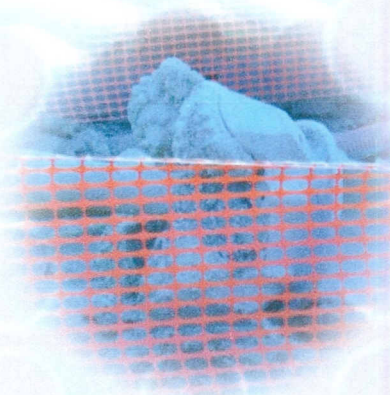


# Town of Longboat Key

Bid Number 09-002

Water System Improvements:  
Upsize Potable Water Transmission Main

Contract Specifications



January 2009

# Town of Longboat Key

**Bid Number 09-002**

**Water System Improvements:  
Upsize Potable Water Main**

## Contract Specifications

**January 2009**



*Laura S. Andrews*

Laura S. Andrews, P.E.

Florida Professional Engineer

License No.: 47683

Date: 01/29/09

(Civil/Environmental)

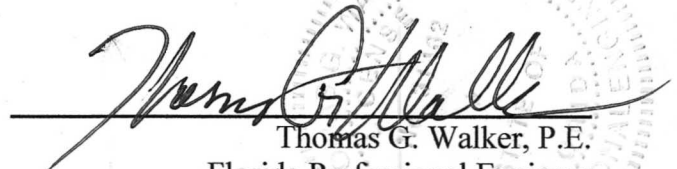
Engineering Visions, Inc.

4400 El Conquistador Pkwy, Suite 26

Bradenton, FL 34210

Office: (941) 870-5622

Florida Certificate of Authorization # 27192



*Thomas G. Walker*

Thomas G. Walker, P.E.

Florida Professional Engineer

License No.: 31462

Date: 01/29/09

(Civil/Environmental)

TGW Engineering, Inc

909 Tamiami Trail South, Suite 210

Nokomis, FL 34275

Office: (941) 412-9187

Florida Certificate of Authorization # 26755

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INVITATION FOR QUALIFICATION AND BID  
**Bid # 09-002**

The Town of Longboat Key (hereinafter “Town” or “Owner”) is accepting sealed qualifications and bids (hereinafter “bid submittals) from contractors that must have recent and successful experience in the construction of potable water mains along Florida Department of Transportation (FDOT) right-of-way corridors utilizing open trench and directional drill technologies. All bidders must be or have a qualifying agent who is a current licensed Certified General Contractor or Underground Utility Contractor doing business as the bidder submitting the bid. Failure to list or to provide a current licensed Certified General Contractor or Underground Utility Contractor, whose license includes doing business as the bidder at the bid acceptance date, shall be deemed a non-responsive bid. In order for bidder to be considered as a qualified bidder they must complete and submit each of the Bid Submittal Forms attached in the bid submittal packet or they will be deemed an unqualified bidder.

Bid submittals for this project shall be comprised of two-parts (sealed qualification package and sealed price bid package). See Section 00100, Instructions to Bidders for detail instructions. Bid documents are only available through the Town of Longboat Key Purchasing Office at 501 Bay Isles Road, Longboat Key, FL 34228. There will be a \$270 nonrefundable charge for printed Bid Documents. Checks for payment are payable to the Town of Longboat Key. VISA and Master Cards are an acceptable form of payment. The \$270 charge is required before the Bid Documents can be obtained by or mailed to the bidder. Bid Documents provided include the Project Contract and Specifications, Drawings and a disk containing an Adobe pdf set of Specifications and Drawings. The Town of Longboat Key and its agents will not be responsible for print issues or content obtained from the use of Adobe .pdf files contained on the disk. There will be a Mandatory Pre-Bid conference on Friday, February 13, 2009 at 1:30 p.m. EST at the Town of Longboat Key Town Hall, Commission Chambers, 501 Bay Isles Road, Longboat Key, FL 34228 for providing pre-bid information and a site visit. For information about the bidding process, contact Gerald Wilson, Purchasing Manager at 941-316-1943. Questions or information requests regarding this Bid must be submitted in writing at least 7 calendar days prior to the bid receipt date and time. Fax or E-Mail questions or information requests to Gerald Wilson, Purchasing Manager, Fax # (941) 316-1656; e-mail address [gwilson@longboatkey.org](mailto:gwilson@longboatkey.org). Bid Documents may be examined at the Purchasing office. Examination of the bidding documents is by appointment at least one day in advance of intended viewing. Sealed bids will be accepted at the Purchasing Office at Town Hall until 2:00 p.m. eastern standard time (EST) on Wednesday, March 18, 2009 for the Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass contract. Bids will not be accepted after 2:00 p.m. on that date.

