARDED
1.70
1.30

TOTAL FINAL SCORE	FINAL RANKING
5.05	2
3.95	1

RATER #2 - MIKE MESA															
	Statement of Interest			General Firm and Project Team Information			List of Projects and References			Cost and Schedules			Project Approach and Concept Design		
PROPOSING FIRM	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal
TADEOS ENGINEERING, INC.	0.05	2	0.10	0.20	2	0.40	0.20	2	0.40	0.25	2	0.50	0.30	1	0.30
WAYPOINT CONTRACTING, INC.	0.05	1	0.05	0.20	1	0.20	0.20	1	0.20	0.25	1	0.25	0.30	2	0.60

TOTAL POINTS AWARDED
1.70
1.30

RATER #3 - JOSE CUSTODIO															
	Statement of Interest			General Firm and Project Team Information			List of Projects and References			Cost and Schedules			Project Approach and Concept Design		
PROPOSING FIRM	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal	Weight Factor	Ranking	Point Subtotal
TADEOS ENGINEERING, INC.	0.05	1	0.05	0.20	2	0.40	0.20	2	0.40	0.25	2	0.50	0.30	1	0.30
WAYPOINT CONTRACTING, INC.	0.05	2	0.10	0.20	1	0.20	0.20	1	0.20	0.25	1	0.25	0.30	2	0.60

TOTAL POINTS AWARDED
1.65
1.35

Notes:

1. Highest ranked firm on each category will be given an rank of 1, Second highest will be given a rank of 2 on each category.

2. The firm will the "Total Final Score" closer to 1, will be the recommended firm for award.

92 DOG PARK EXTENSION- DESIGN BUILD



BH-228



WAYPOINT CONTRACTING, INC

TABLE OF CONTENTS

A

STATEMENT OF INTEREST

B

GENERAL FIRM AND PROJECT
TEAM INFORMATION

C

LIST OF PROJECTS AND
REFERENCES

D

COST AND SCHEDULES

E

PROJECT APPROACH AND
CONCEPTUAL PLANS

F

BID FORMS



WAYPOINT
— Contracting, Inc. —

MILLER  **LEGG**

STATEMENT OF INTEREST

TAB A.



A. STATEMENT OF QUALIFICATION



August 11, 2022

Town of Bay Harbor Islands
Office of the Town Clerk
9665 Bay Harbor Terrace
Bay Harbor Island, Florida 33154

RE: PROJECT NUMBER BHI-228 92ND STREET DOG PARK EXTENSION- DESIGN BUILD

Dear Selection Committee,

The Waypoint Contracting, Inc.'s design-build team would like to thank the Town of Bay Harbor for the opportunity to submit our proposal to build this important addition to the current dog park that will allow for both small and large dogs to play in safely manner and that will benefit local families, neighbors, and the entire community. Here at Waypoint, we want to be a part of the Town which is always to **pursue excellence in every task that is performed**. We understand that your main priority is to gather an experience team that is proactive with solving problems, maintaining project costs & schedules and can provide a fully functional turnkey project. Our Design-Build team is more than qualified and is pleased to submit for the oppo. Our Design-Build team is more than qualified and is pleased to submit for the opportunity to be selected as the Design-Build team to perform design, construction, and commissioning of 92nd Street Dog Park.

We have teamed up with local consultants, Miller Legg to provide Architecture, Civil Engineer and Landscape Architecture services. Our assembled team consist of uniquely skilled professionals that have over five decades of experience in the design-build of community spaces throughout Florida. As a team, we work together cohesively to form and act as one multidisciplinary group that will enhance this exciting community park project.

WAYPOINT'S DESIGN-BUILD TEAM

Waypoint Contracting, Inc. (Waypoint) – Prime

Waypoint Contracting, Inc., is an award-winning, woman-owned, minority small business dedicated to delivering the most innovative construction projects throughout Florida. Over the years we have built solid reputations in the communities we serve and have maintained strong relationships with vendors, contractors, and A/E firms. Our team is equipped with the knowledge and expertise to confront projects that vary in size and complexity. We

BASIC COMPANY INFORMATION

Company: Waypoint Contracting, Inc.
Address: 7955 NW 12th Street STE 400
Doral, FL 33126
Phone: (786) 472-6721
E-mail: kfrishholz@waypointci.com
Primary contact: Katrina Frischholz

A. STATEMENT OF QUALIFICATION



specialize in the delivery of all project types inclusive of Design-Build and Construction Management for Parks and Recreational projects and more importantly we have successfully completed these projects safely, efficiently, and cost effectively. Our Waypoint team will provide the necessary leadership and expertise required to take this project from design to completion.

Miller Legg – Architectural Consultant

Established in 1965, Miller Legg has consistently worked to improve communities and create environments. Miller Legg offers a variety of services to the development industry. Miller Legg is a leading Landscape Architecture, Engineering, and planning firm that specializes in projects including Dog Parks, Parks and recreation, Mixed Use, Hotels, Resorts, Hospitals, Office, and Campus development. To date, they have been currently working on multiple dog parks around the tri-county area making them the best fit for the Town.

THE BEST LOCAL TEAM

We are extremely excited about the potential partnership between the Town of Bay Harbor Island and the Waypoint Design-Build team. Both of our offices are located than 20 miles from the Town of Bay Harbor Island which allows us the ability to provide immediate response to the Project and Client needs as they arise. Our team offers workforce flexibility and responsiveness and is confident that we can ensure that all your project goals are achieved. Our team has a proven track record for delivering quality projects with clients in South Florida and we are committed to the making our partnership with the Town of Bay Harbor Island a success. If selected, the Waypoint Design-Build team is available to start work on project immediately.

Waypoint Contracting, Inc. is a family that is built on values, transparency, and hard work.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'KF', is placed over a blue rectangular stamp.

Katrina Frischholz

President

✉ kfrischholz@waypointci.com

☎: 786.608.1406 | 📠: 786.472.6721

GENERAL FIRM INFORMATION & PROJECT TEAM INFORMATION

TAB B.





KATRINA FRISCHHOLZ | PRESIDENT

- 8+ years experience in the Construction Industry
- Master's Degree in Construction Management

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Master of Science in Construction Management, Florida International University
- Bachelor of Science in Supervision and Management, Miami Dade College

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- First Aid/CPR
- SBA Emerging Leader CMAA
- Contract of Administration SOP
- CMAA Cost Management SOP
- CMAA Project Management SOP
- CMAA Quality Management SOP
- CMAA Safety & Risk Management SOP
- Certificate of Proficiency for CMDP

Mrs. Frischholz is leading the company applying the same values that were passed down from the generations before. With a Bachelor's degree in Supervision and Management and experience gained through years of working at several South Florida construction firms, she brings a wealth of knowledge and diversified expertise to the company.

She is also responsible for establishing the strategic direction for the Waypoint, setting attainable goals for the organization. Not afraid to get her hands dirty, Mrs. Frischholz is actively involved in projects, applying her keen sense of attention to detail and thoroughness to each task. Whether she's bringing in new clientele or marketing the brand, her goal is always to ensure quality. Determined to be a catalyst for change, she is dedicated to providing our clients with exceptional construction experience and is committed to promoting the presence of women in construction.

PROJECT EXPERIENCE

GOVERNMENT

Sunny Lakes Community Center Renovation, Davie, FL - interior renovation and installation of a new package lift station, water service and force main.

Windermere Community Center, Lauderhill, FL - relocation of existing basketball court and installation of new canopy.

St. George Park & Community Center Improvements, Lauderhill, FL - DA and other improvements to the existing community center.

Cooper City Community Center Interior Renovations, Cooper City, FL - complete interior renovation.

Cooper City Building Department, Cooper City, FL - complete remodel of the building department.

Phichol Williams Community Center, Homestead, FL - complete demolition and reconstruction of the community center.

John Prince Park Fountains, West Palm Beach, FL - Project consists of ADA Compliance upgrades.

North Broward Service Center Interior Renovations, Broward County, FL painting of the first and second floor of the service center

Florida City State Farmers Market, Florida City, FL - hurricane repairs to the roof. f **Convoy Point Building Storm Repair, Homestead, FL** - hurricane repairs performed throughout the building.

Miami Air Route Playground, Miami, FL - restoration of the Playground for the Miami Air Route Traffic Control.

Morningside Park Tennis Courts, Miami, FL- demolition and reconstruction of the existing seven tennis courts, and the addition of one new tennis court; construction of a new plaza with seating, tables, and other site furnishings; installation of landscaping, an irrigation system, a pre-fabricated tennis practice wall, new fencing, security lights, and resurfacing and restriping of the existing parking lot

Go Bond Sadkin Community Center Improvements, Lauderhill, FL - new-cantivlevered Canopy & Installation of Bleachers, scoreboards and all basketball hoop accessories.

John Mullin Park Improvements, Lauderhill, FL - Project consists of the repair & replacement of sidewalk, netting, basketball courts fencing, and bathrooms.

Sandspur Park Restroom, Pompano Beach, FL - ground-up stand-alone restroom structure.

Dog Park Restroom, Pompano Beach, FL - round-up stand-alone restroom structure.

Ft. Myers Farmers Market, FT. Myers, FL - new pre-engineered retail market facility

Morgan Levy Park, Doral FL -renovation to the community building

Parking Lot Modifications, Coral Gables, FL -28,000 sf parking lot modifications

Medley Lakeside Community Center, Medley, FL -complete interior renovation of the community center

Fire Station 44 Structural Hardening, North Lauderdale, FL -roof mitigation to the fire station

HARB Repair Water Damage Hurricane , Miami, FL -complete interior renovation of the community center

Collier County 9 & 12 Bus Stops , Collier County, FL -improvement of the 12 and 9 bus stops

Palm Springs Pathway Park, Palm Springs FL -12,000 sf of sidewalk work

Wellbrock Historic House Renovation, Delray Beach, Florida - renovation of the locally designated historic wellbrock house

98 NW 5TH Ave Renovation, Delray Beach, Florida - interior and exterior renovations of a commercial building

Terramar, Parkland, Florida - development of 2 new baseball/ softball fields along with fences and batting cages.

Temporary Fire Station 13 and Parking Area, Fort Lauderdale, Florida - construction of site and electrical developement and improvements for the new temporary fire station and new parking area.

Snake Creek HQ Building, Miramar, Florida - construction of a new 7,669 sqft building

Doral White Course Park, Doral, FL - Ground up park that consisted of dog park, playground, fitness equipment, pavilions, bathroom, greenspace.



WAYPOINT
Contracting, Inc.



JORGE L. LOPEZ, PMP, CPC, LEED GA | **VICE PRESIDENT
SENIOR PROJECT MANAGER**

- 12+ years of experience in managing a variety of complex construction projects ranging from \$100K to over a \$100M
- Actively engaged in all aspects of project management, delivering consistent leadership to the team and a thorough understanding the client's needs

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Bachelor of Science in Construction Management, Florida International University

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- Project Management Professional (PMP #1624830)
- American Institute of Constructors Certified Professional Constructor (CPC #8657)
- LEED Green Associate (Certification #10679250)
- State of Florida Certified General Contractor (CGC1519415)
- USACE Construction Quality Control for Contractors
- First Aid / CPR
- OSHA 30
- DoD Clearance – Top Secret

Mr. Lopez has over a decade of Project Management experience in the industry providing hands-on management encouraging collaboration, inspiring teams to effectively accomplish project goals. He is responsible for supporting each department, assuring prompt cost-effective project delivery while promoting safety. His consistent leadership and innovative approach contribute to the development and implementation of systems, procedures, key performance measures and various management tools that keep Waypoint contemporary with industry standards. Mr. Lopez specializes in designing, constructing, renovating, and maintaining a variety of complex construction projects for government and commercial clients both large and small ranging from \$100K to over a \$100M. He is a natural problem solver with a commitment to thoroughly understanding the client's needs.

PROJECT EXPERIENCE GOVERNMENT

Repair Water Damage Hurricane Irma, HARB, FL- hurricane repairs to multiple buildings.

Sunny Lakes Community Center Renovation, Davie, FL- interior renovation and installation of a new package lift station, water service and force main.

Windermere Community Center, Lauderhill, FL- relocation of existing basketball court and installation of new canopy.

St. George Park & Community Center Improvements, Lauderhill, FL- ADA and other improvements to the existing community center.

Cooper City Building Department, Cooper City, FL- complete remodel of the building department.

Phichol Williams Community Center, Homestead, FL - complete demolition and reconstruction of the community center.

John Prince Park Fountains, West Palm Beach, FL- ADA compliance upgrades

Cooper City Community Center Interior Renovations, Cooper City, FL- complete interior renovation.

North Broward Service Center Interior Renovations, Broward County, FL - painting of the first and second floor of the service center

Florida City State Farmers Market, Florida City, FL - hurricane repairs to the roof

Convoy Point Building Storm Repair, Homestead, FL - hurricane repairs performed throughout the building.

Miami Air Route Playground, Miami, FL - restoration of the Playground for the Miami Air Route Traffic Control.

Morningside Park Tennis Courts, Miami, FL- demolition and reconstruction of the existing seven tennis courts, and the addition of one new tennis court; construction of a new plaza with seating, tables, and other site furnishings; installation of landscaping, an irrigation system, a pre-fabricated tennis practice wall, new fencing, security lights, and resurfacing and restriping of the existing parking lot

Go Bond Sadkin Community Center Improvements, Lauderhill, FL - new-cantilevered Canopy & Installation of Bleachers, scoreboards and all basketball hoop accessories.

John Mullin Park Improvements, Lauderhill, FL - repair & replacement of sidewalk, netting, basketball courts fencing, and bathrooms.

Sandspur Park Restroom, Pompano Beach, FL- ground-up stand-alone restroom structure

Dog Park Restroom, Pompano Beach, FL - ground-up stand-alone restroom structure

Sunny Isles Beach Fire Station #10, Sunny Isles, FL - new construction of Fire Station #10.

Ft. Myers Farmers Market, FT. Myers, FL - new pre-engineered retail market facility

Morgan Levy Park, Doral FL - renovation to the community building

Parking Lot Modifications, Coral Gables, FL - 28,000 sf parking lot modifications

Medley Lakeside Community Center, Medley, FL - complete interior renovation of the community center

Fire Station 44 Structural Hardening, North Lauderdale, FL - roof mitigation to the fire station

HARB Repair Water Damage Hurricane, Miami, FL- complete interior renovation of the community center

Wellbrock Historic House Renovation, Delray Beach, Florida - renovation of the locally designated historic wellbrock house

98 NW 5TH Ave Renovation, Delray Beach, Florida - interior and exterior renovations of a commercial building

Terramar, Parkland, Florida - development of 2 new baseball/ softball fields along with fences and batting cages.

Temporary Fire Station 13 and Parking Area, Fort Lauderdale, Florida - construction of site and electrical development and improvements for the new temporary fire station and new parking area.

Snake Creek HQ Building, Miramar, Florida - construction of a new 7,669 sqft building

Collier County 9 & 12 Bus Stops, Collier County, FL - improvement of the 12 and 9 bus stops

Palm Springs Pathway Park, Palm Springs FL - 12,000 sf of sidewalk work

Doral White Course Park, Doral, FL - Ground up park that consisted of dog park, playground, fitness equipment, pavilions, bathroom, greenspace.

ACP#3 and ACP#4 Design-build – Defense Logistics Agency Facility, Susquehanna, PA, - design and construction of an integrated system of active and passive vehicle barriers at two (2) entry control points to stop threat vehicles from breaching a secured compound perimeter.

NOAA NSOF Satellite Facility Mechanical and Electrical System Upgrades- phase renovation of the NOAA facility that involved doubling the power, UPS, and cooling capacity of an N+2 redundant series of critical systems and rooms that were fully operational and could not be shutdown.

USACE Upgrades to Access Control Points 3 & 4, New Cumberland, PA- design-build upgrade of Access Control Points 3 and 4 at the Defense Distribution Center Susquehanna in New Cumberland, Pennsylvania.

MDC- Data Processing Center Settlement Remediation – GSA Project #Z00072-GOB227- the settlement remediation of part of Miami Dade County's Data Processing Center

D/B FAA ARTCC Major Mechanical and Electrical Upgrades, Miami Florida- phase renovation of the Miami FL, ARTCC facility that involved the replacement of two 300-ton chillers, four chilled water pumps, four 325-ton cooling towers, three 60hp vertical turbine pumps, and seven computer room air units, all without disruption of mission-critical services at the ARTCC in Miami, Florida



EDDY GONZALEZ, JR. | DIRECTOR OF OPERATIONS

- 30+ years of construction experience in the South Florida area for residential and commercial projects.
- Dynamic leader that ensures projects are on time and within budget
- Specialized experience in ADA upgrade construction

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Bachelor of Science in Construction Management, Florida International University

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- State of Florida Certified General Contractor

PROFESSIONAL ASSOCIATIONS

- Former Director of the Latin Builders Association
- Former Member of Florida Educational Facilities Planners Association
- Former Board Member of ABC

Eddy Gonzalez is an accomplished construction professional that brings over 30 years of expertise and experience in construction and management. As Director of Operations, he is responsible for business functions, ensuring that each project is delivered with the highest level of service and quality — making sure that budgetary guidelines are met. With a degree in Construction Management adding to his dynamic leadership skills, Mr. Gonzalez is able to lead project teams to success. Under Mr. Gonzalez's leadership, he oversees performance making sure that the strategy is clearly defined, to in return maximize teamwork, and ultimately allow Waypoint to deliver successful projects while maintaining morale.

PROJECT EXPERIENCE GOVERNMENT

Sunny Lakes Community Center Renovation, Davie, FL - Waypoint Contracting, Inc., was selected to demolish and renovate the interior of the existing structure, install a new package lift station, water service, and force main.

Windermere Community Center, Lauderhill, FL - Waypoint Contracting, Inc., was selected to relocate the existing basketball court and install new canopy over the new basketball court.

John Prince Park Fountains, West Palm Beach, FL - Project consists of ADA Compliance upgrades.

St. George Park & Community Center Improvements, Lauderhill, FL - ADA and other improvements to the existing community center.

Phichol Williams Community Center, Homestead, FL - complete demolition and reconstruction of the community center.

Cooper City Community Center Interior Renovations, Cooper City, FL - complete interior renovation.

Cooper City Building Department, Cooper City, FL - complete remodel of the building department.

North Broward Service Center Interior Renovations, Broward County, FL - painting of the first and second floor of the service center

Florida City State Farmers Market, Florida City, FL - Hurricane repairs to the roof

Convoy Point Building Storm Repair, Homestead, FL - hurricane repairs performed throughout the building.

Miami Air Route Playground, Miami, FL - restoration of the Playground for the Miami Air Route Traffic Control.



Morningside Park Tennis Courts, Miami, FL - The work consisted of furnishing all materials, labor, and equipment necessary for the demolition and reconstruction of the existing seven tennis courts, and the addition of one new tennis court; construction of a new plaza with seating, tables, and other site furnishings; installation of landscaping, an irrigation system, a pre-fabricated tennis practice wall, new fencing, security lights, and resurfacing and restriping of the existing parking lot.

Go Bond Sadkin Community Center Improvements, Lauderhill, FL - Project scope includes: New-cantilevered Canopy & Installation of Bleachers, scoreboards and all basketball hoop accessories.

John Mullin Park Improvements, Lauderhill, FL - QA/QC Manager. Project consists of the repair & replacement of sidewalk, netting, basketball courts fencing, and bathrooms.

Sandspur Park Restroom, Pompano Beach, FL - ground-up stand-alone restroom structure.

Ft. Myers Farmers Market, FT. Myers, FL - new pre-engineered retail market facility

Morgan Levy Park, Doral FL - renovation to the community building

Parking Lot Modifications, Coral Gables, FL - 28,000 sf parking lot modifications

Medley Lakeside Community Center, Medley, FL - complete interior renovation of the community center

Wellbrock Historic House Renovation, Delray Beach, Florida - renovation of the locally designated historic wellbrock house

98 NW 5TH Ave Renovation, Delray Beach, Florida - interior and exterior renovations of a commercial building

Terramar, Parkland, Florida - development of 2 new baseball/ softball fields along with fences and batting cages.

Temporary Fire Station 13 and Parking Area, Fort Lauderdale, Florida - construction of site and electrical development and improvements for the new temporary fire station and new parking area.

Snake Creek HQ Building, Miramar, Florida - construction of a new 7,669 sqft building

Fire Station 44 Structural Hardening, North Lauderdale, FL - roof mitigation to the fire station

HARB Repair Water Damage Hurricane , Miami, FL - complete interior renovation of the community center

Collier County 9 & 12 Bus Stops , Collier County, FL - improvement of the 12 and 9 bus stops

Palm Springs Pathway Park, Palm Springs FL - 12,000 sf of sidewalk work

Watson Island Restrooms - New Construction of a restroom building for the Miami-Dade Parking Authority.

FDOT - SunGuide Intelligent Transportation Repairs, Miami, FL - Rehabilitation to exterior finish and waterproofing of existing building.

Country Club of Miami Storm Water, Miami, FL - New irrigation system, storm water mitigation, 36 holes.

Country Club of Miami Driving Range, Miami, FL - New entrance to club, parking spaces, driving range, practice facility.

Kendall Soccer Park, Miami, FL - Artificial turf soccer fields, parking lot, building.

African Heritage Cultural Center, Miami, FL - Two-story building with dual portables (CM@Risk).

Martin Luther King, Jr. Park, Miami, FL - Two,one-story Recreational Buildings.

Haulover Marina Dockmaster Complex, Miami, FL - New dockmaster facility.

Miami Circle, Miami, FL - New construction of South Florida landmark.

Doral Park Building, Doral, FL - - QA/QC Manager for the design-build of a 1,042 sq ft restroom & storage room.



LIMREAL "LIM" BLANC | ESTIMATOR

- 20+ years of cost estimating projects of moderate-to-high complexity for residential, commercial, and industrial markets

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Bachelor of Science in Business Administration, Reinhardt University
- Plans Reading Course, Gold Coast School of Construction

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- Project Management Certificate
- Business & Financial Management Certificate
- Xactimate Certified
- Certified Construction Estimator

PROFESSIONAL ASSOCIATIONS

- American Association of Professional Estimators: ASPE
- Member of America Association for Cost Engineering. AACE

Limreal "Lim" Blanc has 20+ years of experience as a senior executive in project management, project implementation, cost engineering and field engineering experiences. His vast knowledge and experience translates into his ability to achieve strategic and team problem solving solutions for a better project delivery in the field of business development construction and engineering. Lim has worked on some of South Florida's exceptional projects such as: Gibson Park, Grapeland Park, Broward County's Sheriff Lab, several of Miami-Dade County Public School Projects, Miami Dade College, Homeland Aquatic Facility, and the FITTEAM Ballpark of the Palm Beaches - the training facility for the Houston Astros and Washington Nationals. The FITTEAM was designed and built in just 18 months. Limreal is a certified Cost Estimator and Florida adjuster. He also lead the training and estimating development for the South Florida Chapter of the American Society of Professional Estimators.

PROJECT EXPERIENCE RECREATIONAL

- **Ball Park of the PALM Beaches** - New Astros / Nationals Spring Training Center.
- **Doral Park, Doral, FL** - Site cleanup New Park Facilities and clubhouse.
- **Doral Meadows Park** - New ball fields and Amenities.
- **Grapeland Park** - New Water , Ball Field Park, Rec Hall.
- **Broward Regional Park** - New Regional Park.
- **T.Y Park Rehabilitation, Broward County Parks and Rec-** New park improvements and amenities
- **Pompano Aquatic Facility, City of Pompano Beach** - New Pool and Office complex.
- **Lakewood Park, St Lucie County** - New Regional Park.
- **Marathon Community Park, City of Marathon** - New community Park and Amphitheatre.
- **Vero Beach Community Cent / Gym, City of Vero Bch, FL** - Gymnasium and Community Center.
- **FIU Recreational Center, Florida International University** - New 48,500 Sf Gymnasium.
- **Wellington Green Gym, Village of Wellington** - New Gymnasium Addition.
- **South Bend Park, St Lucie County** - New Park Facility.
- **Volunteer Park, City of Plantation** - New Park Facility.
- **South Beach Park, City of Boca Raton** - Improvements to ext park.
- **Equestrian Club House, Centerline Commercial** - Outdoor Facility Site Furnishings.
- **Black Diamond Club House, Centerline Commercial** - Outdoor Facility Site Furnishings.
- **South West Recreation Center, City of Pompano Beach** - New Community Center.

- **Miami Dade Aquatic Facility, Miami Dade Country School** - New Aquatic facility.
- **Gibson Park Community Gymnasium, City of Miami** - New two story gym and classroom.
- **Gibson Park Community Center, City of Miami** - New Commercial, Pool and Stadium Seating.
- **Pathway Park, Palm Springs, FL** - New pathways and landscape.

COMERCIAL

- **Supervisor of Election Office, Broward County** - 72,000 Sf Interior and exterior Reno.
- **Navarro Discount Pharmacy, Navarro Pharmacies** - New shopping complex.
- **ABC Wine & Liquor, ABC Fine Wines** - New Store.
- **Bel Decal Warehouse, Bel Decal** - New 30,000 Warehouse.
- **FDOT District 6, Florida Dept. of Transportation** - Renovation to existing offices.
- **LA Belle T Hangers & FBO Bldg, City of Hendry County** - New T Hangers and FBO Building.
- **Keystone Shopping Center, Taubeer Reality** - New shopping complex.
- **Biscayne Commercial Complex, Biscayne Developers** - New shopping complex.
- **Centerline World Headquarters, Centerline Homes** - New Office Building.
- **Miramar Fire Station, City Of Miramar** - New Fire Station.
- **Boca Fire Station # 7, City Of Boca** - New Fire Station.
- **Aventura Parking Garage, Turnderry Associates** - New Parking garage.
- **Storage America Homestead, Storage America** - New Storage Building.
- **Sterling Business Park, Sterling Developers** - New Warehouse Buildings.
- **Linen & Things, Linen & Things** - New Store Build out.
- **Humane Society Animal Shelter of Miami** - Renovation and New addition.
- **7-11 Stores - Various 7-11 Developers, Seven Eleven** - New Commercial stores.
- **Burlington Coat Factory** - New Store Build out.
- **La Perlla Boutique La Perlla Boutique, La Perlla** - New Store Build out \$ 1,850,000.00.

INSTITUTIONAL

- **Shering Laboratories Renovation, Shering Laboratories Miami** - New Laboratory Build out and Reno.
- **Bay Harbor Medical Building, Coopers Investments** - New Medical Building.
- **North Broward Cancer Center, North Broward Hospital District** - Interior renovation to Cancer Unit.
- **Aventura Medical Complex, Health South Group** - New Medical Building.
- **Miami Dade Animal Shelter, Miami Dade County** - Renovation of ext. bldgs. to new animal shelter
- **Broward Sherrif Crime Lab, Broward County** - Renovation of ext. lab facilities.



YESID GUATAME LOPEZ | PROJECT MANAGER

- 10 years of project and operation management experience in commercial and residential construction
- Experienced manager, with a firm understanding of time management as it pertains to the workforce process and adherence of scheduling

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Bachelor of Science in Construction Management
Unity of Cundinamarca
-

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- OSHA 30
- CPR
-

Mr. Yeside Guatame Lopez has several years of project management experience in the construction industry. His experience and repeated success is specialized in solving problems that could possibly delay construction and add to construction cost. He has successfully managed subcontractor/craft workforce to meet deadlines and takes a proactive approach to communicating schedules, holding all team members accountable for projects. Yesid is extremely knowledgeable and works with each of the crew to accomplish task, including teaching and mentoring individuals in the crew that are less experienced, maintaining tools, cords and equipment so that they are kept in good working order and are safe for use.

PROJECT EXPERIENCE

Parking Lot Renovations, Coral Gables, Florida - relocation and construction of new dumpster enclosure and parking lot renovations.

White Course Park, Doral, Florida - construction of a new parking with all the furnishings, utilities and restroom buildings.

Cape Coral Cultural & Gator Circle, Cape Coral- construction of two brand new parks.

Sentry Warehouse- roof structure replacement and interior renovations

The Plaza, Coral Gables, Florida - interior renovation to The Plaza in Coral Gables.

Flager Village Hotel, Fort Lauderdale, Florida - renovation to the hotel, parking, and the residential building.

Pearl Riverland, Fort Lauderdale, Florida - renovation of 6 residential buildings, maintenance room, club house and parking lot modifications.

La Clara, Palm Beach, Florida - 25 historic building construction which consisted of being a part of the preconstruction phase and BIM model coordination.

Self-Storage, Birmingham, Alabama - new construction of a historic building and basement.

748 Townhouse, Achi Bolivar, Colombia - construction of 748 townhouses on 14,760 acres of land.



CESAR MURILLO | SUPERINTENDENT

- 13+ years of project and operation management experience in commercial and residential construction
- Experienced manager, with a firm understanding of time management as it pertains to the workforce process and adherence of scheduling.

TYPES OF PROJECTS

- General Contracting
- CM@Risk
- Design-Build
- Construction Management

EDUCATION

- Civil Engineering, Universidad Catolica Andres Bello

PROFESSIONAL REGISTRATIONS & CERTIFICATIONS

- OSHA 30
- Advanced MOT Certification
- Stormwater Erosion and Sedimentation Control
- Construction Quality Management for Contractors

Mr. Murillo has several years of operations management experience in the construction industry. His experience and repeated success is specialized in solving problems that could possibly delay construction and add to construction cost. He is responsible for the production aspects of the work and is accountable for producing quality work that is constructed consistent with the standard's set forth in the projects contract documents; performing the work in a timely and cost effective manner and maintaining a work environment that is safe and continuously kept clean and orderly. Cesar is extremely knowledgeable and works with each of the crew to accomplish task, including teaching and mentoring individuals in the crew that are less experienced, maintaining tools, cords and equipment so that they are kept in good working order and are safe for use.

PROJECT EXPERIENCE

Single Family, Miami FL - ground up 15 unit residential single family
Traffic Signal Improvements, Dora, Florida - traffic improvements
Roadway & Drainage Improvements, Delray, FL - roadway improvements
Roadway Improvements, Fort Lauderdale, FL - roadway improvements
Roadway Improvements, Laduerdale Lakes, FL - roadway improvements
West Regional Terminal Improvements, Plantation, FL - terminal improvements
Roadway Improvements, North Miami Beach, FL - roadway improvements
Cape Coral Cultural & Gator Circle, Cape Coral - construction of two brand new parks.
Ft. Myers Farmers Market, FT. Myers, FL - new pre-engineered retail market facility
Morgan Levy Park, Doral, FL - renovation to the community building
Parking Lot Modifications, Coral Gables, FL - 28,000 sf parking lot modifications
Fire Station 44 Structural Hardening, North Lauderdale, FL - roof mitigation to the fire station
HARB Repair Water Damage Hurricane, Miami, FL - complete interior renovation of community center
City of Miami Beach 17th St Parking Lot - modifications to the parking lot for the sanitation department
Homestead Air Force Base - Design build of the clean dirty hangar
Naples Airport Administration Building, Naples, FL - 12'x48' modular base building adjacent to the existing air traffic control tower



Years of Experience: 36

Registrations & Certifications:

Registered Landscape Architect, FL, 1989

Registered Landscape Architect, TX, 2009

Fellow American Society of Landscape Architects, 2014

Education:

Bachelor of Landscape Architecture

University of Florida, 1986

Graduate Studies, Urban and Regional Planning

Florida State University, 1989

Publications & Presentations:

Florida Educational Facilities Planners' Association, Inc.,

Making Connections: Benefits of On-Campus Mass

Transit Elements, July 2014, Presenter/Speaker

Florida Engineering Society, Environmental Design &

Habitat Restoration, April 1995, Lecturer

Florida Planning and Zoning Association, Public Private

Partnerships, June 2007, Presenter/Speaker

University of Florida School of Architecture, Where the

Water Meets the Land, September 1996, Guest

Lecturer

Professional & Civic Activities:

Fellow, American Society of Landscape Architects

Past Member, American Society of Landscape Architects,

Florida Executive Committee

2021 Chair, Broward County Bicycle & Pedestrian Advisory

Committee, 2009-present

Member, Broward Section, American Planning Association

Past Chair, Broward Section, American Society of

Landscape Architects

Member, Florida Board of Landscape Architecture, 2013-

current

Member, Florida Earth Foundation, Engineering Advisory

Committee, 2004-present

Member, Florida Recreation and Park Association

Member, Florida Redevelopment Association

Recipient, UF Distinguished Landscape Architect Alumnus

Award, 2013

Member, Urban Land Institute

Michael Kroll, RLA, FASLA

Senior Landscape Architect

Professional Experience:

Mr. Kroll, President of Miller Legg, has been actively involved in projects ranging from large scale habitat restoration to international urban redevelopment projects. His 35+/-year career has concentrated on planning, infrastructure, open space, transportation and redevelopment, principally in South Florida.