Scope of work shall include, but not limited to:

Installation of approximately 3.2 miles of a new 12-inch to 16-inch potable water transmission main via open cut and directional drilling technologies along the eastern FDOT right-of-way (ROW) of State Road 789 (Gulf of Mexico Drive) from Bay Isles Road to 280 Gulf of Mexico Drive. The work shall progress as to maintain uninterrupted potable water service to Town customers. The work includes, but is not limited to, pipeline installation via horizontal directional drilling and open cut technologies, maintenance of traffic, tapping sleeve and valve installation, live taps, sitework, pressure and leakage tests, cleaning and disinfection, dewatering, compaction, site restoration, roadway restoration, ROW restoration, landscape restoration, sidewalk restoration, erosion and sediment control, and necessary appurtenances.

The pipeline route is in a heavily utility congested FDOT ROW. Field verification of existing utilities, daily record drawings including survey, and compliance with FDOT Utility permit, Health Department Construction of New Water Main permit and federal, state and local codes and regulations are required. The active project area for installation, testing and restoration of the transmission main is anticipated to

proceed in 2,000-foot increments. Construction and/or opening of larger areas of the pipeline route will not be allowed. It is the Town's intention to issue the Notice to Proceed as soon as possible in order to facilitate completion of most of the work prior to January 1, 2010 and therefore avoiding the busiest portion of traffic season. Utility and field verifications and shop drawing submittals may begin after the Notice to Proceed is issued. Limited material storage and staging areas will be provided by the Town at the Overlook Park on the South-end of Longboat Key. Security measures will be provided by the Contractor. Any additional staging and related security will be the responsibility of the Contractor. Storage of pipeline and equipment beyond the active project area within the ROW will not be allowed.

The time frame required for this Project is Two Hundred and Ten Calendar Days (210 Days) from the Start Date as identified in the Notice to Proceed, to Substantial Completion and Two Hundred and Fifty-five Calendar Days (255 Days) from Start to Final Completion. Liquidated damages will apply if the substantial completion date is not met.

A bid bond for 5% of the amount bid shall be required by all bidders. A public construction bond (performance and payment bond) shall be required by the successful bidder in the amount of 100% of the Contract Sum.

Bidders shall submit three (3) complete sets of fully completed bids at the time of bidding as defined in Section 00100, Instructions to Bidders. All Bid Submittals shall have one (1) original and two (2) copies. The original Bid Submittal Forms, Required Submissions shall be marked "Original" and the copies shall be marked "Copy".

Bids received after the scheduled receiving date and time established above will not be considered, but can be claimed by the bidder within 10 Days of the opening. After that time, they will be destroyed.

SECTION 00100

INSTRUCTIONS TO BIDDERS

**THERE WILL BE A MANDATORY PRE-BID MEETING ON FRIDAY, FEBRUARY 13, 2009 AT 1:30 P.M. AT TOWN OF LONGBOAT KEY, TOWN HALL, COMMISSION CHAMBERS, 501 BAY ISLES ROAD, LONGBOAT KEY, FLORIDA, 34228 FOR BID INFORMATION AND SITE VISIT. BID DOCUMENT SUBMITTALS MUST BE DELIVERED TO THE PURCHASING OFFICE PRIOR TO 2:00 P.M., WEDNESDAY, MARCH 18, 2009, LOCATED AT 501 BAY ISLES ROAD, LONGBOAT KEY, FL, 34228. THERE WILL BE NO EXCEPTIONS.**