Mr. Kroll's diverse professional experience has led to projects that successfully integrate environmental, planning and landscape architectural services. Under his leadership, Miller Legg develops project solutions that respond to the natural environment, respect the social fabric and create sustainable aesthetic spaces.

Relevant Project Experience:

City of Oakland Park East Dog Park

- To assist with the City of Oakland Park's plan to develop a 1-acre Dog Park at the existing Richard Giusti Heart Par Cours Park, Miller Legg was retained for topographic and tree surveying, SUE, engineering and landscape architecture services as well as an opinion of probable cost. The firm is providing schematic designs and renderings to provide off-street parking along NE 6th Avenue and NE 36th Street, sidewalk connectivity, modification to the existing jogging trail, dog park design for small and large dogs which includes landscape improvements, tree additions, canopy shelters, water stations, pet waste stations, benches and asphalt walking paths. This project is being performed under Miller Legg's continuing services contract.

City of Miami Fairlawn Community Park

- Under our continuing services contract with the City of Miami, Miller Legg was awarded the development of programming, pre-design/concept, design, construction document preparation and construction phase services for a new park on SW 63rd

Avenue. The scope includes civil engineering, landscape architecture, certified arborist, surveying and SUE, structural, electrical and geotechnical engineering as well as permitting, opinion of probable cost and limited construction administration. The passive park will contain a shaded/fenced children's playground, dog run, shared pedestrian / bicyclist perimeter path, light bollards, benches, pedestrian pole lighting, irrigation, water fountain, bike racks, receptacles, hardscape furniture, access driveway and perimeter privacy walls. Permitting will be coordinated with the City of Miami, Miami-Dade County DERM, WASD and SFWMD. Survey services include boundary and topographic and tree inventory. Miller Legg will assist the City with the presentation of conceptual designs at Community Meetings to gather public input for a final design.

Miami-Dade County Parks, Recreation & Open Space (PROS) Sabal Chase Park Playground -

Miller Legg was retained to provide design, construction plans, permitting and construction administration for a new small tot playground at Sabal Chase Park in Miami. The scope includes design of a new engineered wood fiber surface playground area with playground equipment, concrete curbing and walkways, benches, bicycle racks, trash receptacles and nature play elements. Site preparation, earthwork, and earth play mounds are specified and detailed in the construction documents. Included is the installation of new trees, sod, and butterfly-inspired plant material as well as the restoration of all areas, including walkways and lawns, which may be damaged during the construction process.

City of Sunny Isles Beach Pelican Community Park -

A three-acre active park site, for which Miller Legg managed landscape architecture, irrigation, engineering, surveying and architecture designs for a baseball field, recreation

building, playground structure, gymnasium, and related site amenities within the City of Sunny Isles Beach. The project management team at Miller Legg received recognition from the City for their involvement in the design completion of the park. In addition, Miller Legg provided construction observation services. In addition, we also provided grant assistance to secure a Florida Recreational Development Assistant Program (FRDAP) grant for \$200,000. FRDAP is a competitive grant program that provides financial assistance to local governments for development or acquisition of land for public outdoor recreational purposes. *Award: Award of Merit, American Society of Landscape Architects, Florida Chapter, 2009*

City of Sunny Isles Beach Gwen Margolis Park and Pelican Community Park Artificial Turf -

The project consisted of the reconstruction of existing natural turf fields at Pelican Community Park and Senator Gwen Margolis Park in the City of Sunny Isles Beach with artificial turf. Miller Legg provided the preparation and permitting of drainage plans to collect under the new drain systems installed as part of the project, as well as surveying services. In addition, construction observation was provided to verify compliance with the plans and for the certification of the project through regulatory agencies.

Miami-Dade County Parks, Recreation & Open Space (PROS) Greynolds Park Playground Design

- Miller Legg was retained to provide survey, civil engineering, and landscape architecture services at Greynolds Park in North Miami Beach. The East Greynolds Design Program includes the addition of an ADA compliant sidewalk connecting the existing parking area to the existing shelter. The West Greynolds Park Design Program includes the demolition of the existing playground and the construction of a new playground that meets nature play criteria set forth by Miami-Dade County PROS. Educational and historic signage will be designed and added to the

playground area. Miller Legg has also provided topographic and tree surveying and SUE services for this property.

Town of Davie Governor Leroy Collins Farm Park -

The new Governor Leroy Collins Farm Park 80-acre parcel was purchased in 2008 through a combination of funds from Davie District 4 open space bonds, Broward County, the Farm Bureau and the Florida Communities Trust Fund. The first phase of the park will consist of 20-acres of development and will include an educational center, riding arena, stables, farmers market and playground. Located east of I-75, the park is being built to preserve the rural lifestyle of the Town of Davie. Miller Legg is providing civil engineering, surveying, landscape architecture, and environmental services as part of the MC Harry team. The park will provide volunteer opportunities, farm tours, field trips, summer camps, community gardens, and equestrian programs for the special needs population. Miller Legg's civil engineering scope includes earthwork analysis; paving, grading and drainage; water and sanitary sewer, pavement marking and signage, stormwater pollution prevention; offsite improvements; phasing plans, permitting through the Town of Davie, Central Broward Water Control District, City of Sunrise, Florida Department of Environmental Protection, Broward County Environmental Protections and South Florida Water Management District; and construction administration. The wetlands scope includes wetlands due diligence, and the landscape architecture scope includes planting design, irrigation design and pedestrian and equestrian trails. Surveying services consisted of a topographic and tree survey.

City of Lauderhill Sports Park -

Miller Legg was retained by the City of Lauderhill to provide civil engineering design, stormwater permitting, landscape architecture, irrigation design, construction specifications and bidding assistance services for proposed amenities improvements at the 12-acre

Lauderhill Sports Park. Replacement of the baseball field and cricket pitch natural grass with synthetic turf and the football scoreboard replacement tasks have been finalized. Miller Legg has also completed design of the playground area wood chip surface conversion to synthetic turf, playground shade, modifications to portions of the fitness trail and the addition of new fitness stations trail and exercise equipment.

City of Miami Hadley Park Synthetic Turf and Park Improvements -

Under Miller Legg's professional service agreement with the City of Miami for landscape architectural services, the firm was retained to provide civil engineering, landscape architecture, permitting and limited construction observation services for the 5.38-acre Hadley Park synthetic turf and park improvements project. Miller Legg provided underground utility designation services in order to prepare an existing utility map. Schematic design documents for the proposed improvements were provided and included client meetings and preliminary Opinion of Probable Cost. Final construction documents were developed for chosen multi-purpose athletic field layout, fencing, fitness stations trail, pedestrian walkways, grading, site amenities, ADA-accessible ramp, sodding and irrigation. Permitting was coordinated with the City, Miami-Dade DERM and SFWMD. Construction administration services were delivered, culminating with a statement of work completion and as-built submittal.

City of Miami Beach 20th Street & Sunset Drive Pocket Park -

Under our Continuing Services Contract with the City of Miami Beach, Miller Legg was awarded an assignment to provide survey, civil, geotechnical, electrical, structural engineering and landscape architecture services for the design, permitting and construction of a new ADA-accessible .33-acre pocket park at 20th Street and Sunset Drive.





Years of Experience: 22

Registrations & Certifications:

Registered Landscape Architect, FL, 2005
FDOT Intermediate Maintenance of Traffic, FL, 2013

Education:

Bachelor of Science, Landscape Architecture
North Carolina A&T State University, 2000

Continuing Education:

Eminent Domain for Landscape Architects, 2013
FDOT Landscape Highway Seminar, 2005, 2006, 2008 and 2013
FDOT Outdoor Advertising Workshop, November 2008 and February 2010
FDOT Plan Reviewer's Workshop, November 2006 and November 2007
FDOT Specifications Package Preparation Training Certificate, 2016
Irrigation: The End to Water Waste in Landscapes 2013
Landscape Palm Diseases, 2013
LAP Project Inception to Notice to Proceed, October 2007
LAP Training for Right-of-Way and Real Estate Acquisition, May 2008
PSMJ Project Management Boot Camp, 2007

Professional & Civic Activities:

Brian Shore, RLA

Senior Landscape Architect

Professional Experience:

As a Senior Landscape Architect, Mr. Shore has significant experience in landscape architectural design and landscape construction services for a variety of public and private projects. Specialties include landscape, hardscape, and irrigation design services for streetscape and roadway projects including the Florida Department of Transportation (FDOT), all aspects of active and passive park design, healthcare campuses, and environmental wetland habitat creation. Other experience includes various residential and commercial projects. Mr. Shore is a Senior Associate of the firm.

Relevant Project Experience:

City of Oakland Park East Dog Park

- To assist with the City of Oakland Park's plan to develop a 1-acre Dog Park at the existing Richard Giusti Heart Par Cours Park, Miller Legg was retained for topographic and tree surveying, SUE, engineering and landscape architecture services as well as an opinion of probable cost. The firm is providing schematic designs and renderings to provide off-street parking along NE 6th Avenue and NE 36th Street, sidewalk connectivity, modification to the existing jogging trail, dog park design for small and large dogs which includes landscape improvements, tree additions, canopy shelters, water stations, pet waste stations, benches and asphalt walking paths. This project is being performed under Miller Legg's continuing services contract.

City of Sunny Isles Beach Pelican

Community Park - A three-acre active park site, for which Miller Legg managed landscape architecture, irrigation, engineering, surveying and architecture designs for a baseball field, recreation building, playground structure, gymnasium, and related site amenities within the City of Sunny Isles Beach. The project management team at Miller Legg received recognition from the City

for their involvement in the design completion of the park. In addition, Miller Legg provided construction observation services. In addition, we also provided grant assistance to secure a Florida Recreational Development Assistant Program (FRDAP) grant for \$200,000. FRDAP is a competitive grant program that provides financial assistance to local governments for development or acquisition of land for public outdoor recreational purposes. *Award: Award of Merit, American Society of Landscape Architects, Florida Chapter, 2009*

City of Lauderhill Sports Park -

Miller Legg was retained by the City of Lauderhill to provide civil engineering design, stormwater permitting, landscape architecture, irrigation design, construction specifications and bidding assistance services for proposed amenities improvements at the 12-acre Lauderhill Sports Park. Replacement of the baseball field and cricket pitch natural grass with synthetic turf and the football scoreboard replacement tasks have been finalized. Miller Legg has also completed design of the playground area wood chip surface conversion to synthetic turf, playground shade, modifications to portions of the fitness trail and the addition of new fitness stations trail and exercise equipment.

Miami-Dade County Parks Misc. Landscape Architecture Support

Services - Miller Legg provided in-house landscape architecture design support services for Capital Improvements to the Parks, Recreation and Open Space (PROS) Department for a variety of park projects. Playground design for various parks included Serena Lakes Park, Trust for Public Lands (TPL) Fitness Zone Design for Amelia Earhart Park, and playground design for Debbie Curtin Park. Services include landscape architecture, hardscape and irrigation design. This work was performed under the County's Equitable Distribution Program Continuous Professional Services Agreement.

Miami-Dade County Parks, Recreation & Open Space (PROS)

Debbie Curtin Interactive Park - Under Miller Legg's Continuing Services Contract with PROS, Miller Legg was responsible for development of the conceptual rendering plans for this exciting interactive park. Features of the interactive components include musical instruments such as a goblet drum, and vivo metallophone, kettle drum, grandioso chimes, kundu drum, animato metallophone, bongo, hourglass and ring-a-bell panels, textured features such as marble and tracing panels, as well as climbers including a custom rope climber, stone block climb, custom hill net, a bobble rider single and double and a global motion freestanding play structure. The conceptual plans were presented to the County. The firm was also responsible for developing construction documents.

Miami-Dade County Parks, Recreation & Open Space (PROS) Greynolds Park Playground Design

- Miller Legg was retained to provide survey, civil engineering, and landscape architecture services at Greynolds Park in North Miami Beach. The East Greynolds Design Program includes the addition of an ADA compliant sidewalk connecting the existing parking area to the existing shelter. The West Greynolds Park Design Program includes the demolition of the existing playground and the construction of a new playground that meets nature play criteria set forth by Miami-Dade County PROS. Educational and historic signage will be designed and added to the playground area. Miller Legg has also provided topographic and tree surveying and SUE services for this property.

City of Fort Lauderdale Joseph C. Carter Park Improvements - A 21-acre community park whose amenities include ball fields, swimming pool and complex, gymnasium, tennis courts, basketball courts, parking lots, entranceways, fencing and fitness stations. Services provided included: paving, drainage, water and sewer, site planning design, lighting, landscape architecture, irrigation, and construction services.

City of Delray Beach Pompey Park Community Center and Campus Design

- Miller Legg is providing surveying, SUE, civil engineering, landscape architecture, permitting and construction phase services associated with the design of Pompey Park Community Center and Campus in Delray Beach. Surveying services consist of specific service and topographic surveys; subsurface utility engineering, including vacuum excavations. Landscape architecture scope elements are associated with design of planting, irrigation, hardscape, site amenities, two (2) playgrounds, baseball fields (relocation and restoration). A tree inventory will be conducted by a firm certified arborist. Schematic design tasks include due diligence, code, programming, site engineering, landscape and hardscape schematic design verification. Miller Legg will assist with community outreach and relevant City agency design review presentations throughout the process. Permitting coordination will be conducted with the City Engineering and Water and Sewer departments, Lake Worth Drainage District and Palm Beach County Health Department.

Florida International University (FIU) Parkview Housing Phase 2

- Miller Legg is providing both on-site and off-site area civil engineering and landscape architecture design documentation, implementation and permitting services associated with the design of the FIU Parkview Housing Phase 2 Project, a new housing complex on the south end of the Modesto Maidique campus adjacent to Tamiami Park. Landscape design was part of the off-site services intended to provide a buffer between Tamiami Park and FIU with the use of low maintenance Florida native and Florida-friendly landscape material. Both on-site and off-site design efforts included work on the irrigation system which was connected to an existing pump fed by a lake. The main goal of the irrigation design was to create a system that delivered water to the landscape material using the most efficient heads and irrigation components with minimal water waste.

Town of Davie Governor Leroy Collins Farm Park

- The first phase of the park will consist of 20-acres of development and will include an educational center, riding arena, stables, farmers market and playground. Located east of I-75, the park is being built to preserve the rural lifestyle of the Town of Davie. Miller Legg is providing civil engineering, surveying, landscape architecture, and environmental services. The park will provide volunteer opportunities, farm tours, field trips, summer camps, community gardens, and equestrian programs for the special needs population. Miller Legg's civil engineering scope includes earthwork analysis; paving, grading and drainage; water and sanitary sewer, pavement marking and signage, stormwater pollution prevention; offsite improvements; phasing plans, permitting through the Town of Davie, Central Broward Water Control District, City of Sunrise, Florida Department of Environmental Protection, Broward County Environmental Protections and South Florida Water Management District; and construction administration. The wetlands scope includes wetlands due diligence, and the landscape architecture scope includes planting design, irrigation design and pedestrian and equestrian trails. Surveying services consisted of a topographic and tree survey.

City of Miami Beach 20th Street & Sunset Drive Pocket Park

- Under our Continuing Services Contract with the City of Miami Beach, Miller Legg was awarded an assignment to provide survey, civil, geotechnical, electrical, structural engineering and landscape architecture services for the design, permitting and construction of a new ADA-accessible .33-acre pocket park at 20th Street and Sunset Drive. The firm prepared a boundary and topographic survey, assisted with the planning of key program elements and performed schematic design, design development, construction document, bidding and construction tasks. The design incorporates Crime Prevention Through Environmental Design (CPTED) principles. Arborist and irrigation design services were also furnished for this project.





Years of Experience: 18

Registrations & Certifications:

Registered Landscape Architect, FL, 2014

Certified Arborist, FL, 2018

FDOT Intermediate Maintenance of Traffic, FL, 2019

Education:

Bachelor of Landscape Architecture, Minor in

Environmental Sciences

University of Florida, 2004

Continuing Education:

FDOT LAP Training Certificate, 2018

*FDOT Specifications Package Preparation Training
Certificate, 2017*

*RainBird Landscape Irrigation Design Process Certificate,
2018*

Professional & Civic Activities:

Member, International Society of Arboriculture

Miguel Juncal, RLA, CA

Landscape Architect / Irrigation Design / Arborist

Professional Experience:

Mr. Juncal is a Landscape Architect and Certified Arborist focused on a variety of public and private landscape architecture projects including roadway landscaping and irrigation, active and passive park landscape design, higher educational facilities as well as residential and commercial projects. Certified Arborist services include: tree species identification and inventories, tree surveys and canopy mapping, destroyed/damaged tree assessments, tree value estimates, tree grading, tree species selection for planting, mangrove trimming oversight and tree permitting.

Relevant Project Experience:

City of Miami Beach 20th Street & Sunset Drive Pocket Park - Under our Continuing Services Contract with the City of Miami Beach, Miller Legg was awarded an assignment to provide survey, civil, geotechnical, electrical, structural engineering and landscape architecture services for the design, permitting and construction of a new ADA-accessible .33-acre pocket park at 20th Street and Sunset Drive. The firm prepared a boundary and topographic survey, assisted with the planning of key program elements and performed schematic design, design development, construction document, bidding and construction tasks. The design incorporates Crime Prevention Through Environmental Design (CPTED) principles. Arborist and irrigation design services were also furnished for this project.

City of Miami E.G. Sewell Park - Miller Legg is under contract with the City of Miami for program development, pre-design, master planning design including public involvement workshops, construction documents and construction administration services for Sewell Park. The program will be an open passive park with elements including passive walkways through park

and preserve areas, pavilions, an eco trail, baywalk, hardscape, floating docks, kayak launch, seawall/living shoreline, wayfinding and historical information signage. The scope of services includes landscape architecture, irrigation, civil engineering, topographical surveying, SUE, certified arborist, structural engineering, electrical engineering, geotechnical engineering, archeological, permitting, bidding assistance and limited construction administration. Miller Legg will also conduct a Bonneted Bat survey and perform a bathymetric survey for the seawall component. The firm is assisting the City to gather community stakeholder input during the design process. Government agency permitting will be coordinated with Miami-Dade Co. DERM, WASD and SFWMD.

City of Miami Fairlawn Community Park - Under our continuing services contract with the City of Miami, Miller Legg was awarded the development of programming, pre-design/concept, design, construction document preparation and construction phase services for a new park on SW 63rd Avenue. The scope includes civil engineering, landscape architecture, certified arborist, surveying and SUE, structural, electrical and geotechnical engineering as well as permitting, opinion of probable cost and limited construction administration. The passive park will contain a shaded/fenced children's playground, dog run, shared pedestrian / bicyclist perimeter path, light bollards, benches, pedestrian pole lighting, irrigation, water fountain, bike racks, receptacles, hardscape furniture, access driveway and perimeter privacy walls. Permitting will be coordinated with the City of Miami, Miami-Dade County DERM, WASD and SFWMD. Survey services include boundary and topographic and tree inventory. Miller Legg will assist the City with the presentation of conceptual designs at Community Meetings to gather public input for a final design.

City of Miami Gardens Rolling Oaks Regional Park - Renovations of Rolling Oaks Regional Park include construction of a new one-story 4,000 SF recreation building, renovated restroom facilities, expansion of walking trail with lighting, distance marker, and exercise stations, new pavilions, new parking lot, refurbished basketball and tennis courts, new fencing, new shaded playgrounds, new landscaping and irrigation, addition of horseshoe pits, sand volleyball, mini golf and splashpad, and video system and WIFI. Miller Legg is providing civil engineering, landscape architecture and surveying services for this 7-acre park as a subconsultant to Synalovski, Romanik and Saye Architects. The civil scope includes design of a lift station and on-site force main extension to service the proposed Welcome Center. An arborist assessment of existing trees and palms was carried out as part of the landscape architecture services.

City of Miami Hadley Park Synthetic Turf and Park Improvements - Under Miller Legg's professional service agreement with the City of Miami for landscape architectural services, the firm was retained to provide civil engineering, landscape architecture, permitting and limited construction observation services for the 5.38-acre Hadley Park synthetic turf and park improvements project. Miller Legg provided underground utility designation services in order to prepare an existing utility map. Schematic design documents for the proposed improvements were provided and included client meetings and preliminary Opinion of Probable Cost. Final construction documents were developed for chosen multi-purpose athletic field layout, fencing, fitness stations trail, pedestrian walkways, grading, site amenities, ADA-accessible ramp, sodding and irrigation. Permitting was coordinated with the City, Miami-Dade DERM and SFWMD. Construction administration services were delivered, culminating with a statement of work completion and as-built submittal.

City of Miami Museum Park Baywalk Phase 3 - Miller Legg

provided landscape architecture, civil engineering, lighting/electrical engineering, surveying, permitting and limited construction administration services for the Miami Baywalk Phase 3 Project. Permitting for project improvements was provided through the City of Miami, Miami-Dade County and South Florida Water Management District. Underground utility designation for electric and drainage utilities was performed. The project is a 1/4-mile pedestrian-oriented urban waterfront park and promenade on Biscayne Bay, located adjacent to the east coast greenway. It provides a unique open space that links the American Airlines Arena, Biscayne Boulevard, and Museum Park. The Baywalk design includes custom native stone benches, extensive paver pedestrian spaces, salt-tolerant tropical plantings, as well as themed lighting and site amenities. Due to historic maritime activities in the project area, soil conditions were addressed through the design of unique drainage facilities that minimized potential groundwater impacts. The Baywalk design solution also improved visibility and lighting in the area to discourage vagrancy issues that existed. The planting design not only enhanced aesthetics, but also buffered unsightly adjacent parking and utility areas and minimized exposed surfaces that had been subject to graffiti. This project was performed under our Miscellaneous Landscape Architectural Services contract.

City of Sunny Isles Beach Gwen Margolis Park and Pelican Community Park Artificial Turf - The project consisted of the reconstruction of existing natural turf fields at Pelican Community Park and Senator Gwen Margolis Park in the City of Sunny Isles Beach with artificial turf. Miller Legg provided the preparation and permitting of drainage plans to collect under the new drain systems installed as part of the project, as well as surveying services. In addition, construction observation was provided to verify compliance with the plans and for the certification of the project through regulatory agencies.

City of Sunny Isles Beach Pelican Community Park - A three-acre active park site, for which Miller Legg managed landscape architecture, irrigation, engineering, surveying and architecture designs for a baseball field, recreation building, playground structure, gymnasium, and related site amenities within the City of Sunny Isles Beach. The project management team at Miller Legg received recognition from the City for their involvement in the design completion of the park. In addition, Miller Legg provided construction observation services. In addition, we also provided grant assistance to secure a Florida Recreational Development Assistant Program (FRDAP) grant for \$200,000. FRDAP is a competitive grant program that provides financial assistance to local governments for development or acquisition of land for public outdoor recreational purposes. *Award: Award of Merit, American Society of Landscape Architects, Florida Chapter, 2009*

Florida International University Stadium Turf Replacement - Miller Legg provided site engineering, subsurface utility engineering (SUE), irrigation design, and construction phase services for the replacement of the artificial turf field (also a FIFA Certified Professional Soccer Field) at the FIU Riccardo Silva football stadium on the Modesto Maidique campus.

Miami-Dade County Parks Misc. Landscape Architecture Support Services - Miller Legg provided in-house landscape architecture design support services for Capital Improvements to the Parks, Recreation and Open Space (PROS) Department for a variety of park projects. Playground design for various parks included Serena Lakes Park, Trust for Public Lands (TPL) Fitness Zone Design for Amelia Earhart Park, and playground design for Debbie Curtin Park. Services include landscape architecture, hardscape and irrigation design. This work was performed under the County's Equitable Distribution Program Continuous Professional Services Agreement.





Years of Experience: 23

Registrations & Certifications:

Registered Professional Engineer, FL, 2003

Education:

*Bachelor of Science, Civil Engineering
University of Central Florida, 1997*

Professional & Civic Activities:

*Member, American Society of Civil Engineers
Member, Commercial Real Estate Development Institute
Member, Florida Engineering Society
Member, International Council of Shopping Centers
Member, Urban Land Institute*

Joaquin Mojica, PE

Senior Engineer

Professional Experience:

Mr. Mojica has extensive project management, design and permitting experience in Florida and the Caribbean. He has provided civil engineering design and management services to both private and public sector clients. As Regional Engineering Manager, Mr. Mojica's responsibilities include preparation of proposals, negotiation of engineering contracts, client relations, project reporting, scheduling, budgeting, management of technical staff and subconsultants, design, and permitting. He is highly skilled in CAD/Civil 3D, ICPR and POND5 software.

Relevant Project Experience:

City of Miami Hadley Park Synthetic Turf and Park

Improvements - Under Miller Legg's professional service agreement with the City of Miami for landscape architectural services, the firm was retained to provide civil engineering, landscape architecture, permitting and limited construction observation services for the 5.38-acre Hadley Park synthetic turf and park improvements project. Miller Legg provided underground utility designation services in order to prepare an existing utility map. Schematic design documents for the proposed improvements were provided and included client meetings and preliminary Opinion of Probable Cost. Final construction documents were developed for chosen multi-purpose athletic field layout, fencing, fitness stations trail, pedestrian walkways, grading, site amenities, ADA-accessible ramp, sodding and irrigation. Permitting was coordinated with the City, Miami-Dade DERM and SFWMD. Construction administration services were delivered, culminating with a statement of work completion and as-built submittal.

City of Coral Gables War Memorial Youth Center Landscape & Engineering - This City of Coral

Gables 7-acre War Memorial Youth Center in Miami Dade County represents a living memorial to Coral Gables World War II veterans. The project includes improvements to multi-purpose athletic fields. Miller Legg was responsible for the landscape architecture, civil engineering design and permitting of the improvement program. Specific improvements included athletic field drainage, re-sodding with Bermuda "Celebration" turf and irrigation design. The irrigation system ties into a non-potable well system. Drainage improvements consist of subsurface field improvements that integrate with the existing exfiltration and subsurface drainage systems. Additional services provided include: design development, final construction documents, and construction administration. Miller Legg collaborated with MC Harry Associates on this project.

City of Oakland Park East Dog Park

- To assist with the City of Oakland Park's plan to develop a 1-acre Dog Park at the existing Richard Giusti Heart Park, Miller Legg was retained for topographic and tree surveying, SUE, engineering and landscape architecture services as well as an opinion of probable cost. The firm is providing schematic designs and renderings to provide off-street parking along NE 6th Avenue and NE 36th Street, sidewalk connectivity, modification to the existing jogging trail, dog park design for small and large dogs which includes landscape improvements, tree additions, canopy shelters, water stations, pet waste stations, benches and asphalt walking paths. This project is being performed under Miller Legg's continuing services contract.

City of Delray Beach Pompey Park Community Center and Campus

Design - Miller Legg is providing surveying, SUE, civil engineering, landscape architecture, permitting and construction phase services associated with the design of Pompey Park Community Center and Campus in

Delray Beach. Surveying services consist of specific service and topographic surveys; subsurface utility engineering, including vacuum excavations. Landscape architecture scope elements are associated with design of planting, irrigation, hardscape, site amenities, two (2) playgrounds, baseball fields (relocation and restoration). A tree inventory will be conducted by a firm certified arborist. Schematic design tasks include due diligence, code, programming, site engineering, landscape and hardscape schematic design verification. Miller Legg will assist with community outreach and relevant City agency design review presentations throughout the process. Permitting coordination will be conducted with the City Engineering and Water and Sewer departments, Lake Worth Drainage District and Palm Beach County Health Department.

City of Homestead Biscayne-Everglades Greenway Trail - Among the services Miller Legg provided for this 3.2 mile, 12-foot-wide Biscayne Everglades Greenway shared-use trail project are landscape architectural, engineering, surveying and environmental services including preparation of FDOT-approved construction documents, design of regulatory and wayfinding signs, pavement markings, safe pedestrian push button crossing and necessary drainage within the C-103 Canal right-of-way from East Mowry Drive to SW 137th Avenue in Homestead. The scope of services was based upon a 2017 Florida Shared-use Non-Motorized Trail Agreement between the City of Homestead and FDOT. Topographic and SUE services were delivered. The scope included engineering design and permitting services for the shared-use trail, associated drainage and roadway pedestrian crossings.

City of Lauderhill Sports Park - Miller Legg was retained by the City of Lauderhill to provide civil engineering design, stormwater permitting, landscape architecture, irrigation design, construction specifications and bidding assistance services for proposed amenities improvements at the 12-acre Lauderhill Sports Park. Replacement of the baseball field and cricket pitch

natural grass with synthetic turf and the football scoreboard replacement tasks have been finalized. Miller Legg has also completed design of the playground area wood chip surface conversion to synthetic turf, playground shade, modifications to portions of the fitness trail and the addition of new fitness stations trail and exercise equipment.

City of Miami Armbrister Park Community Center - Esther Mae Armbrister Park is a 4.4-acre City of Miami Park located at 4000 Grand Avenue, Miami, FL 33133 in the Coconut Grove neighborhood. Park amenities include an existing community center, baseball and football fields, tennis and basketball courts, playground and exercise equipment. The project involves replacement of the existing community center building with a new 10,000 SF 2-story facility and outdoor pavilion. Miller Legg is responsible for civil, landscape architecture and SUE services along with boundary, topographic and tree surveying. The firm is providing site civil and utility infrastructure research of utility maps, as-builts and existing site conditions followed by preparation of civil, landscape architecture and irrigation construction documents, government agency permitting coordination, bidding assistance, contract administration and construction administration. Tree inventory, disposition plans and permitting are part of the scope provided by the firm's certified arborists.

City of Miami Fairlawn Community Park - Under our continuing services contract with the City of Miami, Miller Legg was awarded the development of programming, pre-design/concept, design, construction document preparation and construction phase services for a new park on SW 63rd Avenue. The scope includes civil engineering, landscape architecture, certified arborist, surveying and SUE, structural, electrical and geotechnical engineering as well as permitting, opinion of probable cost and limited construction administration. The passive park will contain a shaded/fenced children's playground, dog run, shared pedestrian / bicyclist perimeter path, light bollards, benches, pedestrian pole

lighting, irrigation, water fountain, bike racks, receptacles, hardscape furniture, access driveway and perimeter privacy walls. Permitting will be coordinated with the City of Miami, Miami-Dade County DERM, WASD and SFWMD. Survey services include boundary and topographic and tree inventory. Miller Legg will assist the City with the presentation of conceptual designs at Community Meetings to gather public input for a final design.

City of Miami Beach Chase Avenue and 34th Street Shared Path -

Under its continuing services agreement with the City of Miami Beach, Miller Legg was retained to provide surveying, civil engineering and landscape architecture services related to the new Chase Avenue and 34th Street shared path and roadway improvements project. The 10-ft shared use path will support the use of simultaneous pedestrian and bicycle activity. The scope of services includes topographic surveying, tree inventory, disposition and permitting; irrigation, landscape, hardscape and amenities design, site civil design development for clearing/demolition, signage and marking, paving, grading, drainage and erosion control/pollution prevention. Team subconsultants are performing geotechnical tasks (soil test borings and SFWMD exfiltration tests) and electrical engineering/site lighting. Miller Legg is also responsible for permitting coordination with the City and Miami-Dade DERM, as well as bidding assistance/contract administration and construction phase tasks including construction observation.

City of Miami Gardens Rolling Oaks Regional Park -

Renovations of Rolling Oaks Regional Park include construction of a new one-story 4,000 SF recreation building, renovated restroom facilities, expansion of walking trail with lighting, distance marker, and exercise stations, new pavilions, new parking lot, refurbished basketball and tennis courts, new fencing, new shaded playgrounds, new landscaping and irrigation, addition of horseshoe pits, sand volleyball, mini golf and splashpad, and video system and WIFI. Miller Legg is providing civil engineering, landscape architecture and surveying services for this 7-acre park





Years of Experience: 9

Registrations & Certifications:

Registered Professional Engineer, FL, 2017

Education:

*Bachelor of Science, Civil Engineering
University of Central Florida, 2012*

Professional & Civic Activities:

*Member, American Society of Civil Engineers
Member, Construction Association of South Florida*

Christopher Andreoni, PE

Project Engineer

Professional Experience:

Mr. Andreoni is a Project Engineer working for a variety of clients such as municipalities, higher education and the private sector. His experience includes civil engineering services specifically in the preparation of site plans, paving, grading, and drainage plans, signing and marking plans, water and sewer plans, stormwater pollution prevention plans, and permitting. Prior to joining Miller Legg, he worked as a Project Manager/Engineer and Staff Engineer at materials testing and inspection firms in South Florida.