**BIDDER - To ensure consideration of your bid, follow these instructions.**

- 1. BID SUBMITTAL:** The bid submittal shall be comprised of two separate sealed packages/envelopes:
  - a) Qualifications Package: plainly marked with the submitting firms name and “QUALIFICATION PACKAGE – Bid #09-002 – Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass”
  - b) Price Bid Package: plainly marked with the submitting firms name and “PRICE BID PACKAGE – Bid #09-002 – Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass”

The Town is administrating this bid in a two-part process. Qualification packages will be opened on the first bid opening date and time. All qualifying bid submittals will be reviewed by the Public Works Department and the Purchasing Division to determine if each bidder is qualified as identified in the bidding documents. The Town has the option but not obligation to consult with the Engineer during the review process. After the qualified bidders have been determined, a qualified bidder list will be recommended and approved by the Town Manager who will make the official determination on behalf of the Town.

A second public opening of the qualified sealed bid price packages from the qualified bidder list will occur. The schedule of the second public opening will be determined at a later date and will be posted on the Towns bulletin board and Demandstar.com one week before the opening. Any unqualified bidder may claim their unopened price bid package from the Purchasing Division up to 30 days from said opening. Any unclaimed unqualified price bid package will be destroyed after 30 days. Award of a contract will be made to the lowest responsive, responsible, and qualified bidder after bid price package evaluations have been completed.

**2. QUALIFICATIONS PACKAGE:**

The Qualifications submittal shall provide adequate information to establish a bidder as a qualified bidder based on the items requested. The package shall be organized and assembled in the order listed below under the given headings. Bidders must also include the provided forms in Section 00300 and 00400 as indicated and detailed on the Forms Index (00400-1). Forms may be copied, as needed, to provide additional area to present all relevant information. The Qualifications Package shall be bound no larger than a 2-inch three-ring binder with tabs separating the section headings and related information noted below:

- A. Title Page
- B. Table of Contents
- C. Letter of Interest Must include the name of the person(s) who will be authorized to make representations for the Bidder, their title(s), telephone number(s), and e-mail address(es). limited to two pages.

D. Section 1 – Team

This section must identify the prime bidder/firm, subcontractors, project staffing plan, and resumes. Identify the Project Manager and Construction Manager that will be responsible for day-to-day communication and coordination with the Town. Provide resumes for the Project Manager and Construction Manager detailing work experience. The Forms Index listed in 00400-01 details required forms for this Section.

E. Section 2 – Bidder’s Experience and Performance History

A qualified bidder shall provide a history of a minimum 5 recent and successfully completed construction projects. Recent shall mean no earlier than 2002. Successfully completed shall be projects performed by the Contractor through final completion. Relative construction experience for the bidder and subcontractors shall be that of similar projects to that summarized in the Scope of Work and Contractor Qualifications. Bidders must exhibit considerable relevant experience with projects of similar size and complexity and within FDOT ROW. Bidders are encouraged to provide detail narrative on similar projects to demonstrate experience. Provide names and resumes of particular personnel who will actually perform the work.

Bidders must indicate any sub-contractors proposed to be utilized for the project and list at least 2 successfully completed projects by the subcontractor with the bidding contractor or other contractors. The 2 successfully completed projects must be similar in size to this project.

Bidders must include a written affidavit stating that as the qualifying general or underground utility contractor, they will perform 51% of the work as identified in the bid documents, under the Contractors License.

Litigation history for Bidder and its proposed subcontractors is required. The Forms Index listed in 00400-01 details required forms for this Section. The Town may at its discretion disqualify a bidder due to excessive litigation actions or monetary amounts.

Similar complexity is defined as acting as general contractor for potable pipeline projects with the following characteristics:

1. Public utility pipeline construction.
2. Horizontal directional boring of HDPE pipe with diameters of 12-inches or greater and pull lengths of 1,000 ft. or greater.
3. Installation of PVC or DIP potable water main with a diameter greater than or equal to 12-inches and a length greater than 5,000 linear feet.
4. Work with and within Florida Department of Transportation (FDOT) roadways and confines
5. Certified FDOT Contractor is preferred.
6. Installation, relocation, and testing of water and wastewater pressure pipe.
7. Experience and capability of directional drilling and open cut techniques in congested rights-of-way paralleling close to edge of pavement.
8. Provision and implementation of certified maintenance of traffic plans requiring full access to property contiguous to project along with two-way traffic maintained.
9. Experience with maintenance of flow for existing potable water service and live tapping.