Relevant Project Experience:

City of Oakland Park East Dog Park

- To assist with the City of Oakland Park's plan to develop a 1-acre Dog Park at the existing Richard Giusti Heart Par Cours Park, Miller Legg was retained for topographic and tree surveying, SUE, engineering and landscape architecture services as well as an opinion of probable cost. The firm is providing schematic designs and renderings to provide off-street parking along NE 6th Avenue and NE 36th Street, sidewalk connectivity, modification to the existing jogging trail, dog park design for small and large dogs which includes landscape improvements, tree additions, canopy shelters, water stations, pet waste stations, benches and asphalt walking paths. This project is being performed under Miller Legg's continuing services contract.

City of Delray Beach Pompey Park Community Center and Campus Design

- Miller Legg is providing surveying, SUE, civil engineering, landscape architecture, permitting and construction phase services associated with the design of Pompey Park Community Center and Campus in Delray Beach. Surveying services consist of specific service and topographic surveys; subsurface utility engineering, including vacuum excavations. Landscape architecture scope elements are

associated with design of planting, irrigation, hardscape, site amenities, two (2) playgrounds, baseball fields (relocation and restoration). A tree inventory will be conducted by a firm certified arborist. Schematic design tasks include due diligence, code, programming, site engineering, landscape and hardscape schematic design verification. Miller Legg will assist with community outreach and relevant City agency design review presentations throughout the process. Permitting coordination will be conducted with the City Engineering and Water and Sewer departments, Lake Worth Drainage District and Palm Beach County Health Department.

City of Lauderdale Sports Park -

Miller Legg was retained by the City of Lauderdale to provide civil engineering design, stormwater permitting, landscape architecture, irrigation design, construction specifications and bidding assistance services for proposed amenities improvements at the 12-acre Lauderdale Sports Park. Replacement of the baseball field and cricket pitch natural grass with synthetic turf and the football scoreboard replacement tasks have been finalized. Miller Legg has also completed design of the playground area wood chip surface conversion to synthetic turf, playground shade, modifications to portions of the fitness trail and the addition of new fitness stations trail and exercise equipment.

City of Miami Armbrister Park Community Center

- Esther Mae Armbrister Park is a 4.4-acre City of Miami Park located at 4000 Grand Avenue, Miami, FL 33133 in the Coconut Grove neighborhood. Park amenities include an existing community center, baseball and football fields, tennis and basketball courts, playground and exercise equipment. The project involves replacement of the existing community center building with a new 10,000 SF 2-story facility and outdoor pavilion. Miller Legg is responsible for civil, landscape

architecture and SUE services along with boundary, topographic and tree surveying. The firm is providing site civil and utility infrastructure research of utility maps, as-builts and existing site conditions followed by preparation of civil, landscape architecture and irrigation construction documents, government agency permitting coordination, bidding assistance, contract administration and construction administration. Tree inventory, disposition plans and permitting are part of the scope provided by the firm's certified arborists.

City of Miami Gardens Rolling Oaks Regional Park - Renovations of Rolling Oaks Regional Park include construction of a new one-story 4,000 SF recreation building, renovated restroom facilities, expansion of walking trail with lighting, distance marker, and exercise stations, new pavilions, new parking lot, refurbished basketball and tennis courts, new fencing, new shaded playgrounds, new landscaping and irrigation, addition of horseshoe pits, sand volleyball, mini golf and splashpad, and video system and WIFI. Miller Legg is providing civil engineering, landscape architecture and surveying services for this 7-acre park as a subconsultant to Synalovski, Romanik and Saye Architects. The civil scope includes design of a lift station and on-site force main extension to service the proposed Welcome Center. An arborist assessment of existing trees and palms was carried out as part of the landscape architecture services.

City of Miami Museum Park Baywalk Phase 3 - Miller Legg provided landscape architecture, civil engineering, lighting/electrical engineering, surveying, permitting and limited construction administration services for the Miami Baywalk Phase 3 Project. Permitting for project improvements was provided through the City of Miami, Miami-Dade County and South Florida Water Management District. Underground utility designation for electric and drainage utilities was performed. The project is a 1/4-mile pedestrian-oriented urban waterfront

park and promenade on Biscayne Bay, located adjacent to the east coast greenway. It provides a unique open space that links the American Airlines Arena, Biscayne Boulevard, and Museum Park. The Baywalk design includes custom native stone benches, extensive paver pedestrian spaces, salt-tolerant tropical plantings, as well as themed lighting and site amenities. Due to historic maritime activities in the project area, soil conditions were addressed through the design of unique drainage facilities that minimized potential groundwater impacts. The Baywalk design solution also improved visibility and lighting in the area to discourage vagrancy issues that existed. The planting design not only enhanced aesthetics, but also buffered unsightly adjacent parking and utility areas and minimized exposed surfaces that had been subject to graffiti. This project was performed under our Miscellaneous Landscape Architectural Services contract.

City of Weston Community Center - Miller Legg provided survey, SUE, civil engineering, landscape architecture and irrigation design, bidding assistance and construction administration services for the new City of Weston Community Center at Weston Regional Park as part of the Cartaya Architects team. Permitting was coordinated with the Cities of Weston and Sunrise, FDEP and SFWMD. The 12.5-acre parcel was redeveloped from land used for sports activities and passive green space. It comprises an indoor facility of approx. 25,000 SF to accommodate office space and multi-purpose rooms. The outdoor facilities will total 6,400 SF, while site work beyond the building includes lawn seating, a 7,500 SF playground, parking and landscaping.

Doral Glades Park Boardwalk and Wetland Preserve - Doral Glades Park is a 25-acre recreational facility in the northeast section of the City. Both passive and active elements were featured, including playing fields, community and nature pavilions, fishing pier, walking trail and wetland boardwalk. Miller Legg provided both

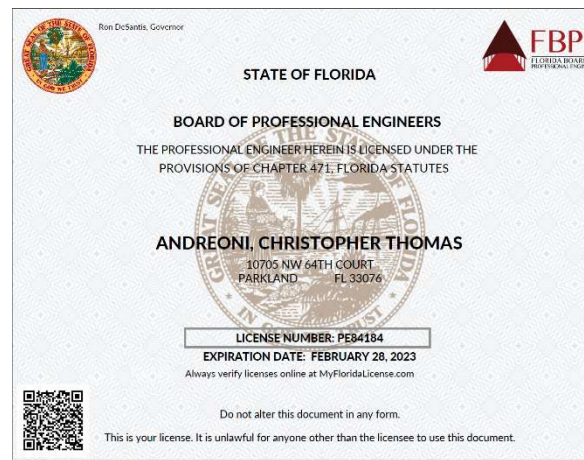
design and permitting services as well as wetland and boardwalk construction administration services, using GIS and surface water management support. The scope included coordination with the City on permit compliance, exotic species removal, native species and maintenance programs; value engineering and design for the boardwalk(s) and pier(s). Miller Legg developed a Wetland Mitigation Plan including GIS maps and habitat evaluation for placement of the boardwalks in ideal locations within the wetland. These Plans captured data from the original permits issued by environmental agencies DERM, SFWMD and USACOE. Further, Miller Legg prepared construction drawings for the upland boardwalk, pavilion, wetland boardwalk and fishing pier. Finally, the firm was responsible for the preparation of environmental resource permit (ERP) modification applications for boardwalk and planting in wetland areas. Amenities at the park include: kayak launch, fishing pier, lake, playground, picnic areas, boardwalks, a Green Globe Certified (LEED Silver) nature center, bike lanes, basketball courts, tennis courts and multi-use fields.

Florida International University Stadium Turf Replacement - Miller Legg provided site engineering, subsurface utility engineering (SUE), irrigation design, and construction phase services for the replacement of the artificial turf field (also a FIFA Certified Professional Soccer Field) at the FIU Riccardo Silva football stadium on the Modesto Maidique campus.

International Sports Training Facility (ISTF) Westlake - Miller Legg is providing master planning and due diligence for a new 90-acre sports training facility in the City of Westlake in Palm Beach County. The master plan includes seven (7) soccer fields and a clubhouse. Services include schematic design, design development, construction documents, permitting, and construction administration. Miller Legg is a subconsultant to PGAL for this project.



B.GENERAL FIRM & PROJECT TEAM INFORMATION- LICENSES



LIST OF PROJECTS AND REFERENCES

TAB C.





WHITE COURSE PARK

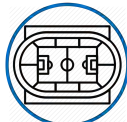
Doral, FL



GOVERNMENT/
MUNICIPAL



PARK



SPORTS FIELD

Total Contract Value:

\$3,200,000.00

Start / End Dates:

03/2021 - 03/2022

Client Contact:

James Violi

8401 NW 53 Terrace

Doral, FL 33166

((305) 968- 5862

jvioli@bcceng.com

Architect:

Chen Moore and Associates

786-497-1500



Waypoint Contracting, Inc., was selected by the City of Doral for the construction of 2.7 acres of land. The ground up park consisted of a shaded playground, a water front flexible event plaza, artificial turf putting green space, outdoor fitness stations, two off-leash artificial turf dog areas with washing stations, putting, multi-purpose greenspace, concrete paver walkways and concrete sidewalks, aluminum fence around the park, and a chain link fence around the playground and dog areas. The park also consisted of a restroom building, 11 parking spaces, and a connectivity to Downtown Doral through the Downtown Doral Boardwalk located at the north side of the park.



JOHN MULLIN PARK IMPROVEMENTS

Lauderhill, FL



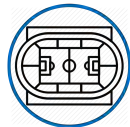
RENOVATION



GOVERNMENT/
MUNICIPAL



PARK



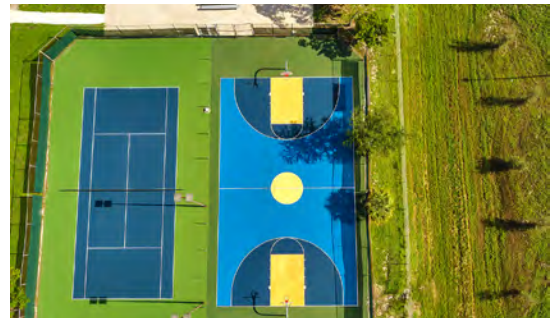
SPORTS FIELD

Total Contract
Value: \$375,440.73

Original Contract
Value: \$333,804.73

Start / End Dates:
01/2019 - 06/2019

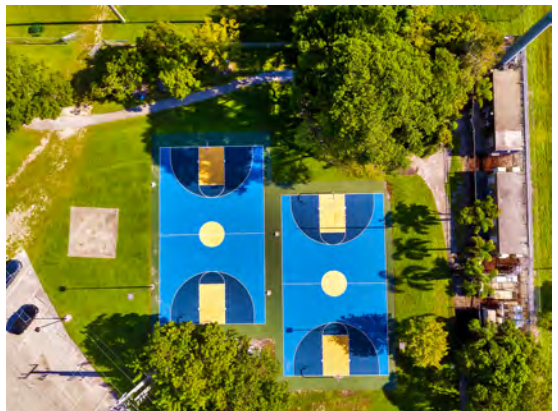
Client Contact:
Scott Newton
7500 W. Oakland Park Blvd.
Lauderhill, Florida 33313
954-572-1478
Architect:
HSQ Group, Inc.
561-392-0221



Waypoint Contracting, Inc., was contracted by the City of Lauderhill to perform improvements to John Mullin Park. Construction took place during the park's operational hours which required installation of a security fence to ensure the safety of children and other ongoing traffic.

The scope of work includes:

- Removal and replacement of 5,000sq. ft. of damaged sidewalks/walking trails
- Replacing baseball field netting
- Resurfacing of basketball courts and installation of new basketball hoops
- Installation of new prefabricated steel dug-outs
- Installation of new aluminum bleachers
- Complete renovation of baseball field bathrooms
- Installation of new cricket pitch
- Installation of new security bollards
- Installation of 500lf new fencing
- Installed new lightening detection system





SHARMAN PARK - PARK IMPROVEMENTS

Miami-Dade, FL



RENOVATION



GOVERNMENT/
MUNICIPAL



PARK

Total Contract Value:
\$426,159.81

Original Contract Value:
\$382,515.75

Start / End Dates:
08/2021 - 01/2022

Client Contact:
Ricardo Ayala
12370 SW 218 ST
Miami Dade, FL 33170
ricardo.ayala@miamidadegov
Architect:
Leah S. Davis- Bonsenor
305-755-5465



Waypoint Contracting, Inc., was selected to perform park improvements. Includes the construction of a 20'x20' and 30'x30 shelter including water and electric, two (2) drinking fountains, hose bibs, fitness court including concrete slab with surface mounted equipment, including landscaping, and connecting walkways



PALM SPRINGS PATHWAY PARK

Palm Springs, FL



RENOVATION



GOVERNMENT/
MUNICIPAL



PARK

Total Contract Value:
\$477,327.00

Start / End Dates:
08/2020 - 12/2020

Client Contact:
Justin Lucas
226 Cypress Lane,
Palm Springs, FL 33461
jlucas@vpsfl.org
Architect:
WGI

Waypoint Contracting, Inc., was awarded this project to construct 12,000sf of sidewalk. Waypoint was responsible for the demolition of existing trees and sidewalk. The sidewalk that was installed was an 8 foot wide sidewalk with a glow in the dark feature. We were responsible for the concrete paver crosswalk, ADA detectable warning pads, new water fountains, park signage, site furnishings, irrigation, and landscaping.

We had continuous contact and coordination with the city throughout the different phases of this project. Due to the phasing of this project, the MOT plan was continuously changing. This project also called for glow stone aggregate to be used, to ensure this was constructed as intended we made several mock ups prior to the final installation.





MIAMI ARTCC PLAYGROUND RESTORATION

Miami, FL



RENOVATION



GOVERNMENT/
MUNICIPAL



PARK



SECURED
FACILITIES

Total Contract Value:

\$99,940.00

Start / End Dates:

11/2017 - 12/2017

Client Contact:

Susan Newcomb

Federal Aviation Administration

7500 NW 58th Street

Miami, FL 33166

781-238-7659



Waypoint Contracting, Inc., was selected by the Federal Aviation Administration to restore the playground for the Miami Air Route Traffic Control Center (ARTCC). Waypoint was responsible for removing the existing turf and replacing it with a new synthetic turf system. Construction took place during the daycare's normal business hours, which required extensive coordination to ensure that the site was properly secure – to prevent children from walking into the construction area and containing the noise and dust so it does not disturb the children.

The scope of this project included:

- Removal of existing playground turf system and subbase
- Re-installation of new subbase and synthetic turf system
- Removal and re-installation of existing playground equipment

City of Oakland Park East Dog Park

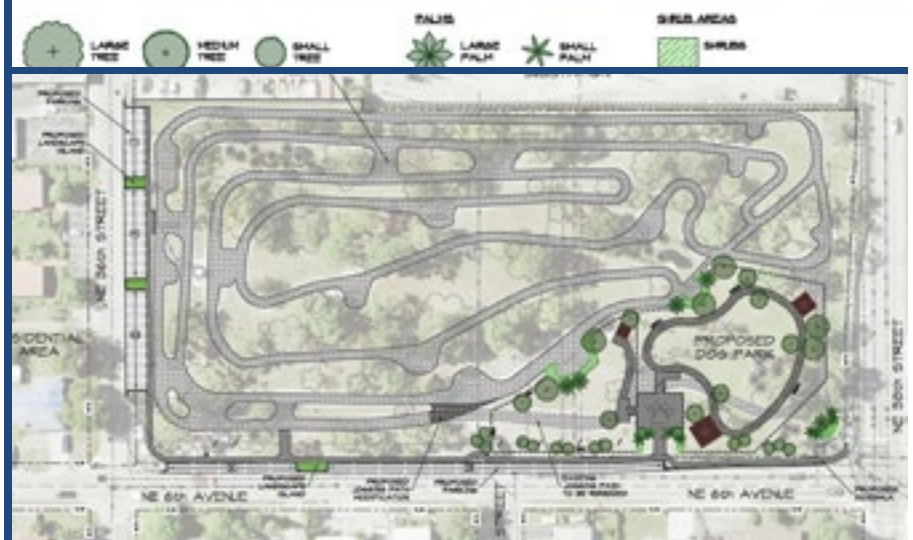
Oakland Park, Florida

To assist with the City of Oakland Park's plan to develop a 1-acre Dog Park at the existing Richard Giusti Heart Par Cours Park, Miller Legg was retained for topographic and tree surveying, SUE, engineering and landscape architecture services as well as an opinion of probable cost.

The firm is providing schematic designs and renderings to provide off-street parking along NE 6th Avenue and NE 36th Street, sidewalk connectivity, modification to the existing jogging trail, dog park design for small and large dogs which includes landscape improvements, tree additions, canopy shelters, water stations, pet waste stations, benches and asphalt walking paths. This project is being performed under Miller Legg's continuing services contract.

Client(s):

City of Oakland Park



City of Miami Fairlawn Community Park

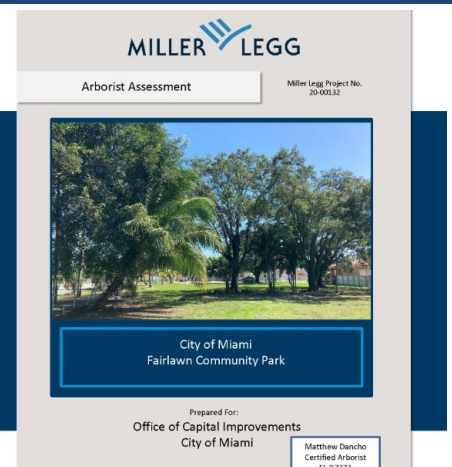
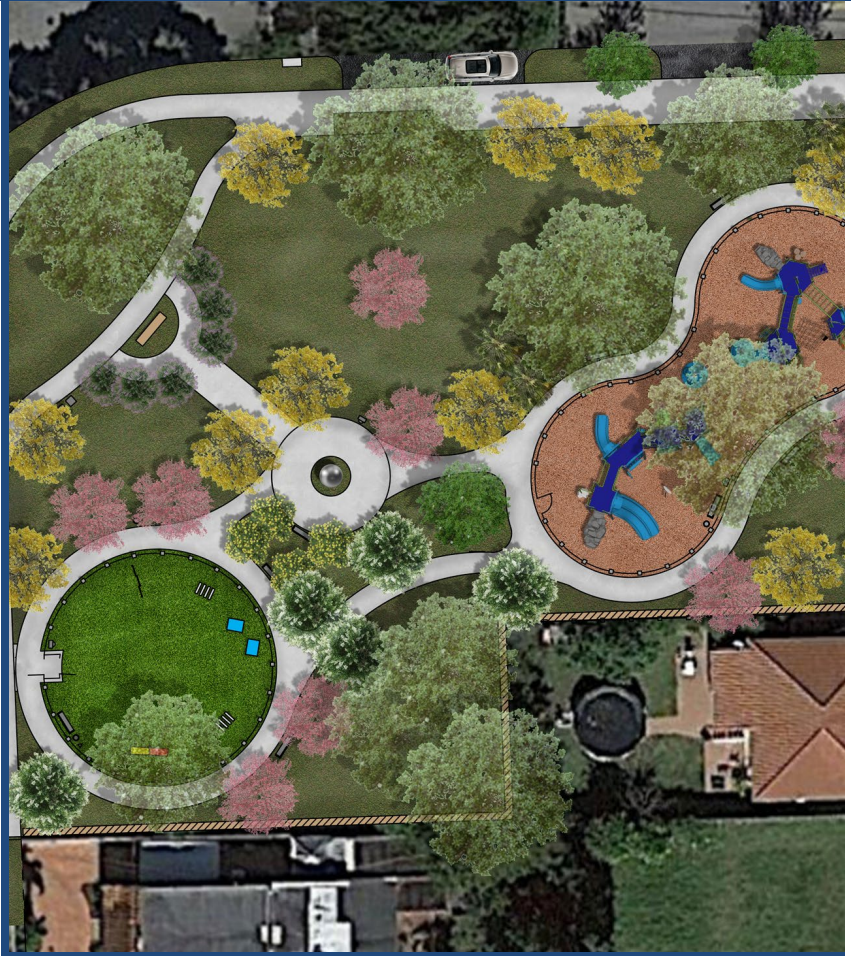
Miami, Florida

Under our continuing services contract with the City of Miami, Miller Legg was awarded the development of programming, pre-design/concept, construction document preparation and construction phase services for a new 1-acre park on SW 63rd Avenue. The scope includes civil engineering, landscape architecture, tree inventory, surveying and SUE, structural, electrical and geotechnical engineering as well as permitting, opinion of probable cost and limited construction administration.

The passive park will contain a shaded/fenced children's playground, dog run, shared pedestrian / bicyclist perimeter path, light bollards, benches, pedestrian pole lighting, irrigation, water fountain, bike racks, receptacles, hardscape furniture, access driveway and perimeter privacy walls. Permitting will be coordinated with the City of Miami, Miami-Dade County DERM, WASD and SFWMD. Survey services include boundary and topographic and tree inventory. Miller Legg will assist the City with the presentation of conceptual designs at Community Meetings to gather public input for the final design.

Client(s):

City of Miami Capital Improvements Program



Miami-Dade County Parks, Recreation & Open Space (PROS) Sabal Chase Park Playground

Miami, Florida

Miller Legg was retained to provide design, construction plans, permitting and construction administration for a new small tot playground at Sabal Chase Park in Miami. The scope includes design of a new engineered wood fiber surface playground area with playground equipment, concrete curbing and walkways, benches, bicycle racks, trash receptacles and nature play elements.

Site preparation, earthwork, and earth play mounds are specified and detailed in the construction documents. Included is the installation of new trees, sod, and butterfly-inspired plant material as well as the restoration of all areas, including walkways and lawns, which may be damaged during the construction process.

Client(s):

Miami-Dade County Parks and Recreation (PROS)



City of Sunny Isles Beach Gwen Margolis Park and Pelican Community Park Artificial Turf

Sunny Isles Beach, Florida

The project consisted of the reconstruction of existing natural turf fields at Pelican Community Park and Senator Gwen Margolis Park in the City of Sunny Isles Beach with artificial turf. Miller Legg provided the preparation and permitting of drainage plans to collect under the new drain systems installed as part of the project, as well as surveying services. In addition, construction observation was provided to verify compliance with the plans and for the certification of the project through regulatory agencies.

In addition, Pelican Park was a three-acre premier recreational active park for the City of Sunny Isles Beach. Miller Legg provided full design services for the City orchestrating park planning, landscape architecture, irrigation, engineering, surveying and architectural design services on a limited site. Amenities of the park include the following: baseball field, recreation building and gymnasium with a multi-use court, playground area and structure, other unique site and architectural features. The project management team at Miller Legg received recognition from the City for its involvement in the design completion of the Park.

Award: ASLA Community Park Award of Merit.

Client(s):
Sports Turf One, Inc.



IMPROVING COMMUNITIES. CREATING ENVIRONMENTS.

www.millerlegg.com

City of Lauderhill Sports Park

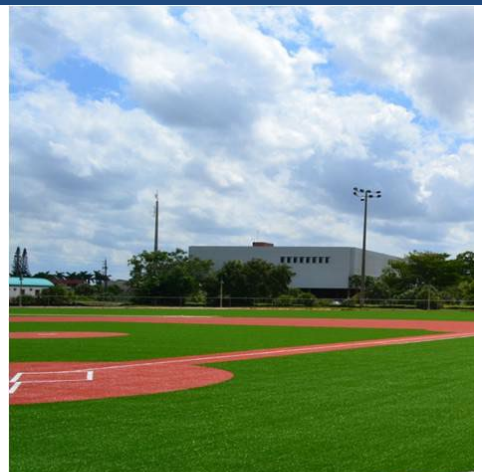
Lauderhill, Florida

Miller Legg was retained by the City of Lauderhill to provide civil engineering design, stormwater permitting, landscape architecture, irrigation design, construction specifications and bidding assistance services for proposed amenities improvements at the 12-acre Lauderhill Sports Park.

Replacement of the baseball field and cricket pitch natural grass with **synthetic turf** and the football scoreboard replacement tasks have been finalized. Miller Legg has also completed design of the playground area wood chip surface conversion to synthetic turf, playground shade, modifications to portions of the fitness trail and the addition of **new fitness stations trail and exercise equipment**.

Client(s):

City of Lauderhill



IMPROVING COMMUNITIES. CREATING ENVIRONMENTS.

www.millerlegg.com

Miami-Dade County Parks Misc. Landscape Architecture Support Services

Miami, Florida

Miller Legg provided in-house landscape architecture design support services for Capital Improvements to the Parks, Recreation and Open Space (PROS) Department for a variety of park projects. Playground design for various parks included Serena Lakes Park, Trust for Public Lands (TPL) **Fitness Zone Design for Amelia Earhart Park**, and playground design for Debbie Curtin Park.

Services include landscape architecture, hardscape and irrigation design. This work was performed under the County's Equitable Distribution Program Continuous Professional Services Agreement.

Client(s):

Miami-Dade County Parks and Recreation (PROS)



IMPROVING COMMUNITIES. CREATING ENVIRONMENTS.

www.millerlegg.com

City of Miami Hadley Park Synthetic Turf and Park Improvements

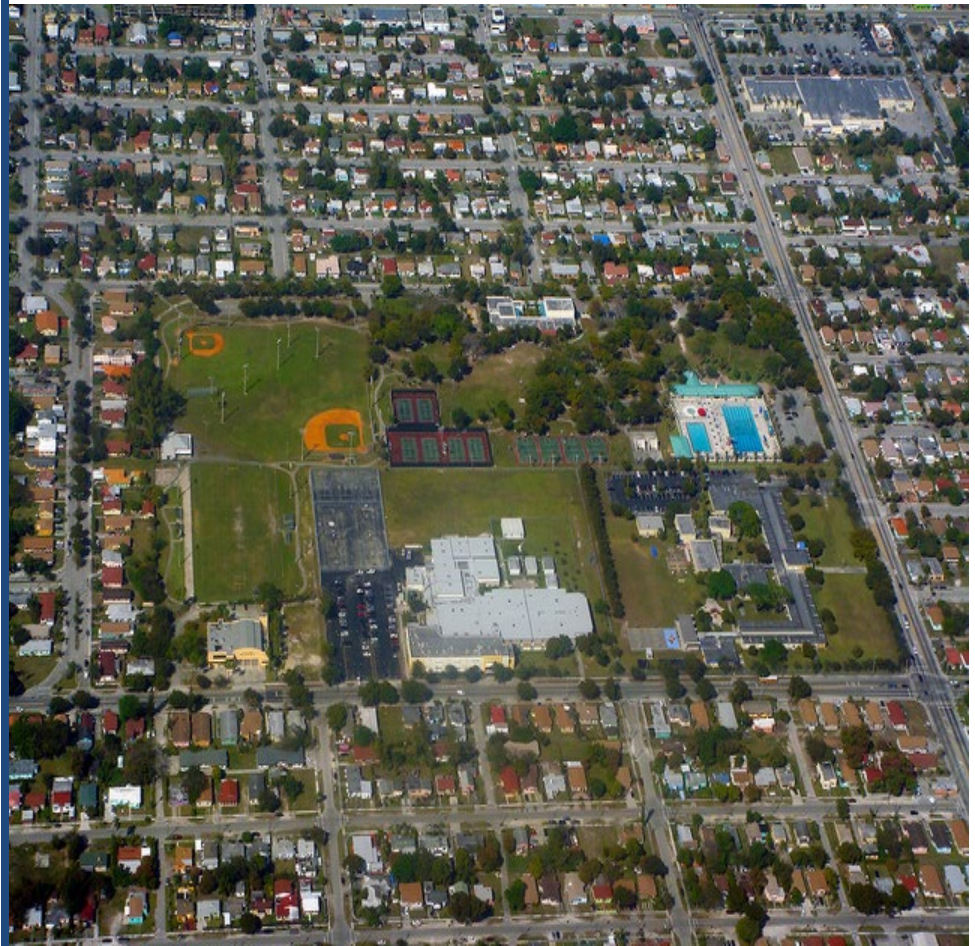
Miami, Florida

Under Miller Legg's professional service agreement with the City of Miami for landscape architectural services, the firm was retained to provide civil engineering, landscape architecture, permitting and limited construction observation services for the 5.38-acre Hadley Park **synthetic turf and park improvements** project. Miller Legg provided underground utility designation services in order to prepare an existing utility map. Schematic design documents for the proposed improvements were provided and included client meetings and preliminary Opinion of Probable Cost.

Final construction documents were developed for chosen multi-purpose athletic field layout, fencing, **fitness stations trail**, **pedestrian walkways**, grading, site amenities, ADA-accessible ramp, sodding and irrigation. Permitting was coordinated with the City, Miami-Dade DERM and SFWMD. Construction administration services were delivered, culminating with a statement of work completion and as-built submittal.

Client(s):

City of Miami
City of Miami Capital Improvements Program



IMPROVING COMMUNITIES. CREATING ENVIRONMENTS.

www.millerlegg.com

COST AND SCHEDULE

TAB D.



92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

PRICE PROPOSAL FORM
DESIGN-BUILD TEAM

Company: Waypoint Contracting, Inc.

All contingencies, overhead & profit, allowances, fees, subconsultant fees and any other associated costs are included in this Price Proposal.