Similar Sized projects shall be defined as projects of not less than \$2,500,000 for an individual project.

F. Section 3 – References

Must provide a minimum of 5 client references with project name, address, telephone number, and contact person(s). Five of the references listed must be for the 5 successful completed construction projects as required in section 2E above. The Forms Index listed in 00400-01 details required forms for this Section.

G. Section 4 – FDOT Prequalification

If the bidder is currently pre-qualified with the Florida Department of Transportation (FDOT), please provide a copy of the pre-qualification and the current status and work class. The Forms Index listed in 00400-01 details required forms for this Section.

H. Section 5 – Other Relevant Information

Provide current Proof of Insurance (copy of Acord Insurance Certificate for proposal purposes – we are not asking for the bidder to add the Town as an additional insured unless they are awarded this bid), Statement on Public Entity Crimes, applicable business licenses and other information the bidder considers pertinent for consideration. The Forms Index listed in 00400-01 details required forms for this Section.

**3. BID PRICE PACKAGE:** The Forms Index listed in 00400-01 details required forms for the Price Bid Package. The following items shall be included in the sealed Bid Price Package envelope:

A. Submitted Bid Forms

B. Bid Bond

**4. REQUEST FOR ADDITIONAL INFORMATION:** The Town reserves the right request additional information from the bidders as reasonably required. This can include items such as requesting interviews, requiring presentations, financial resource information, insurance information, etc. Town will not be liable for any costs incurred by the bidders in connection with such requests.

**5. EXECUTION OF BID:** Bids must contain an original signature of an authorized representative in the space provided on the signature page. Bids must be typed or printed in black ink. Erasable ink is not permitted. All corrections made by a bidder to their bid must be initialed.

**6. BID OPENING:** All bid openings as specified in the Bid Documents shall be public. **BID SUBMITTAL FORMS USING FACSIMILE OR TELEGRAM ARE NOT ACCEPTABLE.**

**NOTE: Bidders may view bid results on the Internet through <http://www.longboatkey.org> by selecting current bids. Written bid results may also be obtained at Town Hall but will not be given over the telephone. For a copy of the recap, send a written request with a self-addressed, stamped envelope with the bid number on the lower left hand corner of the envelope. Bid files may be examined after bid opening during normal working hours by appointment.**

**7. PRICES:** Firm prices shall be bid. Submitted price bids shall remain in effect for 120 days after the bid opening.

**8. MISTAKES:** Bidders are required to examine the Technical Specifications, plans, delivery schedule, bid prices and all other Contract Documents. Failure to do so will be at bidder's risk. In case of a mistake in extension, the unit price will govern. All corrections made by bidder to any bid entry must be initialed and must be submitted before the bid opening.

**9. ADDITIONAL TERMS & CONDITIONS:** The Town reserves the right to reject bids containing any additional or differing terms or conditions than those stated in the Invitation for Qualification and Bid, Instructions to Bidders (including the General Conditions and proposed Contract), Technical Specifications, plans, and other Contract Documents.

**10. CONFLICT OF INTEREST:** The award of any contract as a result of any bid is subject to the provisions of Chapter 112, Florida Statutes. All bidders must disclose, with their bid, the name of any officer, manager, director, or agent who is also an employee of the Town or any of their agencies. Furthermore, all bidders must disclose the name of any Town employee who owns, directly or indirectly, any interest of any amount in the bidder's firms or any of their branches.

**11. AWARD(S):** The award of this bid and a contract shall be made to the lowest qualified responsive and responsible bidder meeting the requirement of the bid documents herein. As the best interest of the Town may require, the right is reserved: to make award(s) by total amount of bid, with or without alternate bid prices if included; to reject all bids, or; waive any minor irregularities or technicalities in bids received all at the sole discretion of the Town as consistent Chapter 38 of the Town Purchasing Code and any other applicable law whether or not reasonable. Upon award of the bid, a contract shall be entered into between the Town and the successful bidder in the form of the Contract For Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass (hereinafter “Contract”) attached to the Bid Submittal Forms, which Contract shall incorporate by reference the General Conditions contained in this Instruction to Bidders.