Item 1 – Design Development: \$ 72,000.00
Item 2 – Construction Documents & Permitting: \$ 32,570.00
Item 3 – Construction: \$ 490,300.00
(Base Bid with Saint Augustine Grass on the
whole area of the dog park)
Item 4 – Construction Administration and Inspection: \$ 75,000.00

TOTAL BASE PRICE \$ 669,870.00

Alternate #1 – Saint Augustine Grass with 6" topsoil on
the Dog Park (small and large dogs) and artificial turf where
the grass area is on the People's side park. \$ 150,000.00

Alternate #2– Artificial Turf on the Dog Park (small and
large dogs). \$ 60,000.00

Proposer will complete the Work in accordance with the Contract Documents for the following Total
Base Bid Price:

\$ 669,870.00
(Total Base Bid Price)

Written Total Base Bid Price Amount (in Words):
\$ six hundred sixty nine thousand eight hundred seventy (Dollars) zero (cents)

\$ 150,000.00
(Total Alternate #1 Bid Price)

Written Total Alternate #1 Bid Price Amount (in Words):
\$ one hundred fifty thousand (Dollars) zero (cents)

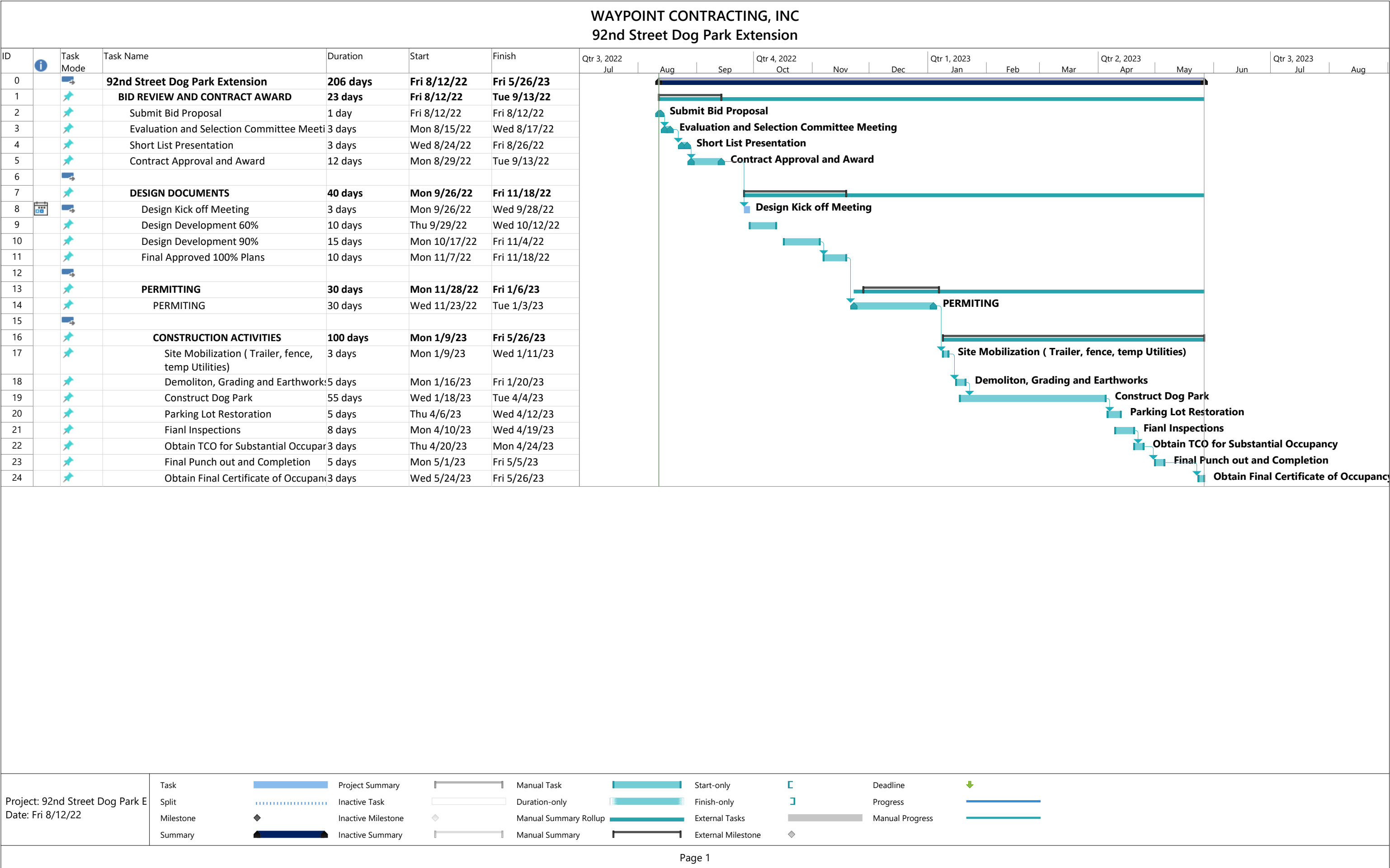
\$ 60,000.00
(Total Alternate #2 Bid Price)

Written Total Alternate #2 Bid Price Amount (in Words):
\$ sixty thousand (Dollars) zero (cents)

Katrina Frischholz
Name of Authorized Agent


Signature of Authorized Agent

Date: 8/12/2022



PROJECT APPROACH AND CONCEPTUAL PLANS

TAB E.



D. PROJECT APPROACH

PROJECT DESCRIPTION

The scope covered in this technical proposal is for a design-build contract. Waypoint Contracting Inc shall provide services to prepare a complete set of construction documents consisting of design drawings, design analysis, landscaping plans, civil plans, and technical specifications for the extension of the existing dog park facility. The new extension is to include a new small dog area and a new large dog area at the facility located at 92nd Street & E Bay Harbor Drive, Bay Harbor FL 33154.

DESIGN REQUIREMENTS

The work covered by this contract consists of, but is not limited to, the furnishing of all general conditions, supervision, labor, materials, equipment, services, tools, transportation, and all miscellaneous requirements needed to provide complete design and engineering plans. All operations are in conjunction with the effort to accomplish the design requirements.

All work shall be done in conformance with the standard for the town of Bay Harbor Islands and applicable codes set by the Environmental Protection Specification, Miami-Dade Department of Environmental Management (DERM), and Occupational Safety and Health Administration (OSHA).

Waypoint contracting along with its design and subcontracting team shall provide all the necessary drawings to include architectural plans, structural plans, landscape plans, and civil plans for the permitting and construction of this project. The design and engineering shall also be included for any of the alternate items if selected by owner. Waypoint Contracting Inc. shall provide all geotechnical exploration testing, construction field testing, site and utilities surveys and ties, and all final grading plans as required for the dog park extension.

SCOPE OF WORK

- The area designated for construction shall be cleared, leveled, and graded for the construction of a small dog park, with an area of approximately 3,800 square feet, and a large dog park with an area of approximately 4,300 square feet.
- In the existing parking lot, a portion from the east area shall be demolished and graded for the extension of the proposed development.
- The area designated for sidewalks and the pavilion shelters shall be prepared and compacted to support the load from the shelters and structural elements.
- The existing exercise equipment at the people side park shall be demolished and removed and fitted with new equipment to match the existing.
- A new five feet high aluminum picket fence and gates shall be constructed to separate the areas between the small dog and large dog areas.
- The new small and large dog park and the existing people side park shall be fitted with the following amenities:
 - Two (2) 15' x 15' pavilion shelter with tongue and groove wood deck and metal roofing
 - Two (2) pet pedestal fountains with two pet bowls
 - Two (2) spray dog high mist fire hydrant.
 - Five (5) exercise equipment stations
 - Two (2) bike racks units for five bikes each



D. PROJECT APPROACH

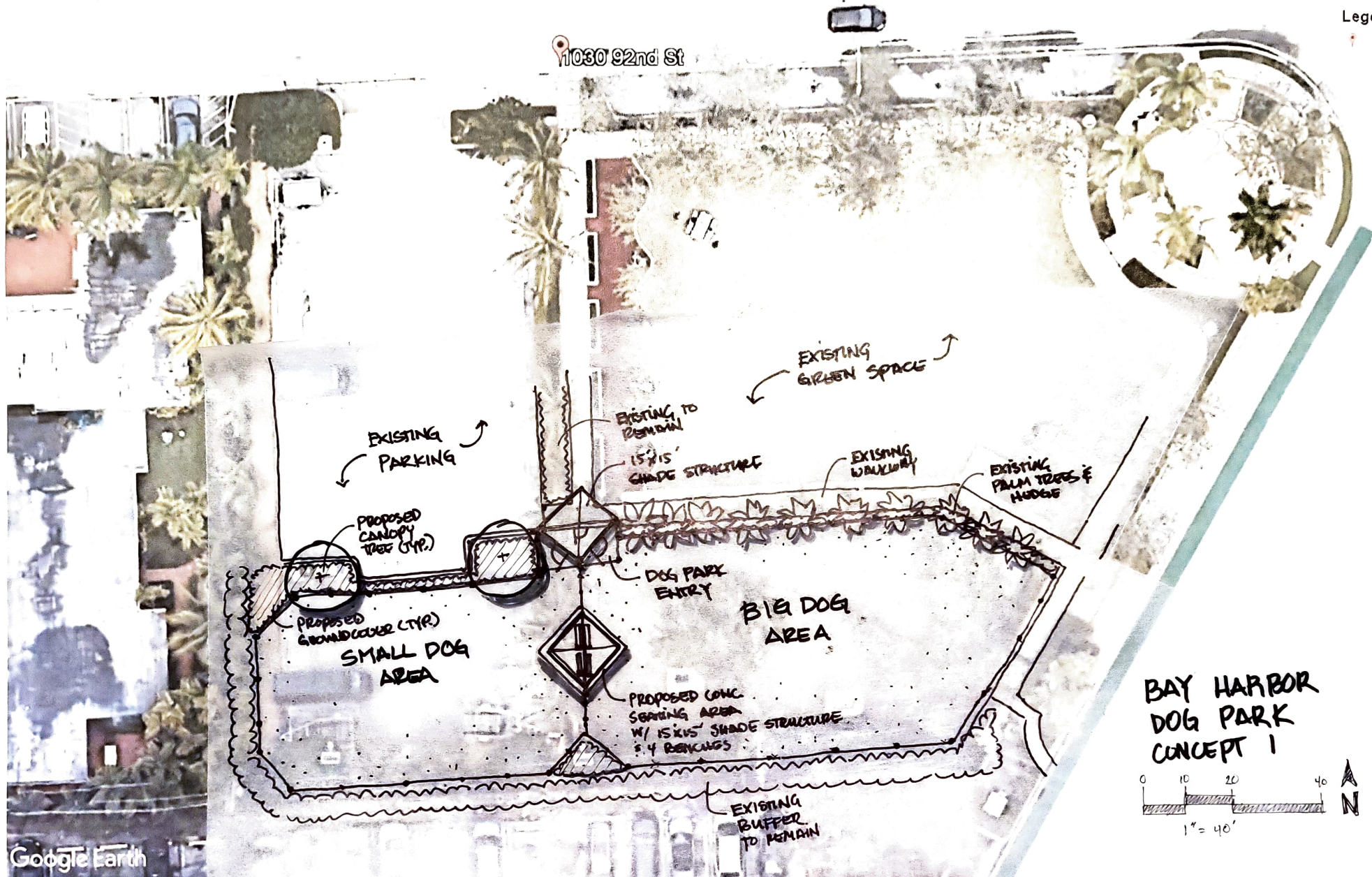
- Six (6) site benches
 - Two (2) site picnic tables for people area
 - Two (2) site picnic table under the new shelters
 - Two (2) Dero bike repairs stations
 - Small and large dog interactive places pieces
-
- The existing park water shall be extended to provide the service for the new pet fountains and pet hydrants. New backflow preventers shall be provided at each unit.
 - The area outside the fenced perimeter of the new dog and existing areas shall be provide with additional landscaping to enhance the park.
 - The 15' x 15' picnic shelter slab shall be a 4 -1/2" thick concrete floor slab and all concrete for the foundation and walkways shall be 3,500 psi.
 - The new park connecting sidewalks shall be 4-1/2" thick and shall receive a broom finish concrete with an integral color pattern to match the park existing sidewalks.
 - The remainder of the area of the existing parking lot shall be striped and reconfigured to accommodate (1) ADA parking space and 13 addition regular spaces.
 - New directional and warning signs shall be provided and installed.
 - The surface of the newly constructed small dog area shall be planted with St. Augustine sod and shall be irrigated.
 - The existing park irrigation system shall be extended to provide the coverage at the new areas.

EXCLUSIONS

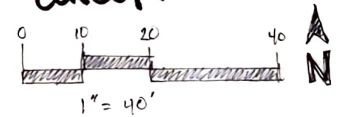
- Impact Fees
- DERM Fees
- Environmental Protection Fees
- Electrical Works
- Roadwork Improvements
- Any modifications to the existing site perimeter fence and gates
- Work at the existing rotunda entry.

Legend

1030 92nd St



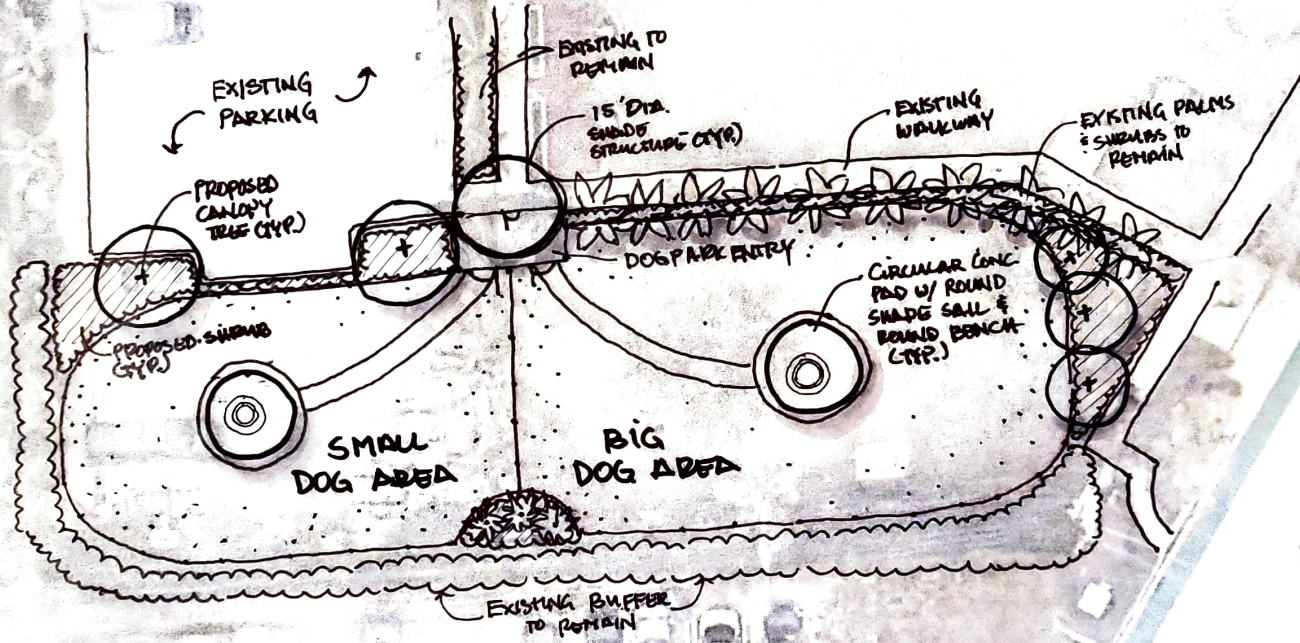
BAY HARBOR DOG PARK CONCEPT 1



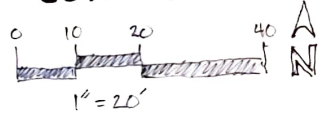
Google Earth

MILLER LEGG

1030 32nd St



BAY HARBOR
DOG PARK
CONCEPT 2



MILLER LEGG

BID FORMS

TAB F.



92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

BID FORM

BID FROM:

Company: Waypoint Contracting, Inc.

Address: 7955 NW 12 ST STE 400

City/St/Zip: Doral, FL 33126

Phone/ Fax: 786-608-1406

To furnish all materials, equipment and labor and to perform all work in accordance with the Bid and Contract Documents for Project:

92ND Street Dog Park Extension , Project No. BHI -228, located in the Town of Bay Harbor Islands, Florida.

TO: TOWN OF BAY HARBOR ISLANDS, FLORIDA
ATTN: TOWN MANAGER

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract for Construction, with the Town in substantially the form included in the Bidding Documents to perform all Work and any Additional Services as specified or indicated in the Bidding Documents at the Total Bid Price and within the Contract Times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for **120** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Town.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Bidding Documents, Contract for Construction, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

Addendum No.

Addendum Date

1

7/14/2022

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work, including all requirements applicable to the Project, including the provisions, clauses, terms or conditions set forth in Construction Contract (Contract Requirements).

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

- D. Bidder has carefully studied all documents as applicable: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Bidding Documents, and (2) reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Bidding Documents.
 - E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - H. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - J. Bidder has reviewed and carefully studied the Contract for Construction, together with Construction Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.

PRICE PROPOSAL SHEET ON FOLLOWING PAGE

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

- 6.01** Bidder's Information:
The Bidder states that he/she is an experienced Contractor and has completed similar projects within the last five years. This information has been provided on the Contractor's Qualifications Statement.
- 7.01** Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Bid and Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Bid Documents and the Contract for Construction, attach a statement to this Bid Form to indicate the number of days required.
- 8.01** Bidder accepts the provisions of the Contract for Construction as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Contract Documents.
- 9.01** The following documents are attached to and made a condition of this Bid:
- A. Required Bid security in the form of Bid Bond
 - B. Bid Bond form
 - C. Performance Bond
 - D. Contractor's Qualifications Statement, containing a tabulation of Subcontractors, Suppliers [and other] individuals and entities required to be identified in this Bid;
 - E. Signed Trench Safety Act Form (if applicable)
 - F. O.S.H.A. Standards Acknowledgement Form
 - G. Non-Collusion Affidavit
 - H. Copy of State of Florida General Contractor's License (ten days prior to Award);
 - I. Addenda
- 10.01** The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions, if any.

SUBMITTED on 8/12/2022, 2022.

State Contractor License No. 1519415. (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

A Partnership

Partnership Name: _____ (SEAL)

By: _____

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Corporation

Corporation Name: Waypoint Contracting, Inc. (SEAL)

State of Incorporation: Florida

Type (General Business, Professional, Service, Limited Liability): General Business

By:  _____

(Signature --attach evidence of authority to sign)

Name: (typed or printed): Katrina Frischholz

Title: President

Attest  _____

(CORPORATE SEAL)

(Signature of Corporate Secretary)

Business address: 7955 NW 12 ST STE 400

Doral, FL 33126

Phone No.: 786-472-6721 FAX No.: _____

Date of Qualification to do business is 11/29/2016.

CONTRACTOR'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your entity/company in detail.

Waypoint Contracting is a small business that provides construction management and general contracting services in Florida from our headquarters in Miami. Our company is built upon a history of quality, on-time completion, and safety.

Our team excels at constructing and managing complex projects requiring a high standard of compliance.

We are dedicated to providing our clients with the highest quality construction services in the industry

2. The address of the principal place of business is:

7955 NW 12 ST STE 400

Doral, FL 33126

3. Entity/Company telephone number, fax number and e-mail addresses:

786-472-6721

kfrischholz@waypointci.com

4. Number of employees:

20

5. Number of employees assigned to this Project:

3

6. Entity/Company Identification numbers for the Internal Revenue Service:

81-4602789

7. Provide Miami-Dade County Occupational License Number, if applicable, and expiration date:

Please see attached

8. How many years has your organization been in business as a General Contractor? Does your organization have a specialty?

Waypoint has been around since his inception in 1962 and we specialize in parks and recreational work.

9. What is the last project of this nature or magnitude that you have completed? Has this firm ever completed a "public" project? Please provide project description, reference and cost of work completed.

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

Doral White Course park for the City of Doral. We constructed a ground up park that consisted of a large and small dog park, a new playground, a putting green, open spaces, pavilions, a new restroom building, and a outdoor fitness.

10. Have you ever failed to complete any work awarded to you? If so, where and why?
 Waypoint has never failed to complete any of the work awarded to us.

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.
Name City of Doral,
Address 8401 NW 53 Terrace Doral, FL 33166
Telephone No. 305-968-5862

11.2.
Name Village of Palm Springs
Address 226 Cypress Lane, Palm Springs, FL 33461
Telephone No. 561-434-5109

11.3.
Name Federal Aviation Administration
Address 7500 NW 58TH ST Miami, FL 33166
Telephone No. 781-238-7659

12. List the following information concerning all contracts or work **in progress** as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date
98 NW 5 ST	City of Delray CRA	\$1,925,000.00	12/31/2022	20%
Cultural and Gator Circle Park	City of Cape Coral	\$5,052,729.20	8/31/2022	95%
Police Elevator	City of Doral	\$348,700.00	8/31/2022	95%
Temporary Fire Station	City of Fort Lauderdale	\$1,237,903.00	8/29/2022	95%

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the Project site and does the Bidder have a complete plan for its performance?

Yes, Katrina Frischholz inspected the project site.

14. Provide list of subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

SubContractor Name	Address	Work to be Performed

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?
Waypoint will use any equipment necessary to perform the work.

16. What equipment will you purchase for the proposed work?
Waypoint will use any equipment necessary to perform the work.

17. What equipment will you rent for the proposed work?
Waypoint will use any equipment necessary to perform the work.

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

18. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

Please see attached Jroge Lopez resume

19. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

Waypoint Contracting, Inc.
President- Katrina Frischholz
Vice President- Jorge Lopez

- 19.1 The correct name of the Bidder is:

Waypoint Contracting, Inc.

- 19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

Corporation

- 19.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

Katrina Frischholz & Jorge Lopez

Only those Bidders and Subcontractor (s) who are qualified in the selected installation methodology

92nd Street Dog Park Extension – Design Build**TOWN OF BAY HARBOR ISLANDS****BHI- 228**

will be considered as bona fide bidders. As Bidder, we certify to have constructed at least three (3) similar projects in the last five (5) year period as indicated by the following:

- | | |
|---------------------|---|
| 1) NAME OF PROJECT | Doral White Course Park |
| YEAR OF PROJECT | 2022 |
| OWNER OF PROJECT | City of Doral |
| CONTACT NAME | James Violi |
| CONTACT PHONE NO. | 305-968-5862 |
| CONTACT E-MAIL | jvioli@bcceng.com |
| LOCATION OF PROJECT | Doral, FL |
| SCOPE OF WORK | ground up park consisted of a shaded playground, a water front flexible event plaza, artificial turf putting green space, outdoor fitness stations, two off-leash artificial turf dog areas with washing stations, putting, multi-purpose greenspace, concrete paver walkways and concrete sidewalks, aluminum fence around the park, and a chain link fence around the playground and dog areas. |
| APPROXIMATE VALUE | \$3,200,000.00 |
-
- | | |
|---------------------|---|
| 2) NAME OF PROJECT | Palm Springs Pathway |
| YEAR OF PROJECT | 2020 |
| OWNER OF PROJECT | Village of Palm Springs |
| CONTACT NAME | Justin Lucas |
| CONTACT PHONE NO. | 561-434-5109 |
| CONTACT E-MAIL | jluucas@vpsfl.org |
| LOCATION OF PROJECT | Palm Springs, FL |
| SCOPE OF WORK | construct 12,000sf of sidewalk. Waypoint was responsible for the demolition of existing trees and sidewalk. The sidewalk that was installed was an 8 foot wide sidewalk with a glow in the dark feature. We were responsible for the concrete paver crosswalk, ADA detectable warning pads, new water fountains, park signage, site furnishings, irrigation, and landscaping. |
| APPROXIMATE VALUE | \$477,327.00 |
-
- | | |
|---------------------|--|
| 3) NAME OF PROJECT | Sharman Park Park Improvements |
| YEAR OF PROJECT | 2022 |
| OWNER OF PROJECT | Miami Dade County Parks and Recreation |
| CONTACT NAME | Ricardo Ayala |
| CONTACT PHONE NO. | 305-755-7800 |
| CONTACT E-MAIL | ricardo.ayala@miamidade.gov |
| LOCATION OF PROJECT | Miami, FL |
| SCOPE OF WORK | construction of a 20'x20' and 30'x30 shelter including water and electric, two (2) drinking fountains, hose bibs, fitness court including concrete slab with surface mounted equipment, including landscaping, and connecting walkways |
| APPROXIMATE VALUE | \$426,159.81 |

**SIGNATURE AND NOTARY ACKNOWLEDGEMENT
FOLLOW ON THE NEXT PAGE**

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

CONTRACTOR:


Print Name: Katrina Frischholz

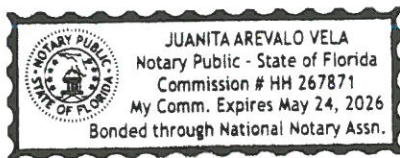
Print Title: President

Date: 08/11/2022

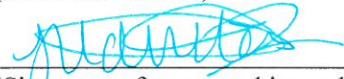
STATE OF FLORIDA)
) S.S.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 11 day of August,
2022, by Katrina Frischholz who is personally known to me or who has produced
President as identification and who did/did not take an oath.

WITNESS my hand and official seal, this 11 day of August, 2022.



(NOTARY SEAL)


(Signature of person taking acknowledgment)

Juanita Arevalo
(Name of officer taking acknowledgment)
typed, printed or stamped

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228
BID BOND

BIDDER (Name and Address):

Waypoint Contracting, Inc.
7955 NW 12th Street, Suite 400, Doral, FL 33126

SURETY (Name and Address of Principal Place of Business):

FCCI Insurance Company
6300 University Parkway
Sarasota, FL 34240

OWNER (Name and Address):

TOWN OF BAY HARBOR ISLANDS
9665 Bay Harbor Terrace
Bay Harbor, FL 33154

BID

BID DUE DATE: August 12, 2022 at 3:00 P.M.

Project Description including Location is as follows:

PROJECT NAME: 92ND STREET DOG PARK EXTENSION – DESIGN BUILD

PROJECT NO: BHI - 228

LOCATION: TOWN OF BAY HARBOR ISLANDS, FLORIDA

BOND

BOND NUMBER: N/A

DATE: (Not later than Bid Due Date): July 25, 2022

PENAL SUM: Five Percent of Amount Bid

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

Waypoint Contracting, Inc. (Seal)
Bidder's Name and Corporate Seal

By: [Signature]
Signature and Title

Attest: [Signature]
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

SURETY

FCCI Insurance Company (Seal)
Surety's Name and Corporate Seal

By: [Signature]
Signature and Title Michael A. Bonet, Attorney-In-Fact

(Attach Power of Attorney)
Attest: See Power of Attorney Attached
Signature and Title



92nd Street Dog Park Extension – Design Build

TOWN OF BAY HARBOR ISLANDS

BHI- 228

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder for the Work required by the Contract Documents, provided that:

- 1.1. The penal sum set forth on the face of this Bond, and
- 1.2. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds and insurance certificates required by the Bidding Documents and Contract Documents.

3. This obligation shall be null and void if:

- 3.1. Owner accepts Bidder's bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Construction Contract required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
- 3.2. All bids are rejected by Owner, or
- 3.3. Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by

Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and within

30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue notice of award agreed to in writing by Owner and Bidder, provided that the total time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid Due Date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

length. If any provision of this Bond conflicts with any applicable provision of this Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "bid" as used herein includes a bid, offer or proposal as applicable.



GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Roy V. Fabry; Michael A. Bonet

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$10,000,000.00): \$10,000,000.00

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 23rd day of July, 2020.

Attest: Christina D. Welch
Christina D. Welch, President
FCCI Insurance Company



Christopher Shoucair
Christopher Shoucair,
EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023

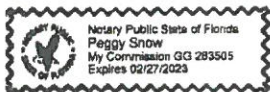


Peggy Snow
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Christina D. Welch, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 2/27/2023



Peggy Snow
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 27, 2020 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.



Dated this 25th day of July, 2022

Christopher Shoucair
Christopher Shoucair, EVP, CFO, Treasurer, Secretary
FCCI Insurance Company

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228
TRENCH SAFETY ACT

(90-96, Laws of Florida)

Bidder acknowledges that included in the appropriate bid items of the Bid and in the Total Bid Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The bidder further identifies the costs of such compliance to be summarized below:

	Trench Safety Measure (Description)	Unit of Measure (LFSF)	Unit (Quantity)	Unit Cost	Extended Cost
A.	Open Trench	LF	60	\$5.00	\$300.00
B.					
C.					
D.					
					Total \$ 300.00

If applicable, the Contractor certifies that all trench excavation done within his control in excess of five feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Subarticle 125-4.1 (**TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL -TRENCH EXCAVATION**).

Failure to complete the above may result in the bid being declared non-responsive.

Contractor agrees that the above safety compliances and costs are included in his bid package.



Signature of Bidding Contractor

END OF DOCUMENT

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228
ACKNOWLEDGEMENT OF CONFORMANCE
WITH O.S.H.A. STANDARDS

TO: Town of Bay Harbor Islands, Florida

We Waypoint Contracting, Inc., hereby acknowledge and agree that as contractors for the construction of the "92ND STREET DOG PARK EXTENSION – DESIGN BUILD Project, Project No. BHI -228", that we have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the Town of Bay Harbor Islands, Florida against any and all legal liability or loss the Town may incur due to Waypoint Contracting, Inc.
_____(Contractor's name) failure to comply with such act.



ATTEST

Waypoint Contracting, Inc.

CONTRACTOR



ATTEST

By: _____
Title: President

08/11/2022

DATE

END OF DOCUMENT

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

- 1 He/She is President of Waypoint Contracting, Inc.,
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 and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees,
or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly
or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in
connection with the Construction Contract for which the attached Bid has been submitted or to
refrain from proposing in connection with such Construction Contract, or has in any manner,
directly or indirectly, sought by agreement of collusion or communication of conference with any
other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any
other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other
bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage
against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed
Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

92nd Street Dog Park Extension – Design Build
TOWN OF BAY HARBOR ISLANDS
BHI- 228

NON-COLLUSION AFFIDAVIT
(CONTINUED)

5. The response to the attached Invitation to Bid is fair and proper and is not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature (Blue ink only)

Katrina Frischholz

Print Name

President

Title

8/11/2022

Date

Witness my hand and official notary seal/stamp at _____ the day and year written above

STATE OF FLORIDA

)

)SS:

COUNTY OF MIAMI-DADE)

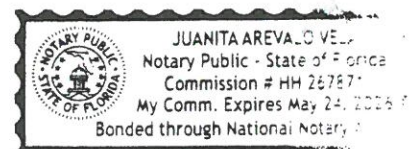
BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Katrina Frischholz as President of Waypoint Contracting, Inc., an organization authorized to do business in the State of Florida, and acknowledged executing the foregoing Affidavit as the proper official of Waypoint Contracting, Inc. for the use and purposes mentioned in the Affidavit and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/She is personally known to me or has produced Personally known as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 11 day of August, 2022.

NOTARY PUBLIC

My Commission Expires:

~~Juanita Arevalo~~
May 24, 2026



92ND STREET DOG PARK EXTENSION – DESIGN BUILD
TOWN OF BAY HARBOR ISLAND
BHI-228

Response

Permit Fees related to the Town's Permit Applications are waived since this is a Town Project. Permit Fees with other agencies needed for the Project, will be reimbursed as part of the invoicing process with the receipts as back up.

Issued By: JOSE CUSTODIO – TOWN ENGINEER

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:



Katrina Frischholz

Waypoint Contracting, Inc.

8/11/2022

Local Business Tax Receipt

Miami-Dade County, State of Florida

-THIS IS NOT A BILL - DO NOT PAY



7217886

RECEIPT NO.

RENEWAL

7502155

BUSINESS NAME/LOCATION
WAYPOINT CONTRACTING INC
1324 NW 29TH ST
MIAMI, FL 33142



EXPIRES
SEPTEMBER 30, 2022

Must be displayed at place of business
Pursuant to County Code
Chapter 8A - Art. 9 & 10

OWNER
WAYPOINT CONTRACTING INC
C/O JORGE LUIS LOPEZ PRES

SEC. TYPE OF BUSINESS

196 GENERAL BUILDING
CONTRACTOR

**PAYMENT RECEIVED
BY TAX COLLECTOR**

45.00 07/28/2021

Worker(s)

2

CGC1519415

INT-21-353228

This Local Business Tax Receipt only confirms payment of the Local Business Tax. The Receipt is not a license, permit, or a certification of the holder's qualifications, to do business. Holder must comply with any governmental or nongovernmental regulatory laws and requirements which apply to the business.

The RECEIPT NO. above must be displayed on all commercial vehicles - Miami-Dade Code Sec 8a-276.

For more information, visit www.miamidade.gov/taxcollector



AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 14.

ITEM: Consideration and Approval of a request by BH Investment LLC, owner of the property located at 1135 103rd Street, to extend the use of the Temporary Sales Center to May 2023, in connection with the development of an eight-story building with 41 high-end residential units. Enclosed is the applicant's Letter of Intent and other supporting documents.

DESCRIPTION:

On June 8, 2020, the Town Council approved the construction of a temporary Sales Center at 10301 East Bay Harbor Drive in connection with the development of an eight-story, 41 unit residential development at 1135 103rd Street, for 24 months.

The initial Sales Center approval contemplated operation from November 2020 through November 2022. The Certificate of Occupancy was issued on August 11, 2022. The owner is now seeking approval for a six-month extension to May 2023.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Bay Harbor Exhibits - Extension Request
2.	ONDA Staff Recommendation and Backup for Town Council Meeting - June 8 2020



Akerman LLP
Three Brickell City Centre
98 SE 7th Street, Suite 1100
Miami, FL 33131
Tel: 305 982 5629
neisen.kasdin@akerman.com

October 6, 2022

VIA E-MAIL

Ms. Maria Lasday
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

RE: Letter of Intent – Onda Temporary Sales Office Extension

Dear Ms. Lasday,

Akerman LLP represents B H Investment LLC ("BHI" or "Owner"), owner of the property located at 1135 103rd Street (the "Property"), located in the Town of Bay Harbor Islands (the "Town"), on the northern tip of the East Island. As you know, the Planning and Zoning Board approved a project at the Property consisting of an eight (8)-story building with 41 high-end residential units (the "Project" to be known as "Onda"), and construction is well underway.



(Onda project: 1135 103rd Street)

The Town Council approved a temporary sales center ("Sales Center") for the Project at the neighboring vacant lot, just east of the Property located at 10301 East Bay Harbor Drive (the "Vacant Lot") on June 8, 2020 ("Sales Center Approval"). Owner subsequently built a unique and beautiful sales office on the Vacant Lot. The Sales Center has been curated out of materials which reflect the aesthetics of the Onda project, including natural materials and décor. See photographs of the Sales Center enclosed as **Exhibit A**, and the "Agenda Item Report" from the June 8, 2020 Sales Center

Approval enclosed as **Exhibit B**. The Sales Center has been constructed (see a copy of original conceptual plans for the Sales Office enclosed as **Exhibit C**) and a Certificate of Occupancy was obtained on August 11, 2021 (see enclosed as **Exhibit D**).

Owner is leasing the land at the Vacant Lot (under separate ownership) for the temporary use of the Sales Center. The owner of the Vacant Lot has consented to this application for the purpose of seeking an extension for the temporary Sales Office, as indicated in the letter enclosed herein as **Exhibit E**. The initial Sales Center Approval contemplated the operation of the sales center from approximately November 2020 through approximately November 2022. ***However, Owner is requesting a six month extension (to utilize the Sales Center through approximately May 2023).***

Please accept this letter, and other enclosed materials as our official request to be heard on the next Town Council agenda for the extension of the Onda temporary Sales Center. Thank you for your consideration.



(Onda Temporary Sales Office: 10301 East Bay Harbor Drive)

Sincerely,

A handwritten signature in blue ink, appearing to read "Marissa R. Amual".

Marissa R. Amual

Enclosures

cc: Valerio Morabito
Neisen Kasdin, Akerman LLP

Exhibit A

PHOTOGRAPHS OF THE SALES CENTER









Exhibit B

AGENDA ITEM REPORT

June 8, 2020

ITEM NUMBER: 8.

ITEM: Consideration and Approval by B H Investment, LLC for a temporary sales center for project that will be built on 1135 103rd Street also know as "Onda". The proposed temporary structure would be built just east of the proposed project, to be located at 10301 East Bay Harbor Drive. Enclosed are copies of the request letter, proposed concept of the sales center and other supporting documents.

DESCRIPTION:

The applicant ("B H Investment, LLC) is seeking Town Council approval to construct a temporary sales center for project know as "Onda" located at 1135 103 Street. The sales center would be built on the vacant lot just east of the property, to be located at 10301 East Bay Harbor Drive. The estimated date to launch the operation for the Sales Center is by November of 2020 and plans to maintain the temporary structure throughout the construction process for approximately 24 months.

Enclosed are copies of the request letter, plans and other supporting documents.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

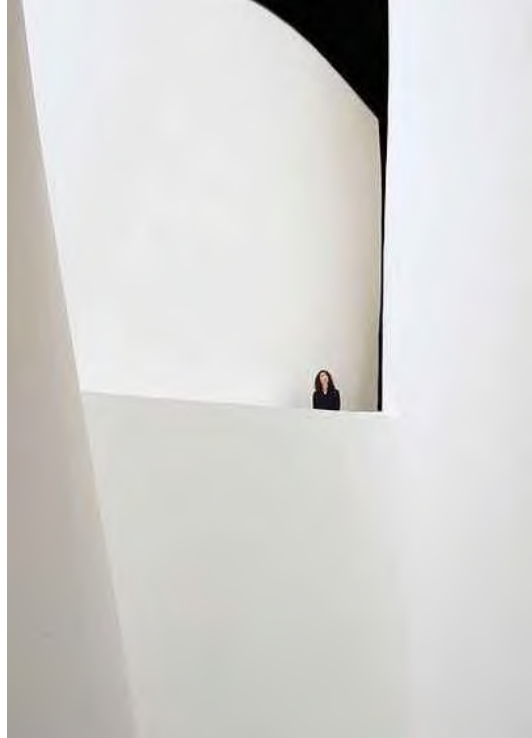
BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk

ATTACHMENTS

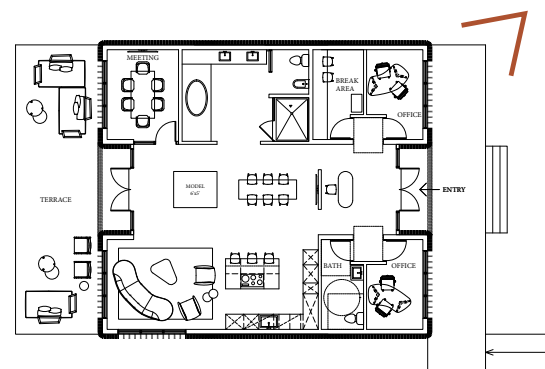
1. Temporary Sales Office- LOI for Onda (003)

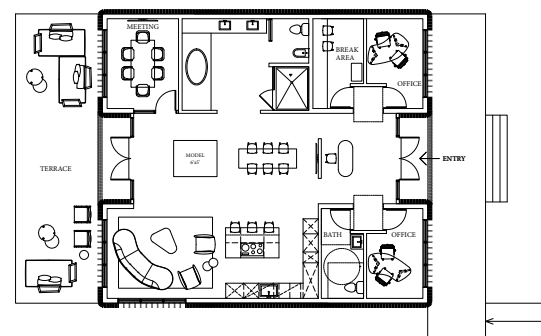
Exhibit C



ONDA
sales center







ZONING DATA

PROJECT ADDRESS:
10301 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FL 33154

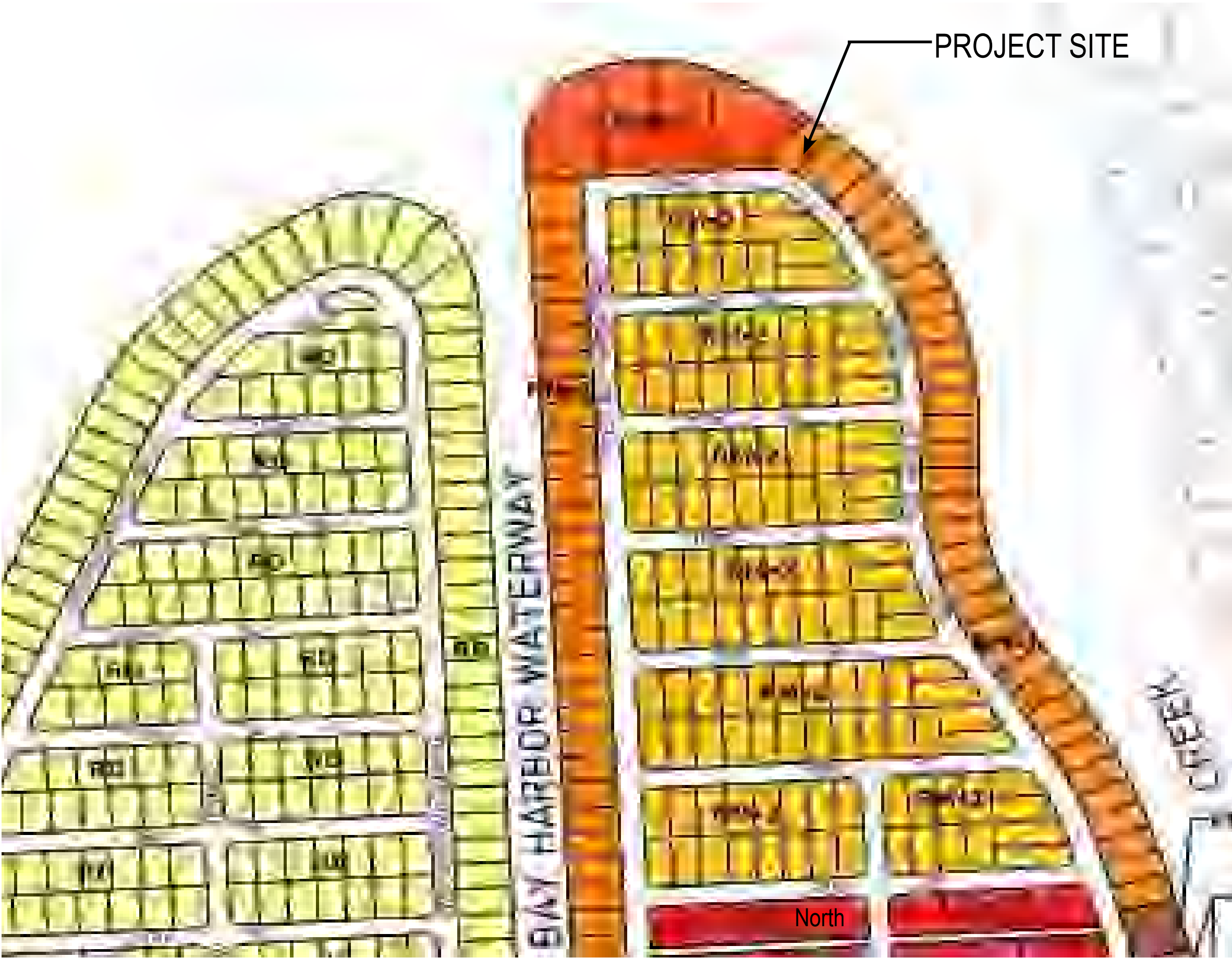
PROPERTY FOLIO NUMBER:
13-2227-001-6770

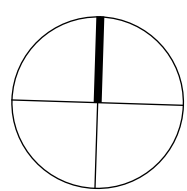
ZONING DISTRICT:
RM-1
LAND USE DESIGNATION
MULTIPLE FAMILY DISTRICT

SURVEY INFORMATION:
PREPARED BY:
JOHN IBARRA & ASSOCIATES, INC.
777 N.W. 72ND. AVENUE STE. 3025,
MIAMI, FL 33126
PH: (305) 262-0400

LEGAL DESCRIPTION (PER SURVEY):
LOT 1, BLOCK 4, BAY HARBOR ISLAND, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 46, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

F.E.M.A. FLOOD ZONE INFORMATION (PER SURVEY):
COMMUNITY NUMBER: 120637
PANEL NUMBER: 0144
ZONE AE. +9'-10'
BFE = 10'
FEMA MAP EFFECTIVE DATE: 09/11/2009







VIEW 01 - LOOKING WEST



VIEW 02 - LOOKING NORTH



VIEW 03 - LOOKING EAST



VIEW 04 - LOOKING SOUTH



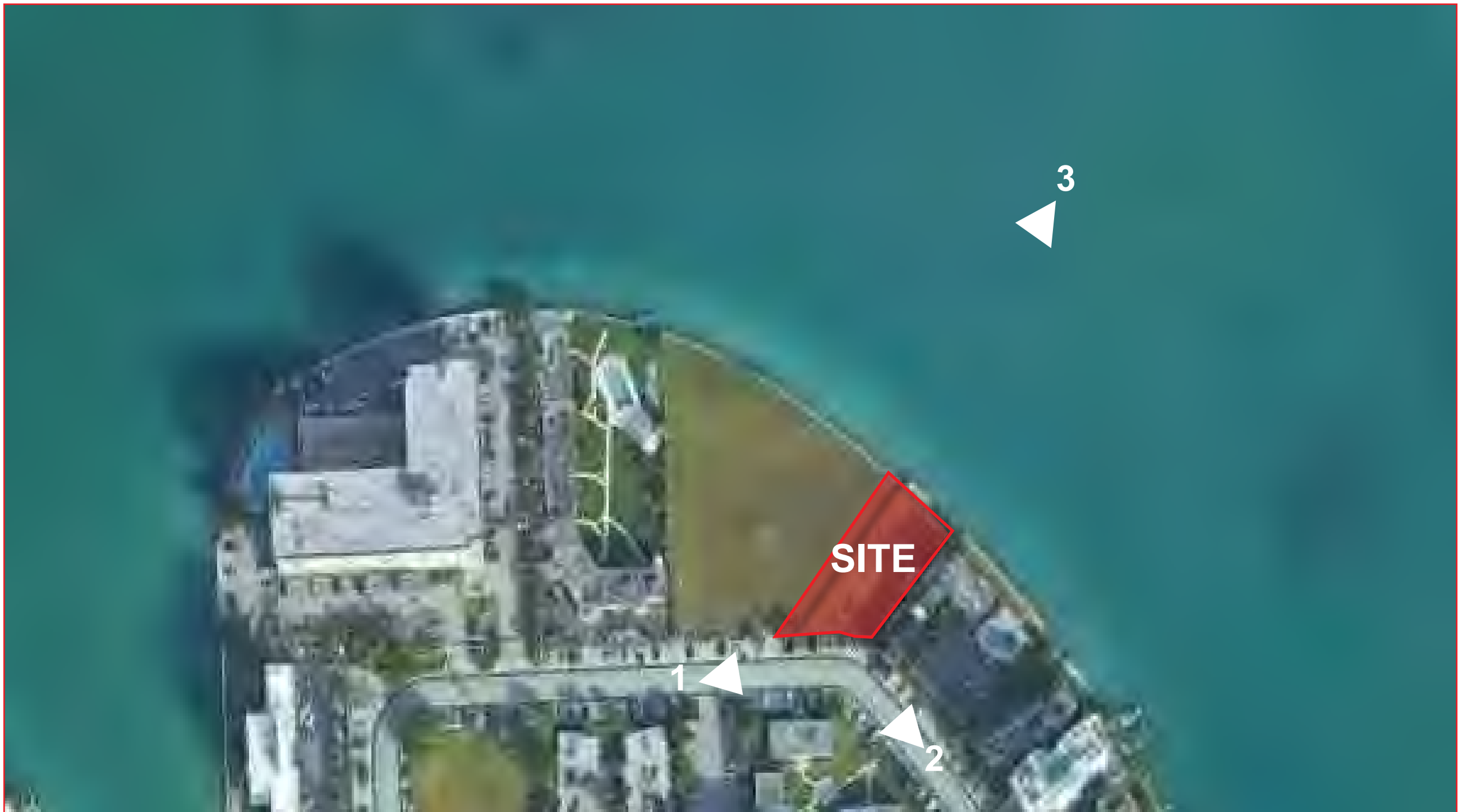
SITE STREET VIEW 01 - FROM SOUTHWEST



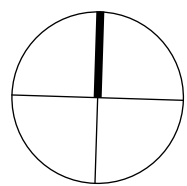
SITE STREET VIEW 02 - SOUTHEAST



SITE VIEW 03 - FROM NORTHWEST (BISCAYNE BAY)

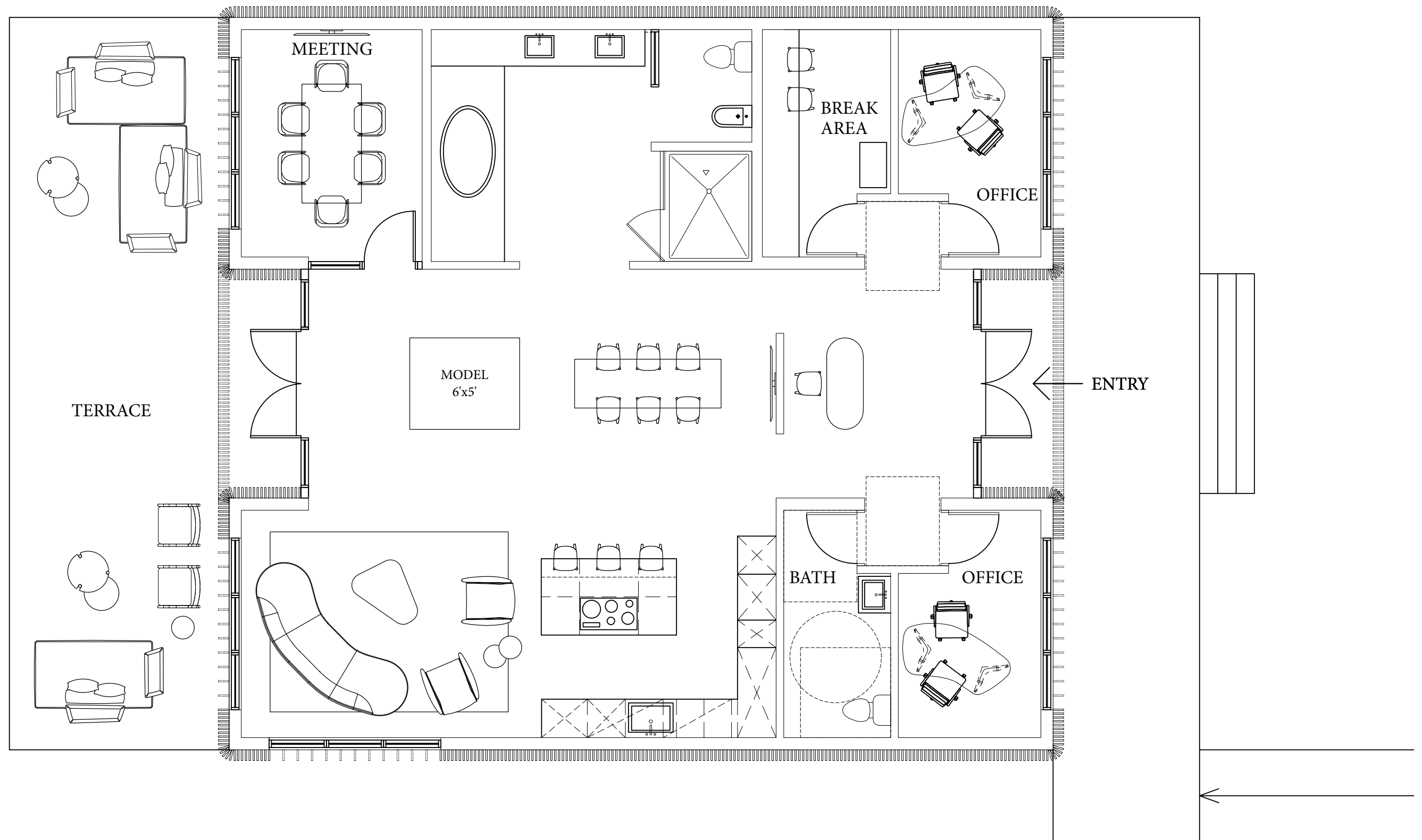


KEY MAP



Finishings&Furniture | Reference images





Plan



Entrance



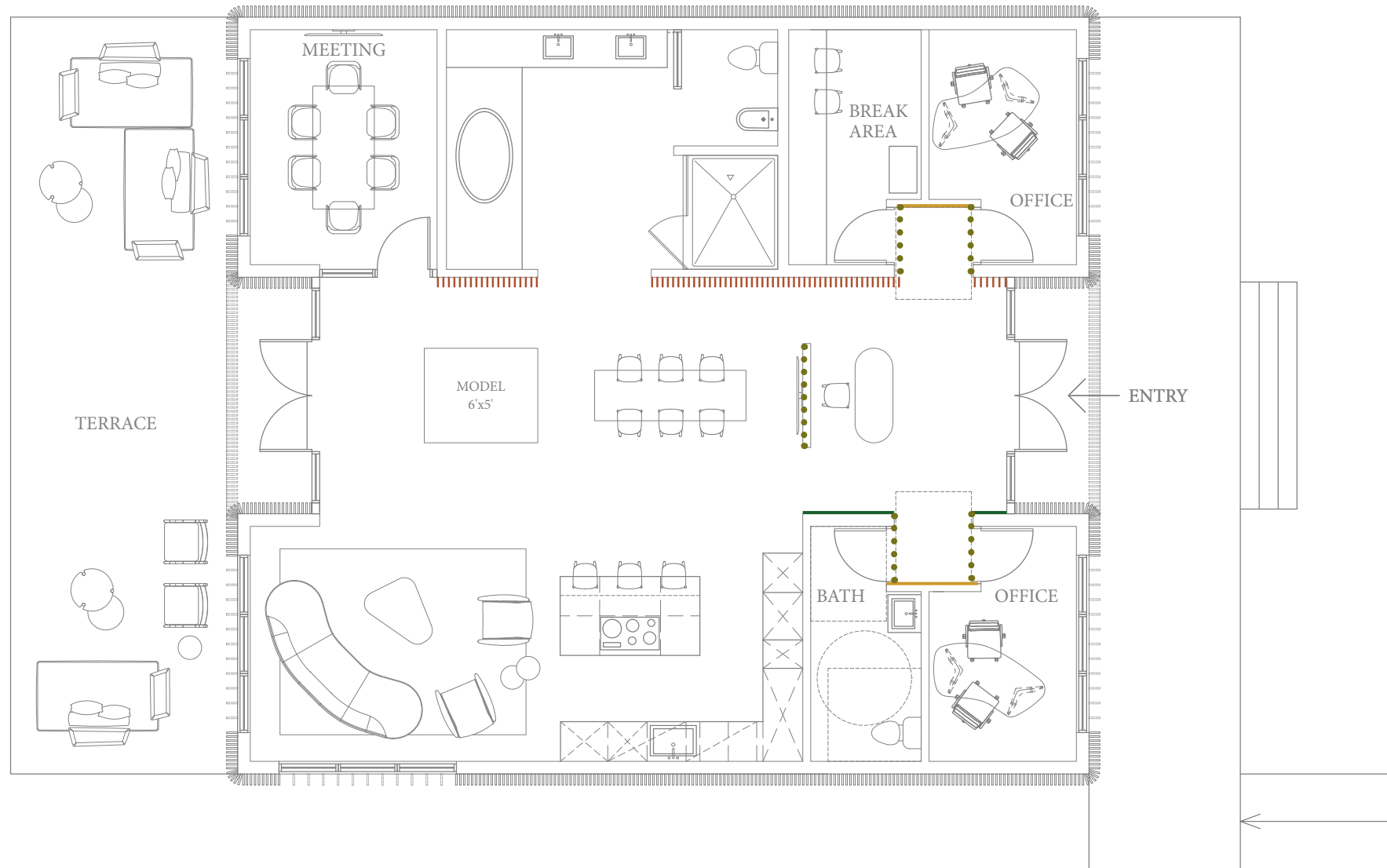
Living room



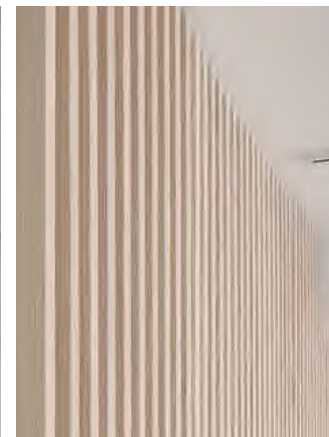
Model area



Meeting



floor
limestone



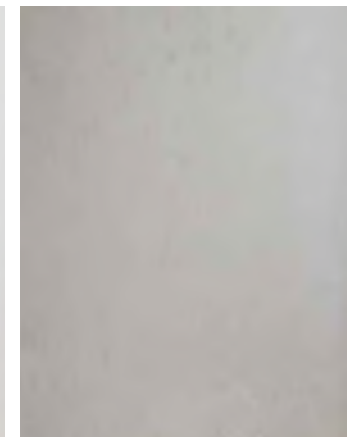
wall
wood slats



wall
wood boiserie



wall
plaster



wall detail
plaster metal



PROJECT DATA

ZONING CLASSIFICATION

RM-1

LAND USE DESIGNATION

MULTIPLE FAMILY DISTRICT

LOT AREA

0.2986 ACRES (13,008 SF)

DENSITY ALLOWED:

34 DU/ACRE: 34X0.2986 = 10 UNITS

70 DU/ACRE W/TDR = 80X0.2986 = 21 UNITS

DENSITY PROPOSED:

N/A

SALES CENTER - TEMPORARY BUILDING

SETBACKS:

FRONT/FACING STREET

REQUIRED 20 FT

PROVIDED 76 FT 8 IN

REAR/WATER

REQUIRED 20 FT

PROVIDED 20 FT

SIDE

REQUIRED FROM 0'-30' = 10'-0"

PROVIDED FROM 0'-30'= 17'-9" E & AT 17'-1" W

MAX BUILDING COVERAGE

ALLOWED N/A

PROVIDED 13% Principal Structure Coverage

1,800 SF

BUILDING HEIGHT

1 STORY AT 11'-6" + ROOF PARAPET/STRUCTURE.

GREEN OPEN SPACE

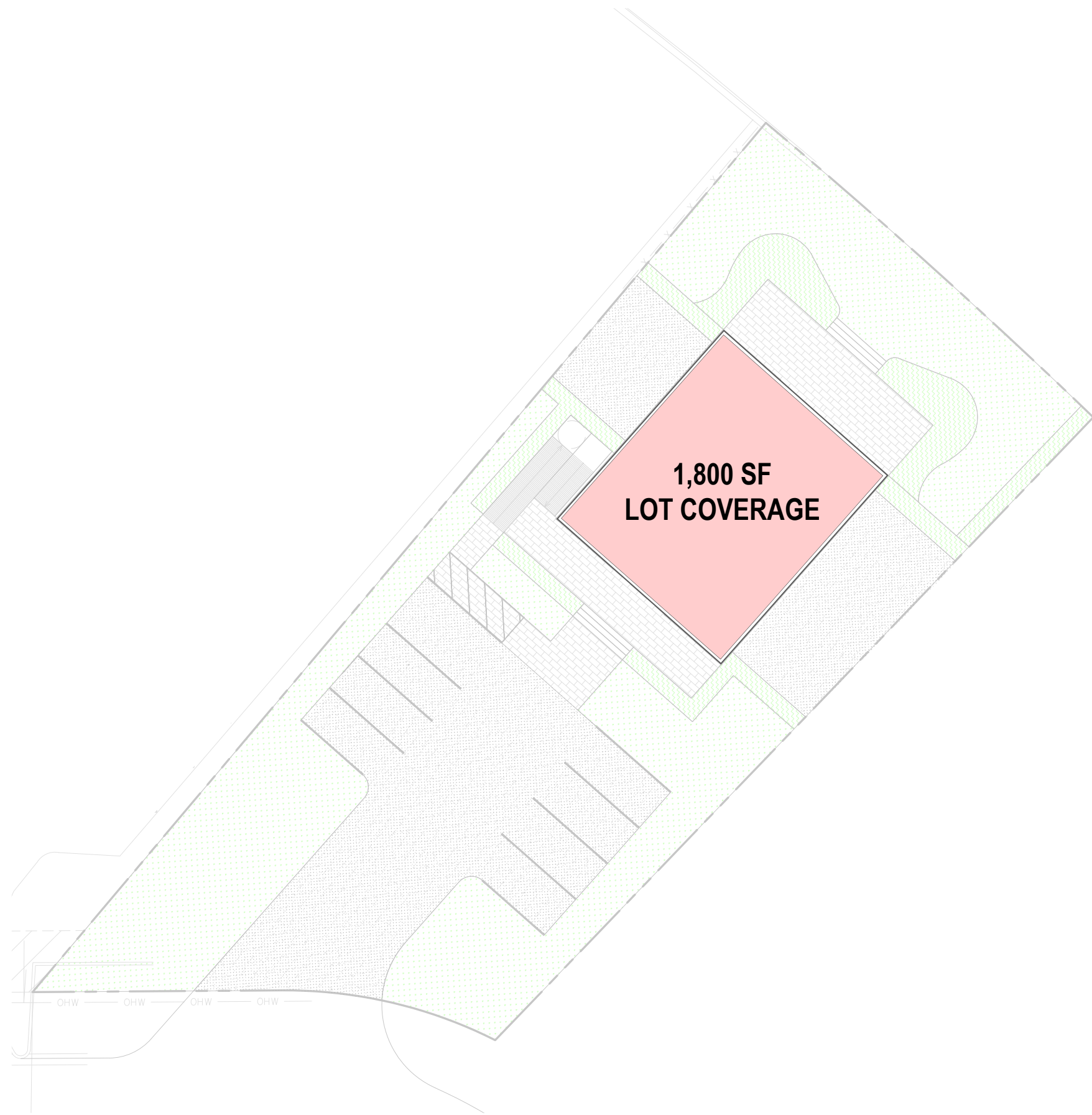
REQUIRED 2,602SF 20% MIN.

PROVIDED 5,691SF 43.75 %

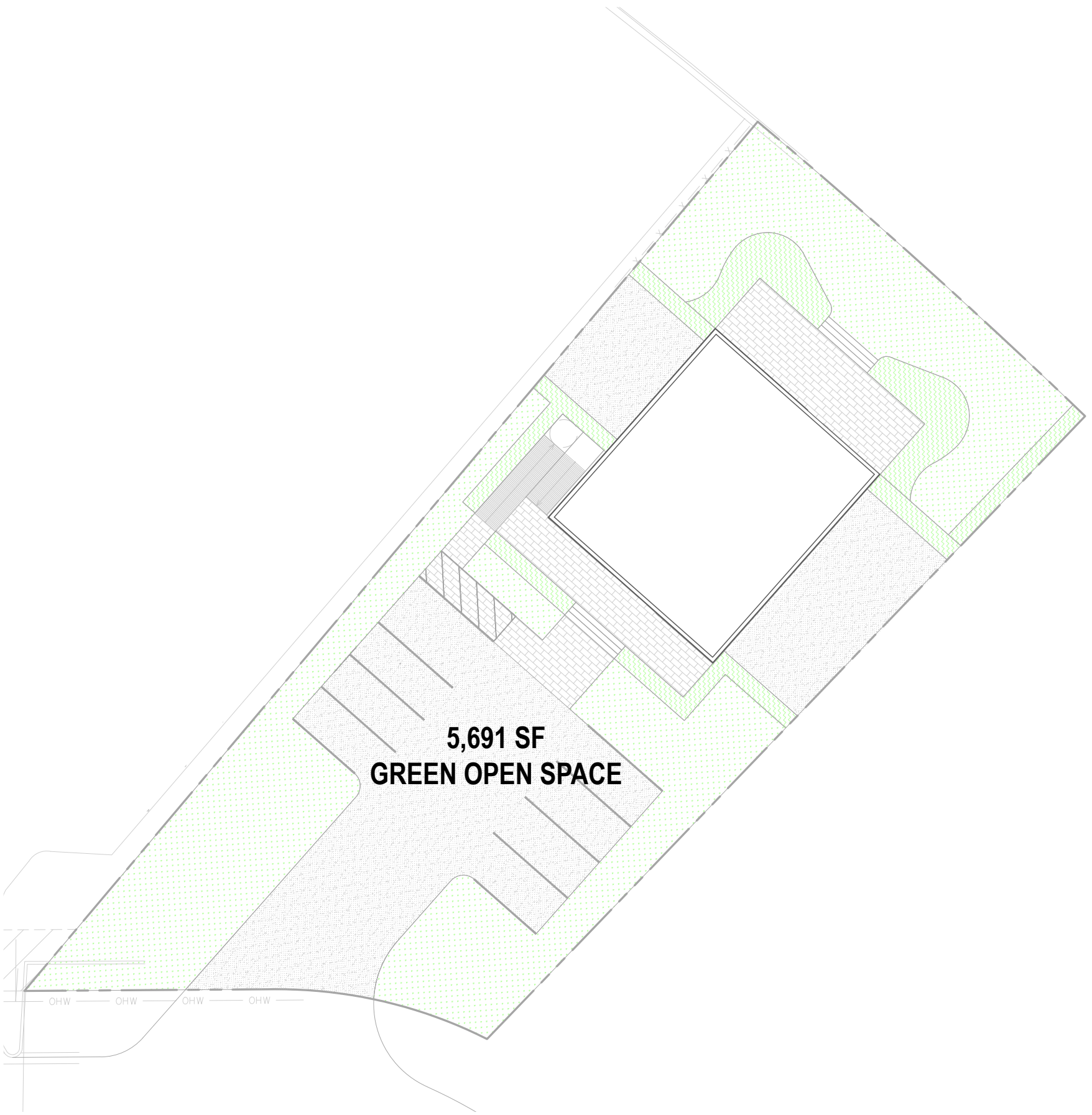
PARKING

REQUIRED N/A

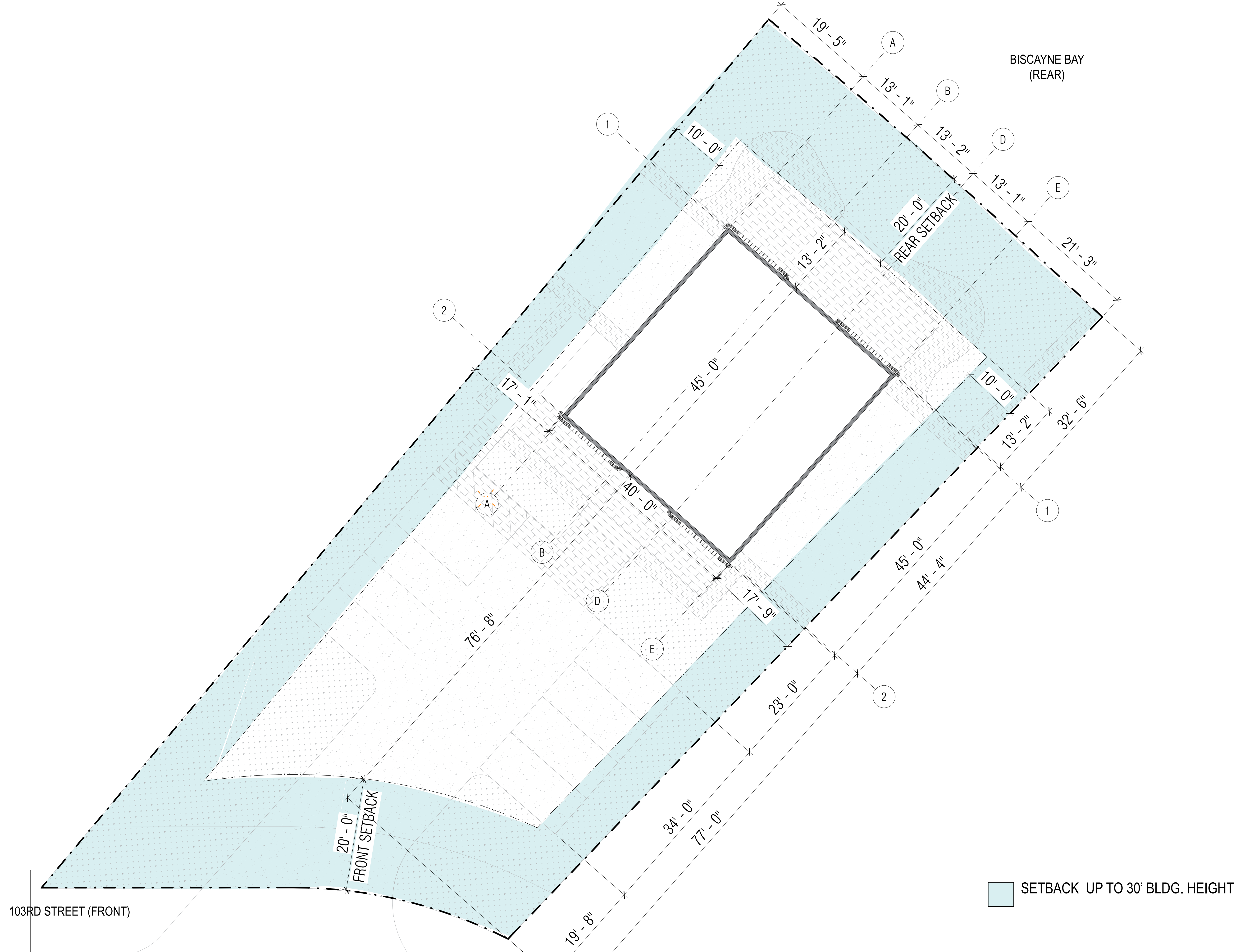
PROVIDED 8 PARKING SPACES



LOT COVERAGE DIAGRAM



OPEN SPACE DIAGRAM





ARQUITECTONICA

No copies, transmissions, reproductions or electronic manipulation of any portion of these drawings in whole or in part are to be made without the express written permission of Arquitectonica International. All designs indicated in these drawings are property of Arquitectonica International. All copyrights reserved (c) 2020.