**12. NONCONFORMANCE WITH BID CONDITIONS:** Bids and related materials delivered and received not conforming to the Invitation for Qualification and Bid, Instruction to Bidders, Technical Specifications, plans and all other Contract Documents for the Project will not be accepted for consideration.

**13. ADDENDUM:** Any changes in the bid shall be made in the form of a written Addendum by the Purchasing Manager or his representative. No other person shall be authorized to make changes verbally or in writing. If an Addendum is issued, the Addendum sheet must be signed and submitted with the bid submittal sheets at the time and due date of the bid.

**14. ASSIGNMENT:** Any Contract entered into pursuant to the Invitation for Qualification and Bid, and any monies which may become due as a result thereof, are not assignable, except with the prior written approval of the Purchasing Manager.

**15. PATENTS AND ROYALTIES:** The bidder, without exception, shall and does hereby indemnify and save harmless the Town and its employees from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented or non-patented invention, process or article manufactured or used in the completion and submission of bids and/or the performance of the contract, including its use by the Town all as more specifically stated in the General Conditions. If the bidder uses any design, device or material covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost arising from the use of such design, device or material in any way involved in the Work.

**16. FACILITIES:** The Town reserves the right to inspect the bidder's facilities at any time, with prior notice.

**17. BID PROTEST:** Protest periods will be in effect five working days from the date of posting on the Town bulletin board and on Demandstar.com. in accordance with the Town's Purchasing Policies and Procedures. “ANY ACTUAL OR PROSPECTIVE BIDDER OR PERSON WHO IS

ALLEGEDLY AGGRIEVED IN THE CONNECTION WITH THE SOLICITATION OR PENDING AWARD OF A CONTRACT MAY PROTEST TO THE PURCHASING MANAGER. FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES PRESCRIBED HEREIN AS ESTABLISHED BY THE TOWN, SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS.” BID PROTEST PROCEDURE REQUIREMENTS MAY OBTAINED FROM THE PURCHASING MANAGER VIA PHONE, E-MAIL OR FAX AS SPECIFIED IN SECTION 00010, THE INVITATION FOR QUALIFICATION AND BID

**18. CANCELLATION:** The Town reserves the right to cancel the Project after the bid opening after reasonable written notice to the successful bidder should it be determined for any reason that completion of the Project is not in the best interest of the Town. Should the service rendered for any bid cause or threaten endangerment to public safety or welfare, the bid may be canceled by the Purchasing Manager immediately. In addition, in the event of the delay in issuance or refusal by any permitting authority to issue any permits for which the Town has applied prior to the publication of the Invitation for Qualification and Bid, the Town may, at its sole option and discretion decline to award any Contract for this Project.

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

**20. PREFERENCE FOR DRUG FREE WORKPLACE:** Whenever two or more bids, which are equal with respect to price, quality and service, are received, preference shall be given to a bid received from a business that certifies that it has implemented a drug free Workplace program in accordance with Section 287.087, Florida Statutes. In order to receive preference, a signed certification of compliance must be submitted with the bid response.

**21. BID BOND:** A form for the required Bid Bond equal to 5% of the Total Base Bid is included in the Forms and must be completed and submitted with each bid. If the bid is accepted and the bidder shall fail to contract as aforesaid, or fail to provide the required Performance and Payment Bond, or shall fail to provide all insurance as required by the Contract Documents within 15 Days after the posted date of the Notice of Bid Action, the Town, at its option, may determine that the bidder has abandoned his contract and thereupon this bid and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this bid shall operate and the same shall be the property of the Town.

**22. PERFORMANCE AND PAYMENT BOND:** A form for the required Performance and Payment Bond is included in the Forms and must be completed and submitted by the successful bidder in accordance with the requirements of the Contract Documents in the amount of 100% of the Contract Sum within 15 Days from posted date of Notice of Bid Action.