The data included in this study is conceptual in nature and will continue to be modified throughout the course of the projects development with the eventual integration of structural, MEP and life safety systems. As these are further refined, the numbers will be adjusted accordingly.

ONDA SALES CENTER

10301 E Bay Harbor Dr., Bay Harbor Islands , FL 33154

NORTH ELEVATION

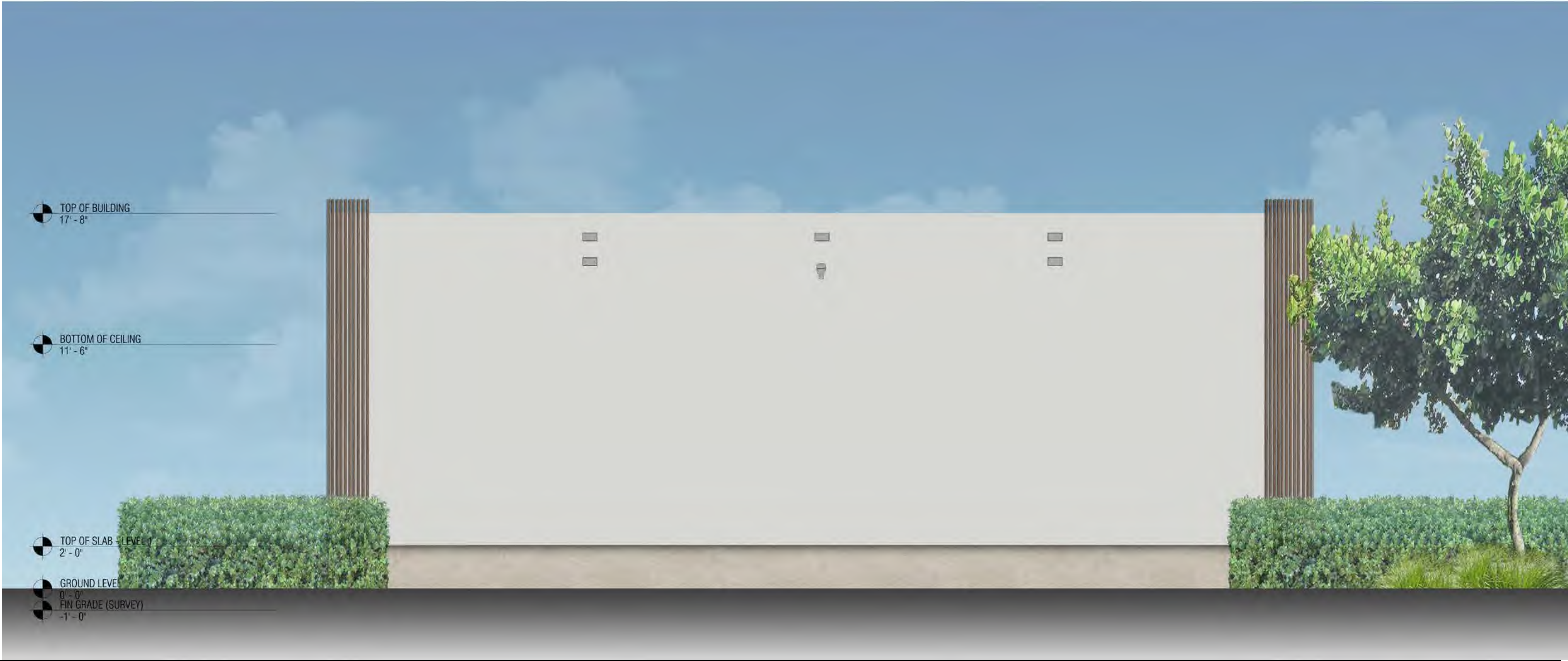


Scale: 3/32" = 1'

DATE:
04.29.2020

A2-01







ARQUITECTONICA

No copies, transmissions, reproductions or electronic manipulation of any portion of these drawings in whole or in part are to be made without the express written permission of Arquitectonica International. All designs indicated in these drawings are property of Arquitectonica International. All copyrights reserved (c) 2020.

ONDA SALES CENTER

10301 E Bay Harbor Dr., Bay Harbor Islands , FL 33154

WEST ELEVATION

0' 10' 20' 30'

Scale: 3/32" = 1'

DATE:
04.29.2020

A2-04

The data included in this study is conceptual in nature and will continue to be modified throughout the course of the projects development with the eventual integration of structural, MEP and life safety systems. As these are further refined, the numbers will be adjusted accordingly.





A0-06

Exhibit D



Town of Bay Harbor Islands

Building Department

Certificate of Occupancy

Date Issued: 08/11/2021

Property Address: 10301 East BAY HARBOR Drive, Bay Harbor Islands, FL 33154-1298

Folio Number: 1322270010800

Lot: 1

Block: 4

Plat Book: 46

Page Number: 5

Contractor: Timothy J Wensing CMC Construction, Inc.

CC#: Miami Dade 4568813

Mailing Address: 1550 Biscayne Boulevard Miami, FL 33132

Occupancy Group: B - Business

Sq Ft: 1,853

Type of Construction: Type VB

Description: **Temporary Building and Paved Parking - Sales Center for ONDA Project**

Master Permit Number: B20-000255

Owner: CONGRESS BHN LLC

Owner Address: 181 NEWBURY STREET, 6TH FLOOR
BOSTON, MA 02116 BOSTON MA 02116

The Building Department has been provided with documentation of the as-built lowest floor elevation and is retained in the records of the building department.

Base Flood Elevation: 10.0' AE

Lowest Floor Elevation: 11.02' AE

FBC Edition: FBC 2020 7th Edition

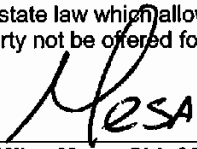
Occupant Load: B1

Automatic Sprinkler System Provided: No

Any Special stipulations and conditions of the building permit: None

This Certificate of Occupancy is issued only upon the express provision that the applicant will comply with all of the Zoning Ordinances and all Ordinances or Building Codes of the Town of the Bay Harbor pertaining to the erection, construction or remodeling of buildings or structures. This also certifies that the electrical, plumbing, mechanical and protection systems have been inspected and approved. The issuance of this Certificate grants permission to occupy and use the property only for the use indicated. Any change in use will require a new Certificate.

This permit was issued under an exception to the state law which allows owners of property to act as their own contractor on one or two family dwellings. The exception requires that the property not be offered for sale or lease within one (1) year after completion.



Mike. Mesa, Chief Building Official

This is a valuable document. Keep it in a safe place.

Exhibit E

VIA E-MAIL

Ms. Maria Lasday
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

RE: Onda Temporary Sales Office Extension

Dear Ms. Lasday,

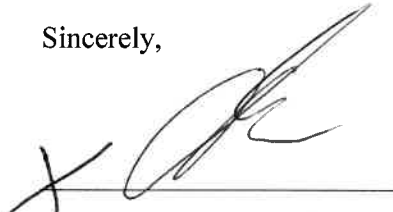
I am writing on behalf of **10301 BAY HARBOR DEVELOPMENT LLC** ("BHD") the owner of the property located at 10301 E Bay Harbor Drive, in Bay Harbor Islands, Florida (the "Property"; folio: 13-2227-001-0800).

BHD has entered into a lease with **B H Investment LLC** ("BHI"), owners of the property located at 1135 103rd Street, in Bay Harbor Islands, Florida for the purpose of allowing BHI to maintain a temporary sales office at the Property.

The temporary sales office at the Property was originally approved by the town council in 2020, but BHD recognizes that an extension is required. Please accept this letter as consent by BHD to allow BHI to proceed with seeking the extension request and approval from the town council to continue the temporary sales office at the Property.

Should you have any questions, please do not hesitate to reach me at 312-914-0224

Sincerely,



Manager

10-6-2022

AGENDA ITEM REPORT

June 8, 2020

ITEM NUMBER: 8.

ITEM: Consideration and Approval by B H Investment, LLC for a temporary sales center for project that will be built on 1135 103rd Street also know as "Onda". The proposed temporary structure would be built just east of the proposed project, to be located at 10301 East Bay Harbor Drive. Enclosed are copies of the request letter, proposed concept of the sales center and other supporting documents.

DESCRIPTION:

The applicant ("B H Investment, LLC) is seeking Town Council approval to construct a temporary sales center for project know as "Onda" located at 1135 103 Street. The sales center would be built on the vacant lot just east of the property, to be located at 10301 East Bay Harbor Drive. The estimated date to launch the operation for the Sales Center is by November of 2020 and plans to maintain the temporary structure throughout the construction process for approximately 24 months.

Enclosed are copies of the request letter, plans and other supporting documents.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk

ATTACHMENTS

1. Temporary Sales Office- LOI for Onda (003)



Neisen O. Kasdin

Akerman LLP
Three Brickell City Centre
98 SE 7th Street, Suite 1100
Miami, FL 33131
Tel: 305 982 5629
neisen.kasdin@akerman.com

May 5, 2020

VIA E-MAIL

Ms. Marlene M. Siegel, CMC
Interim Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

RE: Letter of Intent – Onda Temporary Sales Office

Dear Ms. Siegel,

Akerman LLP represents B H Investment LLC ("BHI" or "Owner"), owner of the property located at 1135 103rd Street (the "Property"), located in the Town of Bay Harbor Islands (the "Town"), on the northern tip of the East Island. As you know, the Planning and Zoning Board approved a project at the Property consisting of an eight (8)-story building with 41 high-end residential units (the "Project" to be known as "Onda").



(Onda project: 1135 103rd Street)

The principals of BHI, Valerio Morabito and Ugo Colombo, are excited to bring their vision to the Town's East Island. Valerio Morabito and Ugo Colombo have developed many of the finest luxury residential properties in South Florida. Most recently, Morabito completed *Beach House 8*, an eight-unit ultra-luxury condominium on the ocean at 37th Street and Collins Avenue. Colombo has developed some of Miami's most highly regarded luxury projects, including *Bristol Tower* and *Santa Maria* on Brickell Avenue, *Porto Vita* in Aventura and *Grovenor House* in Coconut Grove.

A. Temporary sales office: 10301 East Bay Harbor Drive

Owner wishes to create a unique and beautiful sales office on the vacant lot just east of the Property, to be located at 10301 East Bay Harbor Drive (the "Vacant Lot"). The sales center will be curated out of materials which reflect the aesthetics of the proposed Onda project, including natural materials and décor.



(Onda Temporary Sales Office: 10301 East Bay Harbor Drive)

Owner is leasing the land at the Vacant Lot for purposes of constructing the temporary sales office. The owner of the Vacant Lot has consented to this application for the purpose of seeking approval for the temporary sales office, as indicated in the letter enclosed herein as **Exhibit A**. Owner intends to launch the operation of the sales center by November 2020 (approximately 6 months prior to construction), and maintain the temporary structure throughout the construction process. Ideally,

the sales office would be operational for approximately 24 months (approximately through November 2022).

The temporary sales office will have minimal impact to the surrounding area. There will only be three sales agents at the sales office at any given time; and it is estimated that there will be approximately 10 visitors per day to the sales center and most visits will be by appointment only. There are eight (8) proposed parking spaces (including one handicap space), and in the unlikely event that we need additional parking spaces, there is a municipal lot across the street which can accommodate overflow. Therefore, there is no anticipated impact on traffic or parking associated with the temporary sales office.

B. Town Council Approval

Pursuant to Section 5-5(g)(9) of the town code, a temporary sales office requires town council approval. Enclosed herein for your review are the conceptual plans for the temporary sales office, attached as **Exhibit B**.

Please accept this letter, and other enclosed materials as our official request to be heard on the next town council agenda for approval of the Onda temporary sales office. Despite these uncertain times, Owner has invested significantly in the creation of this unique temporary sales office and the project as a whole, and is very much interested in moving forward. We look forward to working with the Town on this important step in the process of creating a successful project. Thank you for your consideration.

Sincerely,

AKERMAN, LLP

Neisen O. Kasdin

Enclosures

cc: Alba Chang, Interim Town Clerk
Frank Simone, Town Attorney
Marissa Amual, Akerman LLP

EXHIBIT A



TWO ROADS

DEVELOPMENT

Daniel G. Hayes, General Counsel & COO
(914) 703-0130 | dhayes@tworoadsre.com

1217 South Flagler Drive, Second Floor
West Palm Beach, Florida 33401-6706

April 30, 2020

Via Email

Ms. Marlene M. Siegel, CMC
Interim Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Re: Lease Agreement dated February 1, 2020, by and between **Bay Harbor North LLC**, as “Landlord”, and **BH Investments LLC**, as “Tenant”

[ONDA Sales Office, 10301 East Bay Harbor Drive, Bay Harbor Islands, Florida 33154-1298]

Dear Ms. Siegel:

I am writing as officer of TRD Bay Harbor LLC, Manager and authorized representative of **Bay Harbor North LLC**, a Delaware limited liability company (formerly known as Congress BHN LLC) (“Bay Harbor North”) and the owner of the property located at 10301 East Bay Harbor Drive, in Bay Harbor Islands, Florida [Folio: 13-2227-001-0800] (the “Property”).

Bay Harbor North has entered into the above-described lease with **BH Investments LLC** (“BHI”), the owner of the property located at 1135 103rd Street, in Bay Harbor Islands, Florida, for the purpose of allowing BHI to construct a temporary sales office at the Property.

Bay Harbor North recognizes that the temporary sales office requires an application and approval by the town council. Please accept this letter as consent by Bay Harbor North to allow BHI to proceed with the application and in seeking approval from the town council for a temporary sales office at the Property.

Please feel free to call or email me directly with any questions or comments the Town may have about this submission or the Property. Thank you for your assistance,

Sincerely,


Daniel G. Hayes
General Counsel & COO

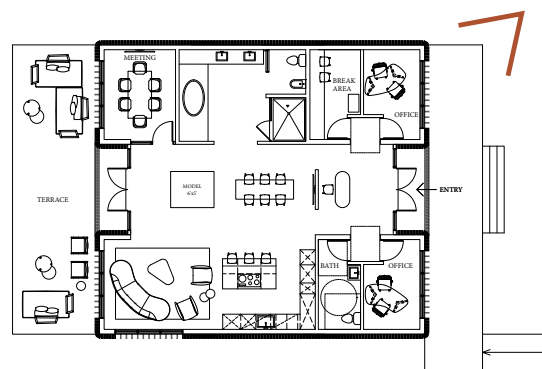
cc: Sara B. Herald, Esq.
E: sherald@bilzin.com

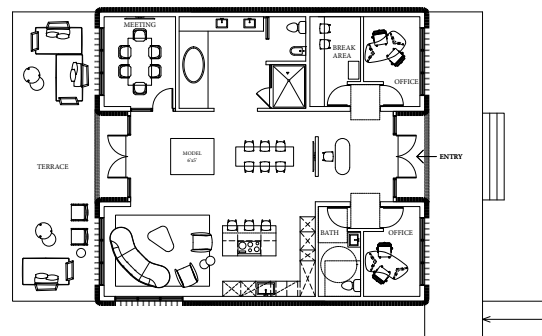
EXHIBIT B



ONDA
sales center







ZONING DATA

PROJECT ADDRESS:
10301 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FL 33154

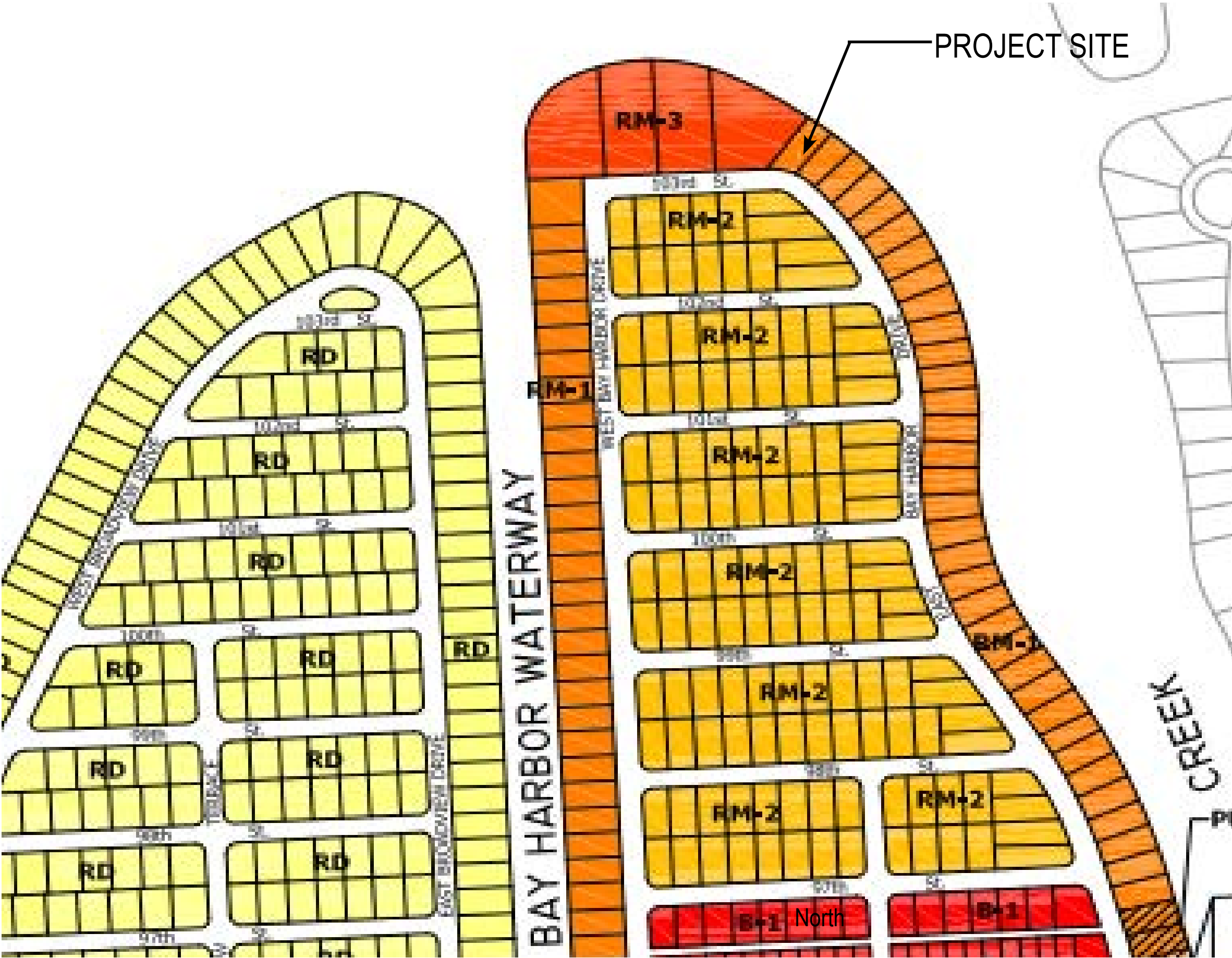
PROPERTY FOLIO NUMBER:
13-2227-001-6770

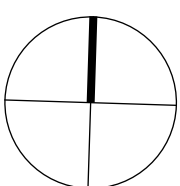
ZONING DISTRICT:
RM-1
LAND USE DESIGNATION
MULTIPLE FAMILY DISTRICT

SURVEY INFORMATION:
PREPARED BY:
JOHN IBARRA & ASSOCIATES, INC.
777 N.W. 72ND. AVENUE STE. 3025,
MIAMI, FL 33126
PH: (305) 262-0400

LEGAL DESCRIPTION (PER SURVEY):
LOT 1, BLOCK 4, BAY HARBOR ISLAND, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 46, PAGE 5, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

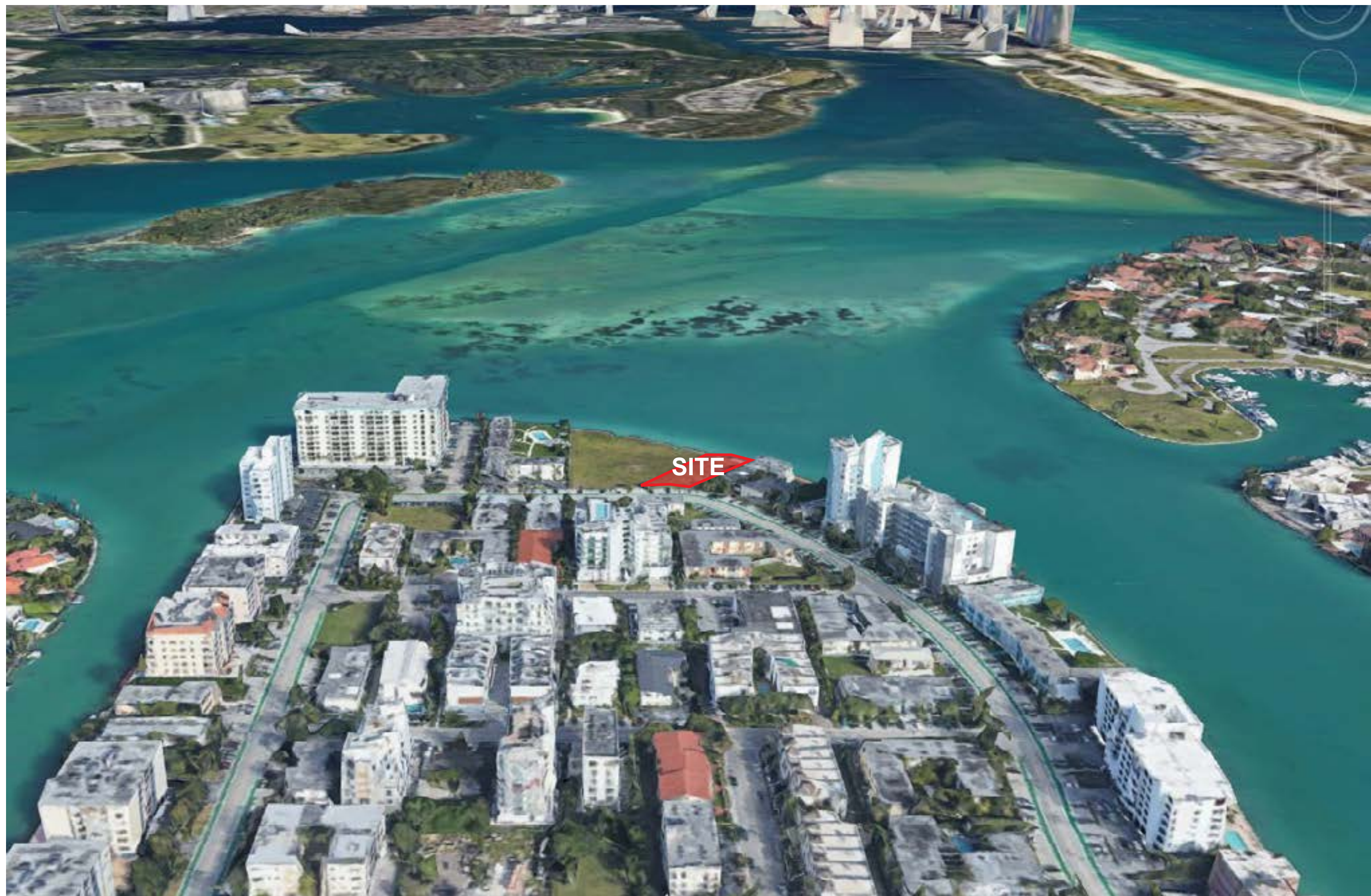
F.E.M.A. FLOOD ZONE INFORMATION (PER SURVEY):
COMMUNITY NUMBER: 120637
PANEL NUMBER: 0144
ZONE AE. +9'-10'
BFE = 10'
FEMA MAP EFFECTIVE DATE: 09/11/2009







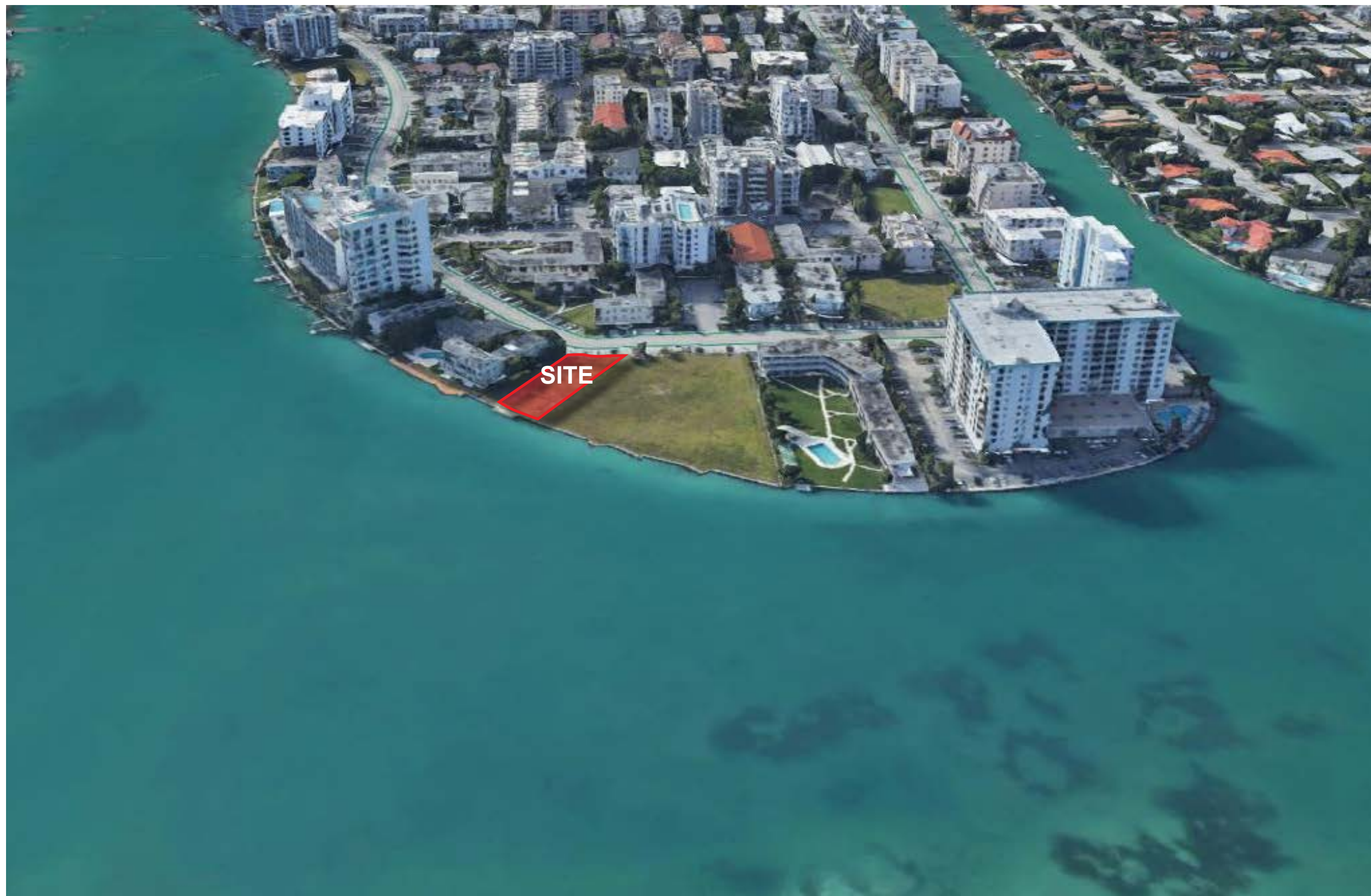
VIEW 01 - LOOKING WEST



VIEW 02 - LOOKING NORTH



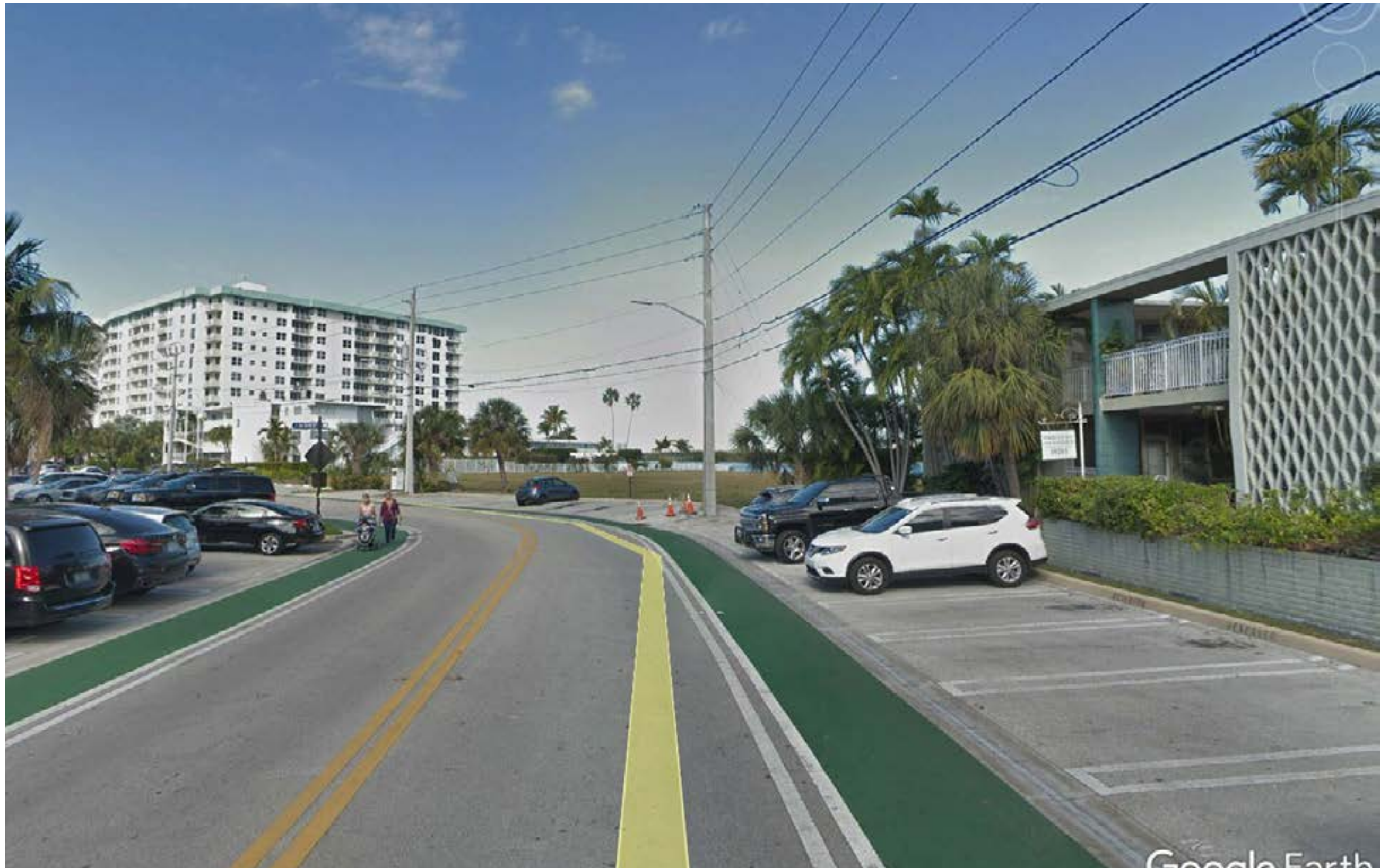
VIEW 03 - LOOKING EAST



VIEW 04 - LOOKING SOUTH



SITE STREET VIEW 01 - FROM SOUTHWEST



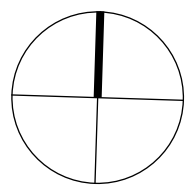
SITE STREET VIEW 02 - SOUTHEAST



SITE VIEW 03 - FROM NORTHWEST (BISCAYNE BAY)

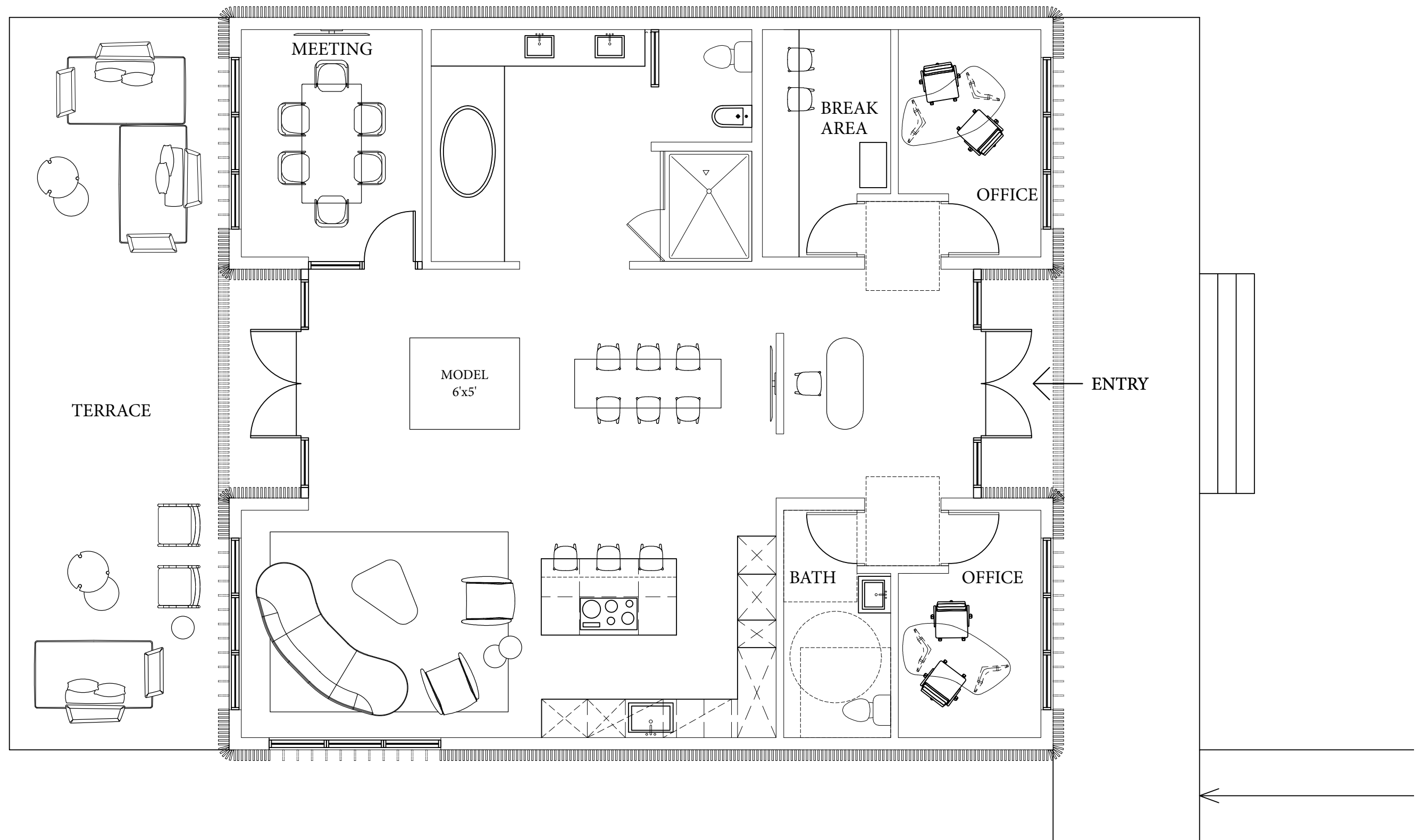


KEY MAP



Finishings&Furniture | Reference images





Plan



Entrance



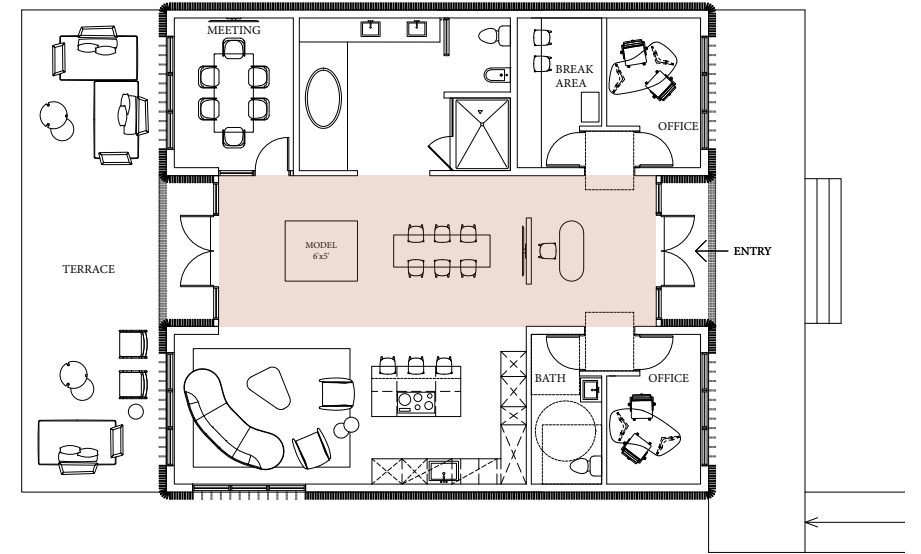
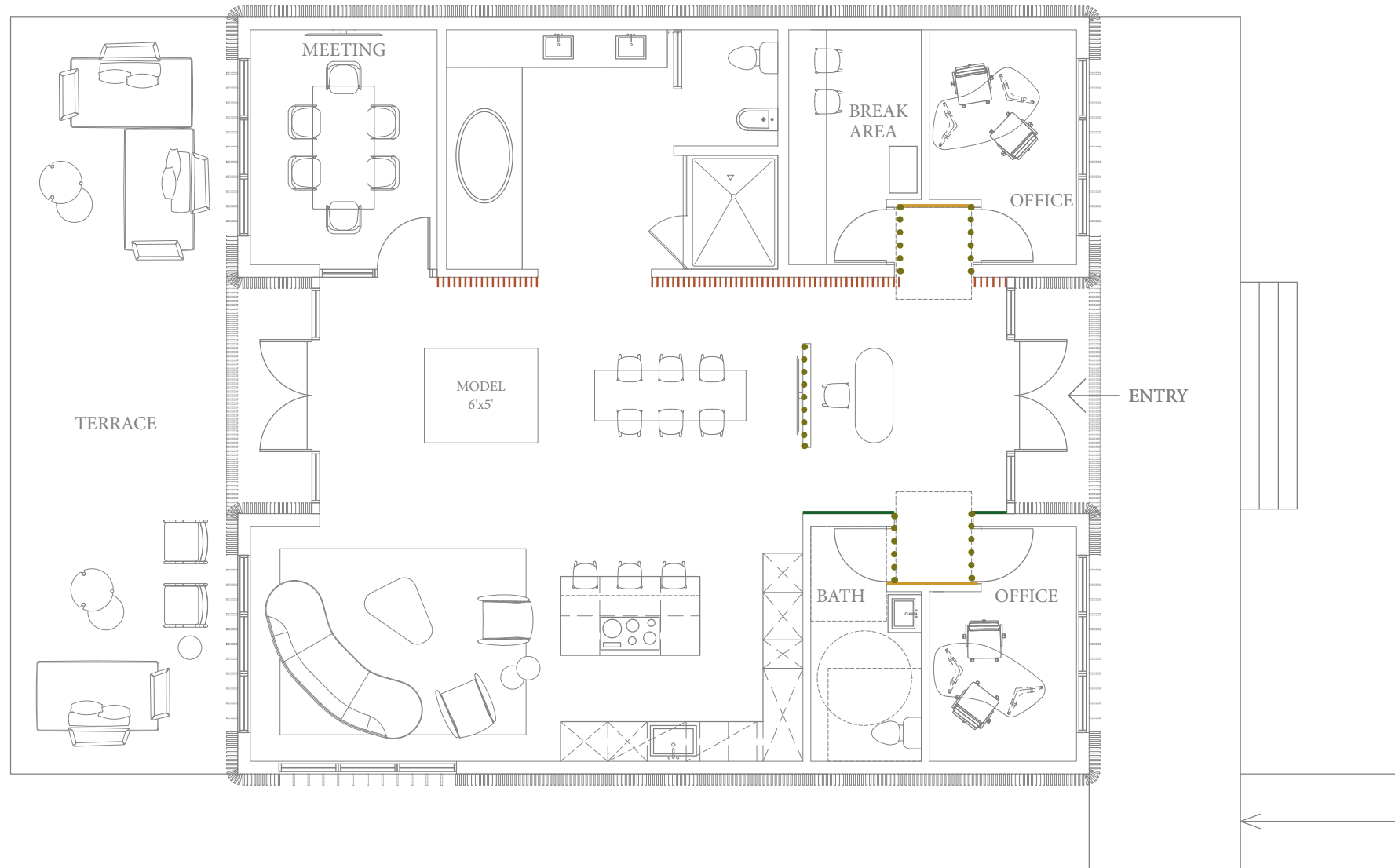
Living room



Model area



Meeting



floor
limestone



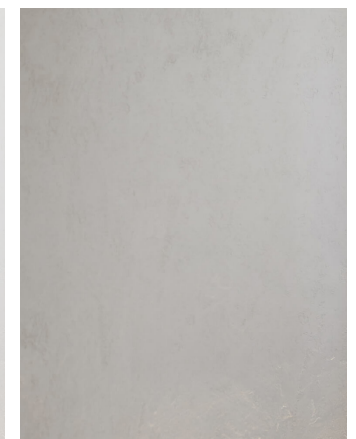
wall
wood slats



wall
wood boiserie



wall
plaster



wall detail
plaster metal

PROJECT DATA

ZONING CLASSIFICATION

RM-1

LAND USE DESIGNATION

MULTIPLE FAMILY DISTRICT

LOT AREA

0.2986 ACRES (13,008 SF)

DENSITY ALLOWED:

34 DU/ACRE: 34X0.2986 = 10 UNITS

70 DU/ACRE W/TDR = 80X0.2986 = 21 UNITS

DENSITY PROPOSED:

N/A

SALES CENTER - TEMPORARY BUILDING

SETBACKS:

FRONT/FACING STREET

REQUIRED 20 FT

PROVIDED 76 FT 8 IN

REAR/WATER

REQUIRED 20 FT

PROVIDED 20 FT

SIDE

REQUIRED FROM 0'-30' = 10'-0"

PROVIDED FROM 0'-30'= 17'-9" E & AT 17'-1" W

MAX BUILDING COVERAGE

ALLOWED N/A

PROVIDED 13% Principal Structure Coverage

1,800 SF

BUILDING HEIGHT

1 STORY AT 11'-6" + ROOF PARAPET/STRUCTURE.

GREEN OPEN SPACE

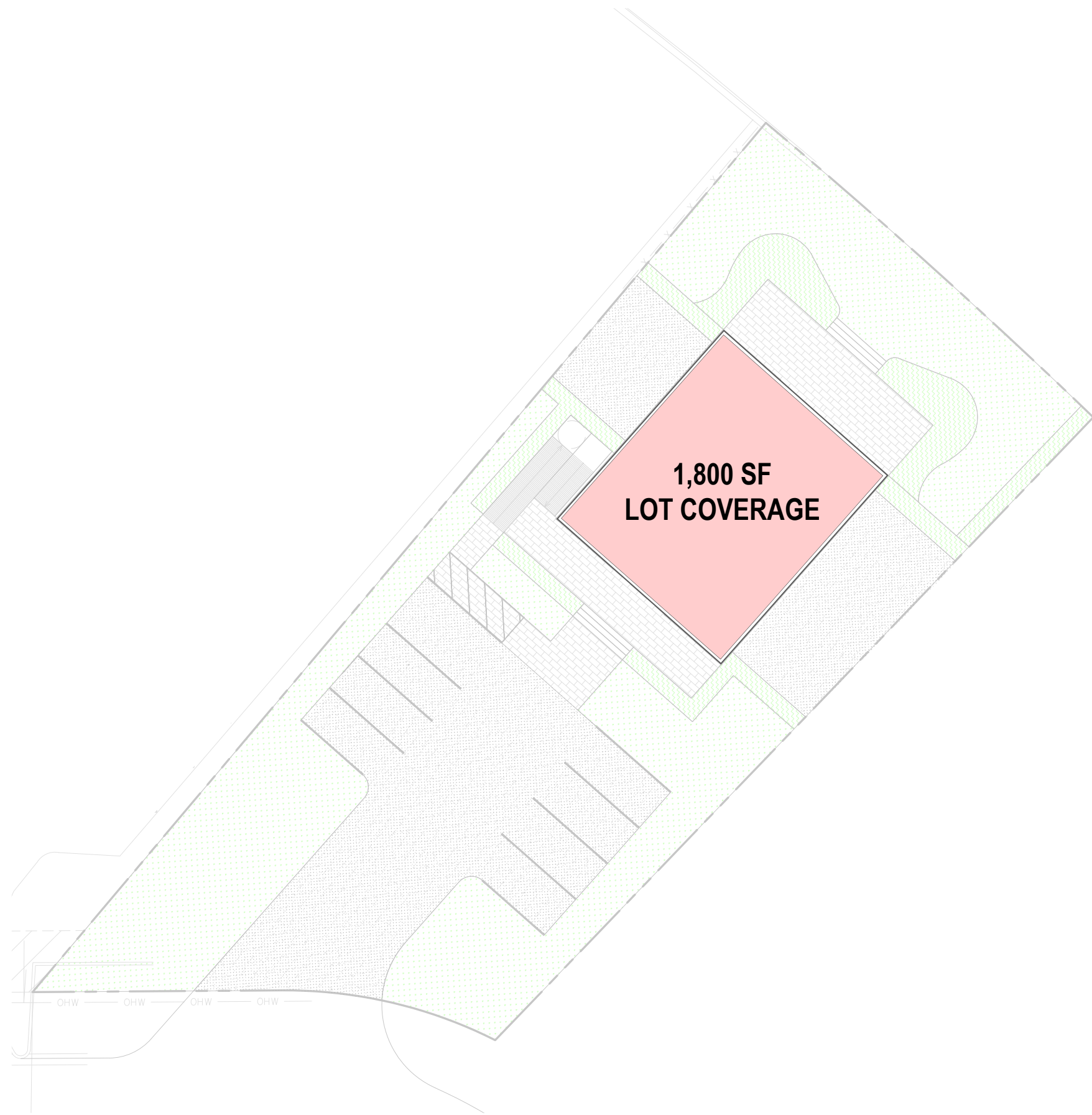
REQUIRED 2,602SF 20% MIN.

PROVIDED 5,691SF 43.75 %

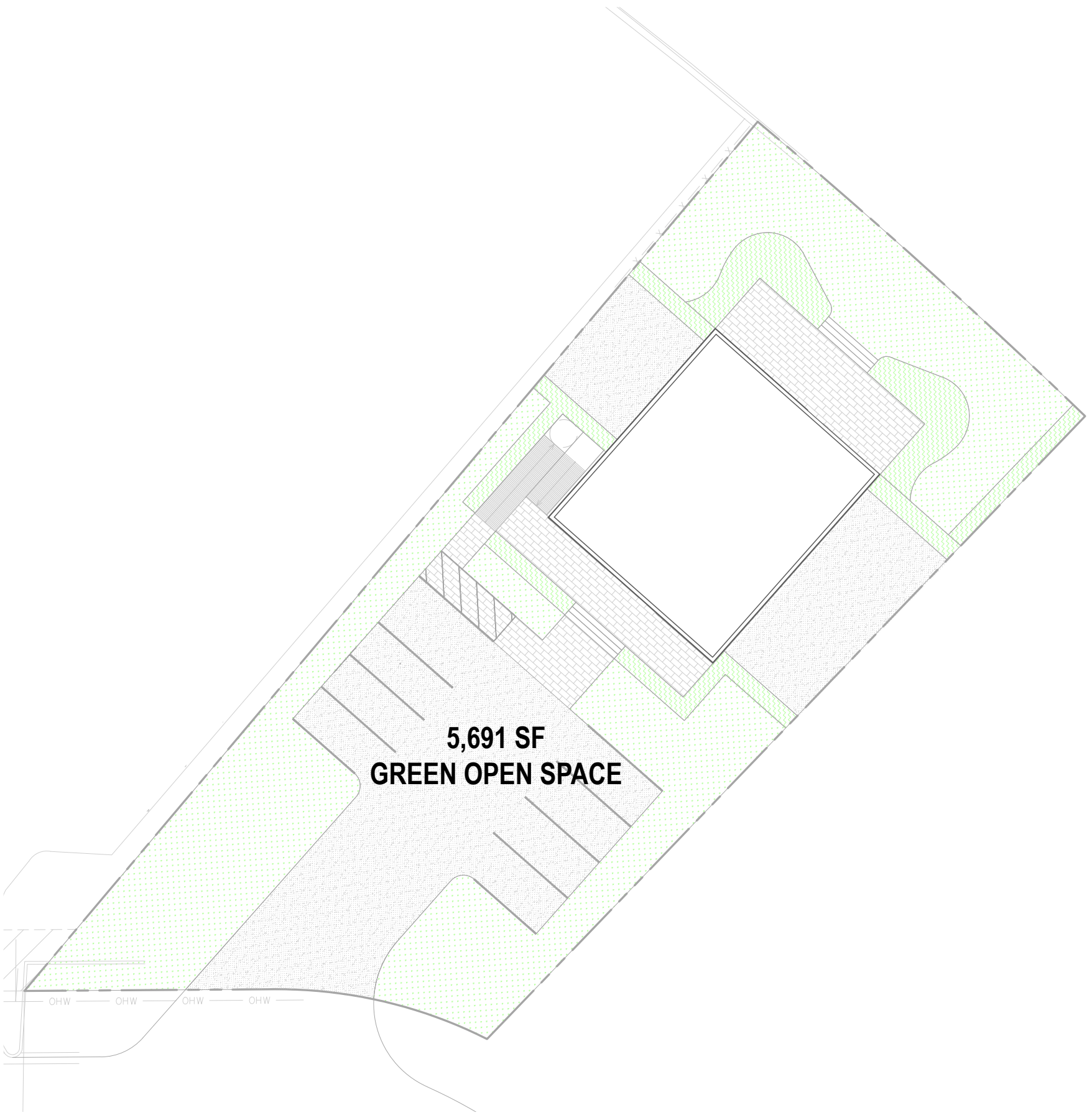
PARKING

REQUIRED N/A

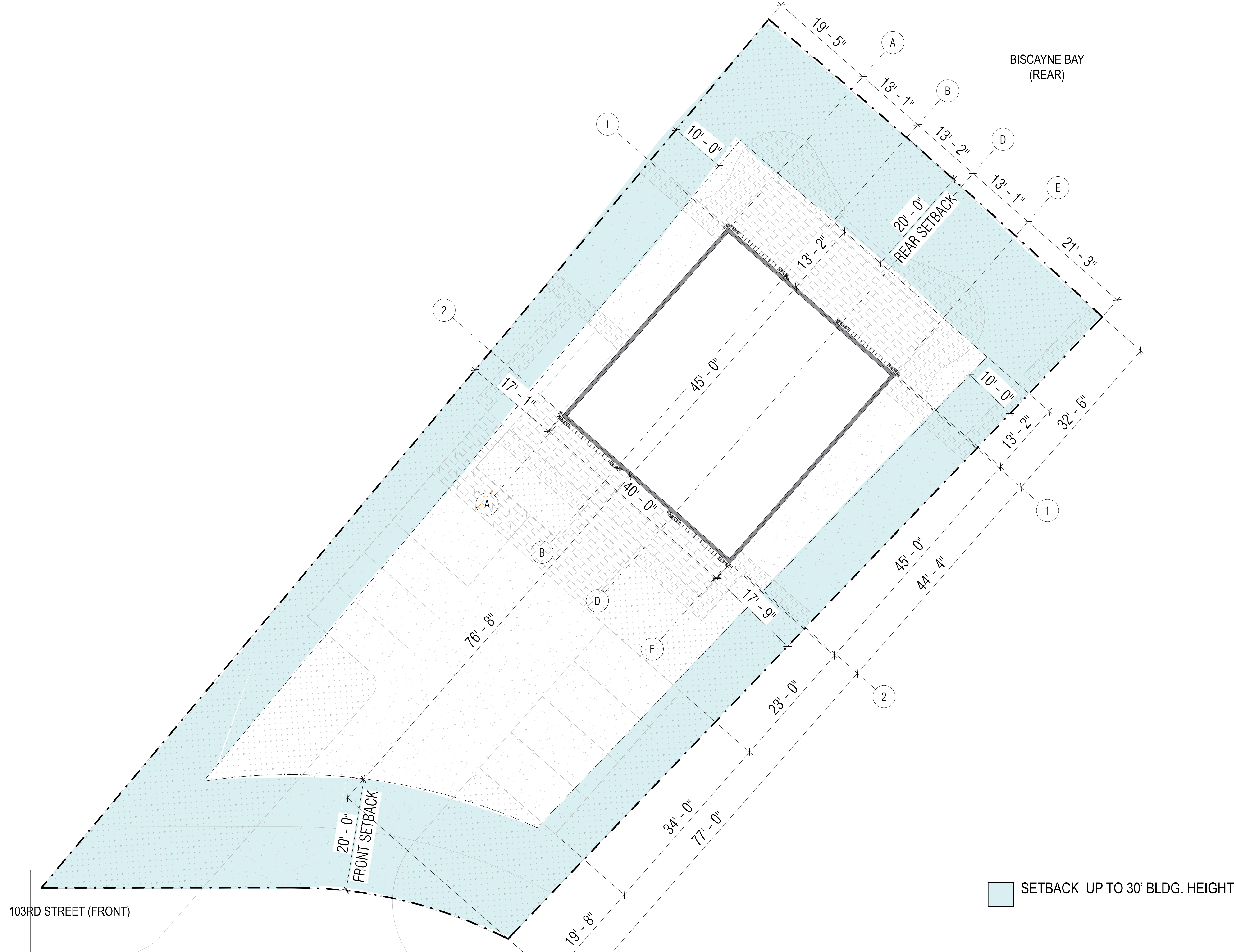
PROVIDED 8 PARKING SPACES



LOT COVERAGE DIAGRAM



OPEN SPACE DIAGRAM







ARQUITECTONICA

No copies, transmissions, reproductions or electronic manipulation of any portion of these drawings in whole or in part are to be made without the express written permission of Arquitectonica International. All designs indicated in these drawings are property of Arquitectonica International. All copyrights reserved (c) 2020.

ONDA SALES CENTER

10301 E Bay Harbor Dr., Bay Harbor Islands , FL 33154

SOUTH ELEVATION



Scale: 3/32" = 1'

DATE:
04.29.2020

A2-02

The data included in this study is conceptual in nature and will continue to be modified throughout the course of the projects development with the eventual integration of structural, MEP and life safety systems. As these are further refined, the numbers will be adjusted accordingly.



ARQUITECTONICA

No copies, transmissions, reproductions or electronic manipulation of any portion of these drawings in whole or in part are to be made without the express written permission of Arquitectonica International. All designs indicated in these drawings are property of Arquitectonica International. All copyrights reserved (c) 2020.

ONDA SALES CENTER

10301 E Bay Harbor Dr., Bay Harbor Islands , FL 33154

EAST ELEVATION

0' 10' 20' 30'

Scale: 3/32" = 1'

DATE:
04.29.2020

A2-03

The data included in this study is conceptual in nature and will continue to be modified throughout the course of the projects development with the eventual integration of structural, MEP and life safety systems. As these are further refined, the numbers will be adjusted accordingly.



ARQUITECTONICA

No copies, transmissions, reproductions or electronic manipulation of any portion of these drawings in whole or in part are to be made without the express written permission of Arquitectonica International. All designs indicated in these drawings are property of Arquitectonica International. All copyrights reserved (c) 2020.

ONDA SALES CENTER

10301 E Bay Harbor Dr., Bay Harbor Islands , FL 33154

WEST ELEVATION

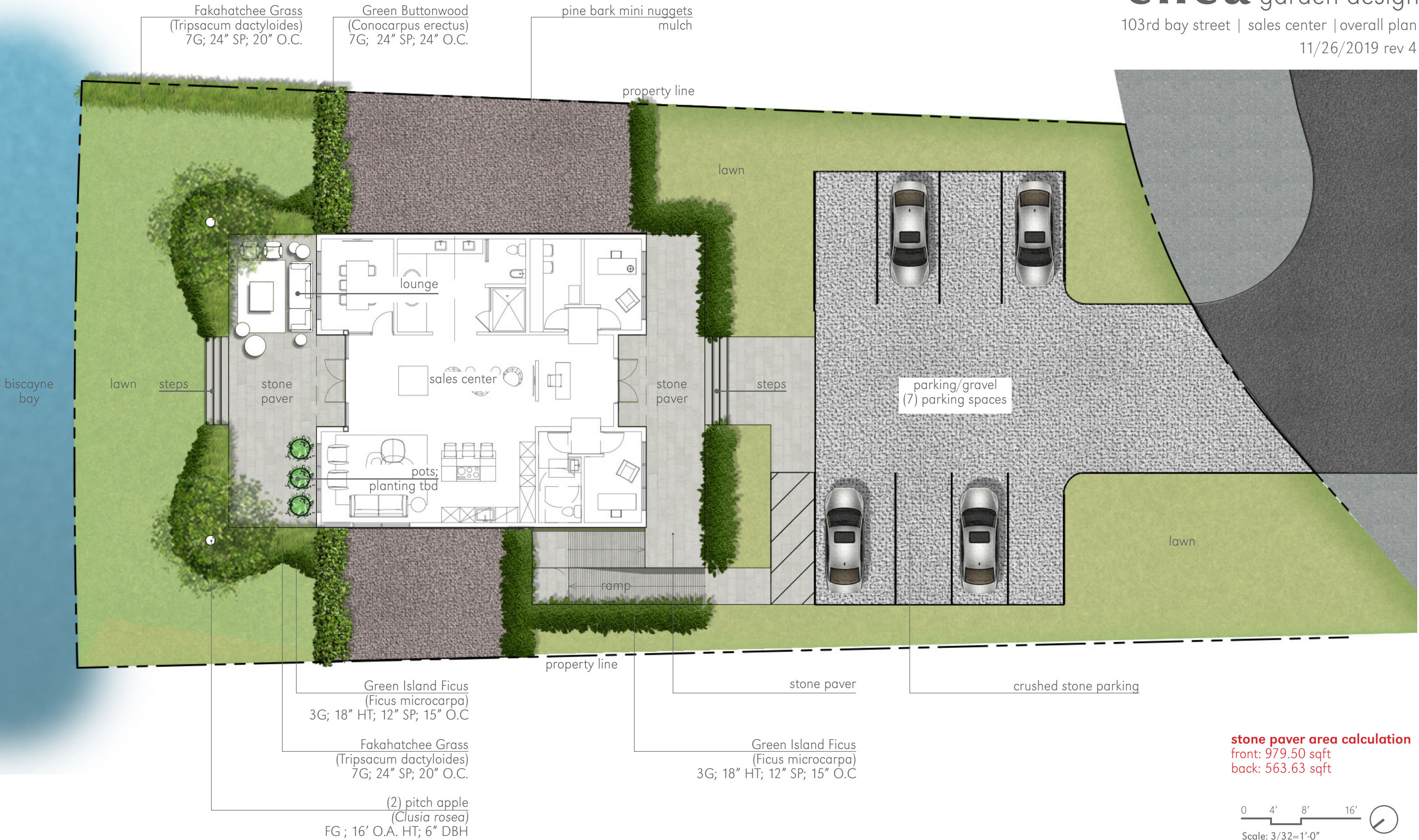
0' 10' 20' 30'

Scale: 3/32" = 1'

DATE:
04.29.2020

A2-04

The data included in this study is conceptual in nature and will continue to be modified throughout the course of the projects development with the eventual integration of structural, MEP and life safety systems. As these are further refined, the numbers will be adjusted accordingly.



AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 15.

ITEM: Discussion and **Possible** action regarding Continuing Services contracts, sponsored by Council Member Stephanie Bruder.

DESCRIPTION:

The town has entered into several contracts with service for an indefinite period. The purpose of this item is to discuss and evaluate the feasibility of continuing with these contracts.

RECOMMENDED ACTION:

Council's Discretion.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Stephanie Bruder, Council Member

ATTACHMENTS

1.	List of Current Contracts
----	---------------------------

CONTRACT NAME	CONTRACT DATE	CONTRACT EXPIRATION	REASON	
AGC Electric, Inc.	04/20/2017	Indefinite	Continuing Electrical Maintenance Services for town owned properties	
Bal Harbor Village	01/14/2019	Indefinite	Use of Village Basketball Court	
Calvin Giordano & Assoc., Inc.	11/8/2017	Indefinite	Professional Engineering Continuing Services	
Chen Moore & Associates, Inc.	10/23/2017	Indefinite	Professional Engineering Continuing Services	
Citizen Serve/Online Solution, LLC	12/01/2015	Indefinite	Citizen Serve Software/Website	
Civic Plus	06/06/2019	Indefinite		
Dade County PBA MOU	10/13/2021	Indefinite	Cares Act-1% Officers Pay Adjustment	
Keith & Schnars, P.A.	10/23/2107	Indefinite	Professional Engineering Continuing Services	
Kimley-Horn& Associates, Inc.	10/19/2017	Indefinite	Professional Engineering Continuing Services	
Lakes Engineering, Inc.	07/03/2018	Indefinite	Professional Engineering Continuing Services – Bridge	
LogomHR, Inc.	01/24/2019	Indefinite		Automatic One-Year Renewal
Miami-Dade County	05/23/3007	Indefinite	Charter County Transit System Surtax	
Miami Shores Village	01/17/2018	Indefinite	Access to and Use of Aquatic Center	Automatic One-Year Renewals
Michael Miller Planning Associates, Inc.	09/17/2002	Indefinite	Planning Services	
Online Solutions, LLC	12/01/2015	Indefinite	CitizenServe Software/Website	

Simplifile, LC	03/07/2019	Indefinite	E-Recording	One Year automatic renewal
----------------	------------	------------	-------------	----------------------------

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 16.