SECTION 00300

TOWN OF LONGBOAT KEY FLORIDA  
QUALIFICATION ACKNOWLEDGEMENT BID # 09-002

(MUST BE COMPLETED AND SUBMITTED IN THE QUALIFICATION PACKAGE ENVELOPE)

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

The undersigned bidder represents that the bidder accepts, and that this bid complies with, the Bid Documents; that bidder has carefully examined the proposed forms of Contract and Bonds, the Technical Specifications, Contract Drawings for the designated Work, and all other Bid Documents and Contract Documents. Bidder affirms that bidder has carefully examined the location of the designated Work and that, from his own investigations has satisfied himself as to the nature and location of the Work, the character, quality, and the quantity of materials and the kind and extent of equipment and other facilities needed for the performance of the Work, the general and local conditions and all difficulties to be encountered, and all other items which may, in any way, affect the Work or its performance.

The undersigned bidder represents that the bidder meets or exceeds all the qualifications put forth in the Bid Documents. The undersigned bidder proposes, and agrees if this bid is accepted, that he will contract with the Town in the form of the copy of the Contract for Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass included in these Bid Documents, to provide all necessary machinery, tools, apparatus, and other means of construction necessary to do all the Work, and furnish all the materials and equipment specified or referred to in the Contract Documents and Bid Documents in the manner and time herein prescribed, and according to the requirements of the Town as therein set forth.

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

Bidder acknowledges receipt of the following addenda issued during the bidding period; the cost of which, if any, is included in the Total Base Bid. If an Addendum is issued, the Addendum acknowledgement sheet must be signed and submitted with the bid submittal package at the time and due date of the bid

ADDENDUM # ADDENDUM DATE

_____	_____
_____	_____
_____	_____

Bidder \_\_\_\_\_

The undersigned bidder understands that the Town reserves the right to reject any or all bids and to waive any informalities and minor irregularities in the bidding. The bidder agrees that this bid shall be good and may not be withdrawn for a period of 120 Days after the scheduled bid opening.

The undersigned bidder acknowledges that Work to be performed shall conform to all Town codes and regulations. Work must be accomplished in a professional manner and meet all standards of any Professional trade requiring a license and or permit. Work must be substantially completed within 210 Calendar Days from the Start Date as specified in the Notice to Proceed, barring justifiable delays. Final Completion shall be 255 Calendar Days after Substantial Completion. Hours of operation that Work can be performed begin at 8:00 a.m. and run through 5:00 p.m. Monday through Saturday in accordance with Town Code, Chapter 130.

\_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Typed name of Bidder)

Doing Business As: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Fax: \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

TOWN OF LONGBOAT KEY FLORIDA  
SUBMITTED BID # 09-002 FORM

(MUST BE COMPLETED AND SUBMITTED WITH BID IN THE PRICE BID PACKAGE ENVELOPE)

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

The undersigned bidder represents that the bidder accepts, and that this bid complies with, the Bid Documents; that bidder has carefully examined the proposed forms of Contract and Bonds, the Technical Specifications, Contract Drawings for the designated Work, and all other Bid Documents and Contract Documents. Bidder affirms that bidder has carefully examined the location of the designated Work and that, from his own investigations has satisfied himself as to the nature and location of the Work, the character, quality, and the quantity of materials and the kind and extent of equipment and other facilities needed for the performance of the Work, the general and local conditions and all difficulties to be encountered, and all other items which may, in any way, affect the Work or its performance.

The undersigned bidder represents that the bidder meets or exceeds all the qualifications put forth in the Bid Documents. The undersigned bidder proposes, and agrees if this bid is accepted, that he will contract with the Town in the form of the copy of the Contract for Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass included in these Bid Documents, to provide all necessary machinery, tools, apparatus, and other means of construction necessary to do all the Work, and furnish all the materials and equipment specified or referred to in the Contract Documents and Bid Documents in the manner and time herein prescribed, and according to the requirements of the Town as therein set forth.

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

Bidder acknowledges receipt of the following addenda issued during the bidding period; the cost of which, if any, is included in the Total Base Bid. If an Addendum is issued, the Addendum acknowledgement sheet must be signed and submitted with the bid submittal package at the time and due date of the bid

ADDENDUM # ADDENDUM DATE

_____	_____
_____	_____
_____	_____

Bidder \_\_\_\_\_

**BID FORM**

The undersigned bidder understands that the Town reserves the right to reject any or all bids and to waive any informalities and minor irregularities in the bidding. The bidder agrees that this bid shall be good and may not be withdrawn for a period of 120 Days after the scheduled bid opening.