ITEM: Consideration and Approval of an Employment Agreement between the Town of Bay Harbor Islands and Town Manager Maria Lasday. Enclosed is a copy of the draft agreement.

DESCRIPTION:

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Manager Contract Oct. 2022
----	----------------------------

**TOWN OF BAY HARBOR ISLANDS
TOWN MANAGER EMPLOYMENT
AGREEMENT**

THIS TOWN MANAGER EMPLOYMENT AGREEMENT ("Agreement"), executed on this ____ day of **October, 2022**, is by and between the Town of Bay Harbor Islands, Florida, a Florida municipal corporation ("Town"), and MARIA LASDAY ("Lasday" or "Town Manager").

WITNESSETH:

WHEREAS, Article III, Section 3.01 of the Town's Charter requires that there shall be a Town Manager who shall be the Chief Administrative Officer of the Town; and

WHEREAS, the Town and Lasday entered into a Town of Bay Harbor Islands Town Manager Employment Agreement dated September __, 2020; and

WHEREAS, the Town and Lasday entered into a Town of Bay Harbor Islands Town Manager Amended Employment Agreement dated October __, 2021; and

WHEREAS, the Town desires to enter into a new Town Manager Employment Agreement; and

WHEREAS, Lasday desires to accept the terms of the Agreement, as hereinafter set forth; and

WHEREAS, the Town desires to continue to employ Lasday to serve as Town Manager of the Town, as provided for in Article III of the Town Charter and as set forth in this Agreement; and

WHEREAS, the Town desires to continue to provide for certain benefits and compensation for the Town Manager and to establish conditions of employment applicable to the Town Manager; and

WHEREAS, Lasday desires to continue to accept employment as the Town Manager of the Town under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

Section 1. Employment.

A. The Town hereby continues to employ Maria Lasday as its Town Manager, under the terms established herein, to perform the duties and functions specified in the Town Charter and the Town's Code of Ordinances ("Code") and to perform such other legally permissible and proper

duties and functions as the Town Council shall, from time to time, assign to the Town Manager.

B. The Town's employment of Lasday as the Town Manager began on September 23, 2020 ("Commencement Date").

C. This Agreement shall remain in effect until terminated by the Town or the Town Manager, as provided for in this Agreement ("Term").

Section 2. Duties and Obligations.

A. The Town Manager shall fulfill and perform all duties, responsibilities, and obligations set forth in the Town Charter and Code as the Chief Administrative Officer of the Town to the best of her abilities, in a professional fashion, with full decorum, as historically required of the Town Manager of the Town, and pursuant to the Code of Ethics of the International City Management Association, and applicable local, county, state and federal ethics codes, and all requirements of the Town's Employee Policies & Procedures Manual ("Employee Manual"), as may be amended from time to time.

B. The position of Town Manager is an exempt position pursuant to the federal Fair Labor Standards Act. The Town Manager shall dedicate no less than an average of forty (40) hours per week in the performance of her duties hereunder, spread over a five (5) day work week (Monday through Friday). The Town Manager shall attend all meetings of the Town, and make herself accessible to the Town Council, Town employees, and Town agents during weekends, if reasonably necessary. The Town Manager shall attend all Town sponsored events held on weekends, unless the Town Manager is on vacation. The Town Manager shall be on call 24 hours a day to respond to emergencies within the Town and shall inform the Town Council of such emergencies as soon as reasonably practical.

C. In the event the Town Manager is unable to perform her duties for more than fourteen (14) consecutive days, the Town Council shall designate an Acting Town Manager in accordance with the Town Charter and Code.

Section 3. Salary and Evaluation.

A. The Town shall pay the Town Manager an annual base salary of -----Dollars (\$-----,000.00) payable in equal installments at the same time that all other Town employees are paid, effective October 1, 2022.

B. The Town will provide the Town Manager with the same cost of living adjustments that it provides to the Town's other employees.

C. The Town agrees to increase said base salary and/or other benefits of the Town Manager in such amounts and to such an extent as the Town Council may determine desirable on the basis of an annual performance evaluation of the Town Manager. Such evaluation shall be in such form as the Town Council deems appropriate and shall be conducted no later than on each annual anniversary of the Agreement.

D. The Town's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with any material provision of this Agreement."

Section 4. Automobile Allowance, Communications, and Computer Equipment.

A. The Town shall grant to the Town Manager an automobile allowance of five hundred Dollars (\$500.00) per month, and the Town Manager shall insure said vehicle naming the Town as an additional insured. The Town also agrees to reimburse the Town Manager for mileage for travel outside of Miami-Dade County associated with business of the Town pursuant to the Employee Manual.

B. The Town shall provide the Town Manager with a Town cell phone to use for Town business purposes as set forth in the Employee Manual.

C. The Town shall provide the Town Manager with a laptop computer to use for Town business purposes as set forth in the Employee Manual.

Section 5. Dues and Subscriptions.

The Town agrees to pay the Town Manager's reasonable and customary professional dues and subscriptions that are necessary for full participation in national, regional, state, and local associations and organizations for the Town Manager's growth and advancement for the Town, including the International City/County Management Association, and the Florida City and County Management Association. The Town shall pay other dues and subscriptions on behalf of the Town Manager as are approved in the Town's annual budget (on a line item basis) or as authorized separately by the Town Council.

Section 6. Professional Development.

Subject to the Town's prior approval, which shall not be unreasonably withheld, the Town agrees to pay reasonable and customary travel and per diem expenses for the Town Manager's travel to and attendance at the International City/County Management Association's annual conference, the Florida City and County Management Association's annual conference, the Miami-Dade League of Cities' annual conference, and the Florida League of Cities' annual conference. The Town Council may choose to pay for the Town Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate.

Section 7. Community Involvement.

The Town recognizes the desirability of representation in and before local civic and other organizations and encourages the Town Manager to participate in these organizations to foster a continuing awareness of the Town's activities as well as the community's attitudes and ideas.

Section 8. Vacation and Sick Leave.

Effective October 1, 2021, Town Manager shall receive five (5) weeks of paid vacation per year. The Town Manager's vacation time shall be governed by the Employee Manual. The Town Manager shall receive sick time as set forth in the Employee Manual.

Section 9. Paid Holidays.

The Town Manager is entitled to the same paid holidays that the other Town employees receive, as set forth in the Employee Manual.

Section 10. Health, Dental, Life, Vision, and Disability Insurance.

The Town Manager shall be eligible to participate in the Health, Dental, Life, Vision and Disability Insurance that are offered to the Town's employees, pursuant to the Employee Manual and all terms and conditions of such insurance plans and policies required by the Town's insurance companies.

Section 11. Pension/Retirement/457 Plan.

The Town Manager shall be eligible to participate in the Pension, Retirement, 457 plan(s) that are offered to the Town's employees, pursuant to the Employee Manual and all terms and conditions of such plans and policies required by the Town's sponsors and plan administrators.

Section 12. Termination by the Town and Severance Pay.

A. The Town Manager shall serve at the pleasure of the Town Council. The Town Council may terminate this Agreement and the Town Manager's employment with the Town at any time, with or without cause, pursuant to Section 3.01 of the Town Charter (as may be amended from time to time).

B. Should the Town Council terminate the services of the Town Manager "without cause," within ten (10) business days following such termination: 1) The Town Manager shall return to the Town any and all Town property which the Town Manager has in her possession, use and/or control; and 2) the Town shall pay the Town Manager any sum required by the Employee Manual. The Town Manager shall also be paid a lump sum severance pay equal to twelve (12) weeks of her base salary ("Severance Pay") in exchange for the Town Manager's execution of a general release of all claims that the Town Manager may have against the Town, its Council Members, agents, attorneys, insurers, and employees for all matters related to, arising out of, or concerning this Agreement and the Town Manager's employment from the beginning of time until the date of the general release ("General Release"). The General Release shall be prepared by the Town Attorney.

C. Should the Town Council terminate the services of the Town Manager "with cause," within ten (10) business days following such termination: 1) The Town Manager shall return to the Town any and all Town property which the Town Manager has in her possession, use

and/or control; and 2) the Town shall pay the Town Manager any sum required by the Employee Manual. The Town shall not be obligated to pay the Town Manager Severance Pay. The Town may elect to pay the Severance Pay, in its sole and absolute discretion, in exchange for the Town Manager's execution of the General Release. For purposes of this Agreement, termination "with cause" is defined as any of the following:

1. Misconduct as defined by Florida Statutes §443.036(29) (as may be amended).
2. Misfeasance, malfeasance and/or nonfeasance in performance of the Town Manager's duties and responsibilities.
3. Conviction or a plea of guilty or no contest to a misdemeanor or felony, whether or not adjudication is withheld.
4. Neglect of any duty or obligation, including the inability or unwillingness to properly discharge the responsibilities of the Town Manager.
5. Violation of the Employee Manual, which would subject any other Town employee to termination.
6. The commission of any fraudulent act against the interest of the Town.
7. The commission of any act which involves moral turpitude, or which causes the Town disrepute.
8. A violation of the International City/County Management Association Code of Ethics, and any applicable local, county, state and federal ethics codes.

Section 13. Resignation/Termination by the Town Manager.

The Town Manager may resign and terminate this Agreement at any time by delivering to the Town Council a written notice of resignation not later than sixty (60) days prior to the effective date of the termination. If the Town Manager terminates this Agreement, the Town Manager shall only be entitled to such sums as required by the Employee Manual. The Town shall not be obligated to pay the Town Manager Severance Pay. The Town may elect to pay the Severance Pay, in its sole and absolute discretion, in exchange for the Town Manager's execution of the General Release. The Town shall have no further financial obligation to Town Manager pursuant to this Agreement. The Town Manager shall return to the Town any and all Town property which the Town Manager has in her possession, use and/or control within ten (10) days of her termination.

Section 14. Disability.

If the Town Manager becomes permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) consecutive weeks beyond any leave authorized by the Employee Manual, the Town shall have the option to terminate this Agreement, and the Town Manager shall receive the Severance

Payment in exchange for the General Release (if Town Manager or Town Manager's guardian or attorney in fact or law is lawfully capable of executing the General Release).

Section 15. Indemnification.

The Town shall indemnify the Town Manager as set forth in Section 2.2 of the Code (as may be amended from time to time). The Town, however, shall not be required to indemnify the Town Manager and shall not be liable for the acts or omissions of the Town Manager committed while acting outside the scope of her duties as required by this Agreement, or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful negligence or disregard of human life or property ("Unauthorized Acts"). The Town Manager shall indemnify and hold the Town harmless from and against all claims and damages including legal fees and expenses that the Town may incur or otherwise pay, for or on her behalf, or in connection with the Unauthorized Acts.

Section 16. Bonding.

The Town agrees to bear the full cost of any fidelity or other bonds required of the Town Manager under any policy, regulation, ordinance or law.

Section 17. Attorney's Fees.

If any litigation is commenced between the parties concerning, relating to, or arising out of this Agreement, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorneys' fees and costs incurred in connection therewith, including appellate fees and expenses. The prevailing party shall also be entitled to receive all reasonable attorneys' fees and costs incurred to litigate the amount of reasonable attorneys' fees that shall be awarded pursuant to this section.

Section 18. General Provisions.

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of Town Manager.

D. This Agreement contains the entire agreement of the parties and supersedes any prior conversation, negotiation, or understanding applicable to the matters set forth herein. This Agreement may only be revised or amended in writing signed by both parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Miami-Dade County, Florida.

F. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

G. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Signed copies shall be valid for all purposes in lieu of originals.

H. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it

I. This Agreement shall not be effective until it is: a) signed by all parties; and b) approved by the Town Council.

Section 19. Housing Reimbursement.

In October 2021, the Town provided Lasday a housing **reimbursement of \$100,000 to reimburse for moving expenses to the Miami Dade County area from Lee County, as requested by Town Council**, provided as an interest free loan, evidenced by appropriate documentation, which will be forgiven at the rate of \$20,000 per year, subject to Lasday being employed by the Town of Bay Harbor Islands as of October 1 of said year beginning on October 1, 2022 and maintaining a permanent residence within 10 miles of the Town of Bay Harbor Islands.

Executed by the TOWN this _____ day of _____, 2022.

TOWN OF BAY HARBOR ISLANDS

By: _____
JOSHUA FULLER,
MAYOR

ATTEST:

YVONNE HAMILTON
TOWN CLERK

Executed by the TOWN MANAGER this _____ day of _____, 2022.

Witnesses:

Signature

Print Name

Signature

Print Name

By: _____
MARIA LASDAY,
TOWN MANAGER

AGENDA ITEM REPORT

October 19, 2022

ITEM NUMBER: 17.

ITEM: Discussion and **Possible** action regarding revision to Section 23-11(B1)(9) of the Town Code to lower the allowable building height for Multiple-Family single lot sites, introduced by Council Member Isaac Salver. Enclosed are suggested code text revision and other supporting documents.

DESCRIPTION:

At the September 14, 2022 Council Member Salver requested the Town Planner analyze the Town's Zoning Code regulations that govern Single lot multi-family developments on the East Island, pertaining to building height, for the council's consideration.

Summary of Town Planner's Analysis: (Please see full Staff Report)

The Town's platted lots, especially on the East Island, are relatively narrow / small and developers typically push the building envelope trying to achieve more units per lot. The Town has used very similar Land Development Regulations (LDRs} inherited from the original developer's Deed Restrictions including them in the Town's Zoning Code since the late 1950s. Since 2004-05 when a full-scale analysis/ updating the Town's LDRs was done, as well as periodic "tweaks" over the years, a comprehensive / rationally established / understandable set of LDRs has existed to guide property owners / developers. Are they perfect - no - no set of LDRs is perfect - but the rules were debated extensively in public based on living examples of existing development and proposed development appearances. The Town's allowed building heights have been about the same since the Zoning Code was adopted. The Charter was modified in 2002 prior to the Codes being updated to set a maximum building height. There is now a variation in allowed multifamily building heights between waterfront sites (75' except 65' across from West Island) and non waterfront sites (65'). Properties have been acquired at great expense in most cases with certain financial expectations. As requested, MMPA has attempted to listen to the Town Council's comments, and carefully look at the Town's appearance and current Codes. MMPA has drafted a Code modification to implement the request to further limit the allowable building heights for single-lot multifamily developments. MMPA is somewhat concerned with this proposal for the reasons stated herein and urges caution, due to property rights and possible litigation.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Isaac Salver, Council Member

ATTACHMENTS

1.	BHI Final2 TC Staff Report Single Lot MFR Bldg Hgt Oct 10 2022
2.	BHI Single Lot MFR Bldg Hgt Draft Ord Text Oct 2022

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

CC: Maria Lasday – Town Manager
Joseph S. Geller, Esq. - Town Attorney

Date: October 10th, 2022

Subject: Town of Bay Harbor Islands
Land Development Code Analysis / Possible Amendments
Building Height - RM-1 & RM-2 District Single Lot Developments
MMPA Acct. No.: 01-0702-0500A

ISSUE

Over the last few months, and specifically at the September 14th, 2022 regular Town Council meeting, Councilmember Salver led a discussion about analyzing the Town's existing Zoning Code regulations that govern "single lot" multifamily developments on the East Island. Some other councilmembers concurred with his observations and requested MMPA to research the matter and prepare a report / draft Text revisions for consideration. It was expressed that in their opinion some of the newer single-lot multifamily developments, while Code compliant, appeared out of scale as related to building height.

BACKGROUND

The Town's original "Zoning" Land Development Regulations (LDRs) were included in the original Developer's recorded Deed Restrictions (Covenants / Conditions / Regulations or CCRs) from April 19th, 1947. These covered both the East and West Islands. A review of those documents notes that basic setbacks were established for all development; however, there were no provisions for building height limitations, open space, lot coverage, etc. When the Town created their first Zoning Code in 1957 many of the CCR provisions were included. Over the years numerous updates and modifications have occurred often based on what other similar nearby communities adopted or visual impacts. From 2002-2005 after MMPA was retained as the Town's Consultant Planner, portions of the Comprehensive Plan related to residential density were initially updated and approved by the state, and most of the Town's LDRs were studied extensively and updated.

The original RE Multifamily District that covered the entire East Island was split to create separate multifamily districts for waterfront (RM-1) and non-waterfront (RM-2) sites (RBA District was retitled RM-3). The main difference between the RM-1 & RM-2 Districts is mostly related to the allowable building height – RM-1 zoned site can be built up to 75' in height, except for the lots abutting the Bay Harbor Waterway due to the single-family homes across the canal which can be built to only 65' in height, while RM-2 zoned sites can be built up to 65' in height. The former RE District created in 1964 did not contain any building height limits in "feet", but there was a regulation limiting the buildings to 6 stories of residential over one grade level parking, resulting in a maximum of 7 stories (70'-75'+/-). The Town soon realized that some developers were building very tall "stories" so some of the actual building heights were getting built quite tall. During the 2022-2005 studies the Town Council decided to use actual "feet" measurements for building heights and do away with a "number of stories" criteria. As an example, if a developer wanted to build internal townhouses inside a midrise complex of 2-stories they could do so, as long as they complied with the overall building height limits, but not get tripped up on the "story" criteria.

Since the Town's major LDR updates were completed in 2004-2005 our records reveal that about 17 new townhouse complexes applications were filed with the Town and about 55 new multifamily applications were filed with the Town. MMPA estimates that only about 50% of the applications approved by the Town ever moved forward for actual development. The reason for this varies but some so-called "developers" are just "speculators" who acquire or make arrangements to acquire a site for redevelopment, they retain architects / other professionals to prepare the site plans and obtain approvals from the Town, but are unable to sell a project to an actual builder, or cannot get financing, as well as normal cyclical economic / real estate market changes (ex. recession 2006-2010 / high interest rates / high development costs / etc.).

It is noted there are still many older non-conforming multifamily buildings on the East Island. Many remain today – mostly on RM-2 lots - but some have been involved in redevelopment efforts. There are about 195+/- multifamily development sites on the East Island in 2022 – the number is constantly changing due to redevelopment and the assemblage of lots into larger sites. There are only six (6) "high-rise" complexes (10 or more stories) – not all on the large RM-3 Tract sites at the tips of the island (2 former PRD sites / 1 other). The RM-1 waterfront sites have most of the mid-rise complexes (5-7 stories) with a few older low-rise complexes (2-3 stories) and 3 of the above high-rise sites. The RM-2 interior lots have a wide variety of housing types from 1-story detached villas, 2-3 story townhouses, garden apartments (2-4 stories), and some midrise complexes (5-7 stories). All of the new townhouse complexes are located within the RM-2 zoned areas. Of the 20 latest Site Development Plan applications five (5) of the sites were single lots.

ANALYSIS

As requested, MMPA conducted an analysis to observe what types of redevelopment projects have been being built in the Town in the last 5 years, their location (RM-1 or RM-2), the number of DU, the proposed building height (# stories / actual height), and the number of lots included in the development site. MMPA prepared a simple map exhibit depicting the locations of the existing single-lot development sites, which includes an indication if the site is a recent redevelopment site. It should be mentioned that for over 60+ years the Town's setbacks and other basics LDRs have generally remained the same. As everyone knows the platted multifamily lots are quite small (typ. 75' x 150') and the developer's original Deed Restriction setbacks were based on that development scenario (waterfront = 20' Front / 10' Side / 20' Rear; non-waterfront = 20' Front /

10' Side / 10' Rear). In 2005 the Town increased setbacks for taller portions of buildings. In 2014 the Town increased the side setback requirements for larger multifamily sites (10' min. / 10% of lot width). It is estimated that over 75% of the existing multifamily development in the Town could not be built today as it currently exists due to a lack of parking / open space / height / etc. Therefore, none of the newer Code criteria that was meant to address modern redevelopment would apply to older developments, unless they were redeveloped. As lots are combined the scale of development typically increases, as interior side yards for individual lots disappear and additional building mass results. The Town already requires large setbacks for portions of structures over 30 feet in height. And for larger sites the side setbacks increase greatly.

Several years ago, MMPA prepared tables comparing the Town's Code LDR requirements with the Codes of several other local municipalities. See attached. This was used as a benchmark for the Town to observe what our neighbors LDRs were. Most cities use similar / standard setback / yard criteria and building height allowances.

After almost 20 years of utilizing the Town's modernized / updated LDRs and processing 100+ multifamily redevelopment Site Development Plan applications, it is readily apparent how the updated Codes have affected the design of new developments. The allowable building heights have not changed much for decades. Since the early 1960s the Town allowed 7-story buildings (6-stories over a grade level parking area whether under building or open parking lots) on the East Island. Around 2000 the Town created PUD regulations to spur redevelopment, as the Town's tax base was stagnant / declining. Five PUDs were approved but only two were allowed to be built (Carroll Walk / La Natique), after litigation upheld the Town's approval revocations. The Town's 75-foot Charter limit on building height adopted in 2002 influenced the Town's decisions on the Zoning Code building height limits when rewritten in 2004-05. There was an intentional building height difference allowance for the waterfront RM-1 sites (75') and the interior RM-2 sites (65'). There have been legal opinions and lawsuits that helped verify to the Town / public how and what gets measured for the main building height and any ancillary rooftop structures like elevator overrides / emergency stairwells / mechanical equipment / recreational uses / etc. As stated above, in 2004 the Code was changed to drop the # of stories criteria and utilize actual heights to control building height. Some cities use both criteria but mostly for single-family development. Finally, the Town Code requires at least 9' of clear space between floor slabs, while the FBC is at least 7', which results in a more spacious taller interior appearance.

Since the Town Codes were updated in 2004-05 all new redevelopment applications have met the new Code building height requirements. The only difference has been where one measures the building height from – prior to 2004 it was the average street grade adjoining the site - now it is the FEMA Base Flood Elevation (BFE) + FBC 1' freeboard which results in about a 3'-5' difference. Since FEMA / FBC mandates that the lowest habitable floor be elevated for flood protection everyone realized the old method was unfairly penalizing property owner's interior height. Given all of the collective restrictions, the maximum achievable number of stories in the RM-1 District (waterfront) is 7 habitable floors over 1 level of parking. The maximum achievable number of stories in the RM-2 District (non-waterfront) is 6 habitable floors over 1 level of parking. If developers request extra density via the TDR system this means more parking spaces are required – many developers have addressed this by installing parking garages on all or a portion of their 2nd Levels, which obviously affects the DU quantity. By reducing the allowable building heights by 10', as has been suggested, this would lower the number of stories by at least one.

As building heights have remained generally the same for 60+ years, reducing the heights for new development may result in challenges to the Code for diminished value and unfair changes that could affect new residents (so-called taking) without a valid demonstratable need. With increased federal flood criteria, expected sea level rise, and the cost of housing, many cities are adjusting their Codes to allow more density and more elevated buildings – not a popular topic in BHI.

Parking related to Building Height - Again, historically most of the original development in the Town (est. at 75%) had no on-site parking at all and has used the available backout on-street parking spaces or Town parking lots. At most about 7+/- perpendicular spaces can be provided adjoining a single lot which provides about 50% of the “needed” parking spaces for a 6-8 DU complex. All redevelopment on the East Island must completely remove the on-street parking and provide on-site parking within a garage, construct an open parking lot or a combination thereof, and at a rate of 2 spaces per DU plus guest spaces / lobby drop-off. Single lot redevelopment projects typically struggle with fitting a new building, parking spaces, and providing 20% of the site as landscaped open space. A double loaded parking lot design requires at least 79' of physical area while a single lot is only about 75' in width (18' deep space + 23' wide driveway + 18' deep space + two 10' side setbacks = 79'). Often this prohibits all vehicles from being placed completely inside an enclosed parking garage in a side-by-side fashion – which looks better. Per FEMA / FBC underground garages are prohibited in purely residential complexes. Some of the Town's former Building Officials interpreted the FEMA flood insurance guidelines differently than current day officials - which influenced the Zoning Code provisions and some past Town Site Development Plan approvals. Several older & newer multifamily projects have underground parking garages (ex. 1977 Ten Thousand Plaza / Riva / Bijou). Underground parking garages are acceptable to FEMA / FBC in commercial or mixed-use developments (residential + nonresidential) – just not solely a residential complex for some reason. MMPA has been advised the FBC was amended in 2014 to include FEMA rules and clarity was added in 2017 to the Residential Code. All of these complexes have pumps and flood barriers. This does not affect building heights but affects the economic viability of new developments - as this affects the density / sales revenues. To provide sufficient parking commonly developers propose alternative parking designs such as tandem or vehicle lifts. And on occasion, some portion of the underbuilding parking extends out into at least one of the yard areas – very common in older complexes. As the lowest required habitable floor elevation is now about 5' above lot / street grade, per FEMA allowances the area between lot grade and the lowest FFE is commonly used for parking, lobby building access and storage (allowed by FEMA). Within most cities in South Florida allowable building height is measured from the FEMA / FBC required floor elevations.

SUMMARY

The Town's platted lots, especially on the East Island, are relatively narrow / small and developers typically push the building envelope trying to achieve more units per lot. The Town has used very similar Land Development Regulations (LDRs) inherited from the original developer's Deed Restrictions including them in the Town's Zoning Code since the late 1950s. Since 2004-05 when a full-scale analysis / updating to the Town's LDRs was done, as well as periodic “tweaks” over the years, a comprehensive / rationally established / understandable set of LDRs has existed to guide property owners / developers. Are they perfect – no – no set of LDRs is perfect – but the rules were debated extensively in public based on living examples of existing development and proposed development appearances. The Town's allowed building heights have been about the same since the Zoning Code was adopted. The Charter was modified in 2002 prior to the Codes

being updated to set a maximum building height. There is now a variation in allowed multifamily building heights between waterfront sites (75' except 65' across from West Island) and non-waterfront sites (65'). Properties have been acquired at great expense in most cases with certain financial expectations. As requested, MMPA has attempted to listen to the Town Council's comments, and carefully look at the Town's appearance and current Codes. MMPA has drafted a Code modification to implement the request to further limit the allowable building heights for single-lot multifamily developments. MMPA is somewhat concerned with this proposal for the reasons stated herein and urges caution, due to property rights and possible litigation.

EXHIBIT “A”

**The Town of Bay Harbor Islands, Florida Code of Ordinances
is hereby amended as follows:**

CHAPTER 23

ZONING AND PLANNING

ARTICLE I. ZONING REGULATIONS

Sec. 23-11. Land development regulations.

In all area districts hereinabove set forth and designated, there shall be front, rear and side yard setbacks provided for of not less than the dimensions specified, as follows, to wit:

(B1) *RM-1 Multiple Family Residential district (Waterfront lots).*

The purpose of the district is to provide appropriate land development regulations for the waterfront properties on the eastern island of the town. As the lots abut the wide waterways surrounding the island where no adjacent development occurs, the regulations reflect appropriate development criteria.

- (1) *Front yard setback (street frontage).*** All lots in the RM-1 Multiple Family zoning district shall have a minimum front yard (street) setback as follows:
 - a. *Buildings less than 30 feet in height.*** Twenty feet.
 - b. *Buildings less than 45 feet in height.*** Twenty-five feet.
 - c. *Buildings less than 75 feet in height.*** Thirty feet.
- (2) *Rear yard (waterfront) setback.*** All lots in the RM-1 Multiple Family zoning district shall have a minimum rear yard (waterfront) setback of 20 feet.
- (3) *Side yard setbacks.*** All lots in the RM-1 Multiple Family zoning district shall have minimum side yard setbacks as follows:
 - a. *Buildings less than 30 feet in height.*** Ten feet.
 - b.** For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.

- c. Notwithstanding the above provisions, for developments on more than one lot the minimum setback from each side lot line shall be equal to ten (10) percent of the street frontage of the lot but not less than ten (10) feet. The maximum required side setback width shall be twenty-two and one-half (22.5) feet.
- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.
- (5) The maximum overall length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Planning and Zoning Board may modify the application of this requirement for townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (7) *[Minimum unobstructed distance.]* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (8) *[Corner, waterfront lots.]* In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.
- (9) ~~*[RM-1 height limits.]*~~ *Maximum building height.* No building in the RM-1 Multiple Family area shall exceed the following height limits:

Block 1. Seventy-five feet.

Block 2, Lots 1 through 13, inclusive. Sixty-five feet.

Block 2, Lots 14 through 29, inclusive. Seventy-five feet.

Block 3. Sixty-five feet.

Block 4. Seventy-five feet.

Special building height restrictions for single lot developments. Notwithstanding the above, for any new development constructed on a single platted lot, or a combination of platted lots or portions of platted lots equivalent to a typical platted lot less than 75 feet in width and 11,250 sq. ft. in size, no building shall exceed sixty-five feet in height. The effective date of this provision is January 1st, 2023 (TC to select date for grandfathering rights for projects in the process of being reviewed).*

***Note: If the above text revisions are acceptable to the Town Council the final adopted version will delete any stricken-through text, and the underlined text will be adopted, and any bold text will be removed.**

- (10) ***Landscape requirements.*** Each plot shall provide for a minimum of 20 percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (11) ***Maximum allowable density.*** The maximum allowable base density is 34 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project densities may be increased on a case-by-case basis only through the process described elsewhere in chapter 23.
- (12) ***Maximum number of hotel rooms.*** The maximum number of hotel rooms shall not exceed 70 rooms per acre.
- (13) ***Building roof design.*** All rooftops of buildings with flat roof decks shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for on-site recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for

recreational purposes, a minimum of 15 percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.

(B2) RM-2 Multiple Family Residential district (Non-waterfront).

The purpose of the district is to provide appropriate land development regulations for the non-waterfront properties on the eastern island of the town. As the interior lots abut other lots, and the relationship of buildings to other buildings require the regulations to reflect appropriate development criteria.

- (1) *Front yard setback.* All lots in the RM-2 Multiple Family areas shall have a minimum front yard setback as follows, the front yard being the yard abutting on any street:

 - a. *Buildings less than 30 feet in height.* Twenty feet.
 - b. *Buildings less than 45 feet in height.* Twenty-five [feet].
 - c. *Buildings less than 65 feet in height.* Thirty feet.
- (2) *Rear yard setback.* All lots in the RM-2 Multiple Family areas shall have a minimum rear yard setback as follows:

 - a. *Buildings less than 30 feet in height.* Ten feet.
 - b. *[Additional setback.]* For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height.
- (3) *Side yard setbacks.* All lots in the RM-2 Multiple Family areas shall have minimum side yard setbacks as follows:

 - a. *Buildings less than 30 feet in height.* Ten feet.
 - b. *[Additional setback.]* For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.

- c. Notwithstanding the above provisions, for developments on more than one lot the minimum setback from each side lot line shall be equal to ten (10) percent of the street frontage of the lot but not less than ten (10) feet. The maximum required side setback width shall be twenty-two and one-half (22.5) feet.
- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.
- (5) *Maximum building length.* The maximum length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Planning and Zoning Board may modify the application of this requirement for Townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (7) *Minimum distance between buildings.* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (8) *[Corner lots.]* In the case of corner lots, side setbacks shall be regarded as those setbacks other than ones abutting streets.

- (9) *Maximum building height.* No building in the RM-2 Multiple Family district shall exceed 65 feet in height. *Special building height restrictions for single lot developments: Notwithstanding the above, for any new development constructed on a single platted lot, or a combination of platted lots or portions of platted lots equivalent to a typical platted lot less than 75 feet in width and 11,250 sq. ft. in size, no building shall exceed fifty-five feet in height. The effective date of this provision is January 1st, 2023* (TC to select date for grandfathering rights for projects in the process of being reviewed).*

***Note:** If the above text revisions are acceptable to the Town Council the final adopted version will delete the stricken-through text, the underlined text will be adopted, and any bold text will be removed.

- (10) *Landscape requirements.* Each plot shall provide for a minimum of 20 percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (11) *Maximum allowable density.* The maximum allowable base density is 34 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project densities may be increased on a case-by-case basis only through the process described elsewhere in chapter 23.
- (12) *Building roof design.* All rooftops of buildings with flat roof decks shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for on-site recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for recreational purposes, a minimum of 15 percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.