Having carefully examined the Contract Documents and Bid Documents, bidder agrees to the terms contained therein and proposes to furnish all labor, material, and equipment for the entire Work (including mobilization and demobilization), and to execute the Contract For Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass in the form as that contained in the Bid Documents and any and all bonds, insurance certifications and other instruments or documents as specified or included in the Contract Documents and furnish the required Performance and Payment Bond, and will completely perform the Work in strict accordance with the terms of the Contract and the Bid Documents therein referred to the following prices, to wit:

<b>Item #</b>	<b>Item Description</b>	<b>Number of Units</b>	<b>Units</b>	<b>Unit Price</b>	<b>Subtotal, \$</b>
1	Mobilization	1	LS		
2	General Conditions	1	LS		
3	Maintenance of Traffic	1	LS		
4	NPDES Permitting	1	LS		
<b>Potable Water Transmission Main</b>					
5	16-inch PVC Pipe	6,335	LF		
6	16-inch Restrained Fittings	25	Tons		
7	16-inch Gate Valves	9	EA		
8	16-inch HDPE Pipe, HDD	1,880	LF		
9	12-inch PVC Pipe	7,275	LF		
10	12-inch Restrained Fittings	35	Tons		
11	12- inch Gate Valves	13	EA		
12	12-inch Tapping Sleeve/valve	2	EA		
13	12-inch Blow-off / Blind Flange	2	EA		
14	12-inch HDPE Pipe, HDD	3,300	LF		

Bidder \_\_\_\_\_

15	10-inch PVC Pipe	450	LF		
16	10-inch Restrained Fittings	10	Tons		
17	10-inch Gate Valves	9	EA		
18	10-inch Tapping Sleeve/valve	9	EA		
19	8-inch PVC Pipe	250	LF		
20	8-inch Restrained Fittings	10	Tons		
21	8-inch Gate Valves	5	EA		
22	8-inch Tapping Sleeve/valve	4	EA		
23	6-inch PVC Pipe	2,050	LF		
24	6-inch Ductile Iron Pipe	260	LF		
25	6-inch Restrained Fittings	15	Tons		
26	6-inch Gate Valves	25	EA		
27	6-inch Tapping Sleeve/valve	21	EA		
28	4-inch PVC Pipe	80	LF		
29	4-inch Restrained Fittings	200	LB		
30	4-inch Gate Valves	2	EA		
31	4-inch Tapping Sleeve/valve	1	EA		
32	2-inch PVC Pipe	80	FT		
33	2-inch Gate Valve	2	EA		
34	3/4-inch PVC Pipe	40	FT		

Bidder \_\_\_\_\_

35	5/8-inch Poly. Tubing	440	LF		
36	5/8-inch Ball Valves	10	EA		
<b>Miscellaneous and Restoration</b>					
37	Air Release Combination Valves and Vaults	9	EA		
38	Blow-Offs	2	EA		
39	Pipe Tracer Wire	21,700	LF		
40	Pipe Detection Tape	21,700	LF		
41	Additional Earth Excavation	500	CY		
42	Additional Unsuitable Material Excavation	200	CY		
43	Additional Crushed Stone Select Fill	250	Tons		
44	Additional Sand Select Fill	250	Tons		
45	Concrete Encasement/thrust blocks	100	CY		
46	Restoration - (Concrete Sidewalks)	3,000	SY		
47	Restoration - (Roads-Asphalt)	2,500	SY		
48	Restoration - (Concrete Drives)	100	LF		
49	Restoration - (Sod - Bahia)	7,500	SY		
50	Demobilization	1	LS		
<b>SUBTOTAL (Item 1 – Item 50)</b>					
51	Project Contingency (10% of Subtotal of Item 1 – Item 50)	1	LS		
<b>TOTAL BASE BID (Item 1- Item 51)</b>					

**TOTAL BASE BID CONTRACT PRICE = \$** \_\_\_\_\_ **and in words:**

\_\_\_\_\_ and 00/100 dollars.

**Alternate Bid Items 1, 2 and 3**

<b>Alternative Bid Items</b>					
52	<p><b>Alternative 1 - <i>Cost difference</i></b> to purchase and install 12" HDPE pipe by directional drilling <i>instead</i> of 12" PVC pipe between</p> <p>Station 42+70 to Station 54+20</p> <p><i>(See Drawing Sheets C-108D, 109D, and 110D)</i></p>	1,150	LF		
53	<p><b>Alternative 2 - <i>Cost difference</i></b> to purchase and install 16" HDPE pipe by directional drilling <i>instead</i> of 16" PVC pipe between</p> <p>Station 108+00 to Station 115+30</p> <p><i>(See Drawing Sheets C-119D and C-120D)</i></p>	730	LF		
54	<p><b>Alternative 3 -</b> Cost savings for <i>not</i> installing the 6" PVC and tap (including sidewalk restoration) between</p> <p>Station 160+96 and Station 168+50</p> <p><i>(See Drawing Sheets C-127T, C-128T, and C-129T)</i></p>	800	LF		

Bidder \_\_\_\_\_

The undersigned bidder acknowledges that Work to be performed shall conform to all Town codes and regulations. Work must be accomplished in a professional manner and meet all standards of any Professional trade requiring a license and or permit. Work must be substantially completed within 210 Calendar Days from the Start Date as specified in the Notice to Proceed, barring justifiable delays. Final Completion shall be 255 Calendar Days after Substantial Completion. Hours of operation that Work can be performed begin at 8:00 a.m. and run through 5:00 p.m. Monday through Saturday in accordance with Town Code, Chapter 130.

\_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Typed name of Bidder)

Doing Business As: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Fax: \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

SECTION 00400

FORMS

**FORMS INDEX**

<b>Forms to be Completed and Submitted With Bid Packages</b>	<b>Package and Section</b>	<b>Page</b>
Qualification and Addenda Acknowledgement	Qualifications-Section 2	00300-1 to 2
Submitted Bid, and Addenda Acknowledgement	Price Bid Package	00300-3 to 5
Forms Index (Form not submitted with bid)		00400-1
Minimum Qualifications and Equipment Lists	Qualifications-Section 2	00400- 2
Qualified Work Experiences & References	Qualifications-Section 3	00400-3
Subcontractor References	Qualifications-Section 3	00400-4
Form of Affidavit Where Bidder a Corporation	Qualifications-Section 1	00400-5
Form of Affidavit Where Bidder a Partnership or Joint Venture		00400-6
Form of Affidavit Where Bidder Sole Proprietor/Individual		00400-7
Organizational Structure	Qualifications-Section 1	00400-8
Organizational Claims and Suits	Qualifications-Section 2	00400-9
Bid Bond	Price Bid Package	00400-10 to 11
Statement of Compliance with Trench Safety Act	Qualifications-Section 5	00400-12
Drug Free Workplace Certification	Qualifications-Section 5	00400-13 to 14
Equal Employment Opportunity	Qualifications-Section 5	00400-15
Public Entity Crime	Qualifications-Section 5	00400-16 to 18
Indemnity, Liability, and Insurance Requirements	Qualifications-Section 5	00400-19 to 20
<b>Form of Documents to be Submitted and/or Executed by Successful Bidder</b>		
Contract		00500-1 to 6
General Conditions		00700-1 to 30
Performance and Payment Bond		00710-1 to 2

Bidder \_\_\_\_\_

<b>MINIMUM QUALIFICATIONS</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
---

Qualifying Firm Name \_\_\_\_\_

Authorized Firm Qualifying Licensed Person \_\_\_\_\_

License # \_\_\_\_\_ Type of License \_\_\_\_\_

Copy of license is attached.  YES  NO, (explain why if NO):

<b>EQUIPMENT LIST</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
---

Attach a list of equipment to be provided and used by bidder to perform the Work. (If not listed below, attach equipment list to this submittal page.)

Bidder \_\_\_\_\_

<b>QUALIFIED WORK EXPERIENCES &amp; REFERENCES</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
--

Complete information below for a minimum of five clients within the past 5 years for work of similar size and complexity (as defined in Section 00100) within a 100 mile radius of Longboat Key:

**NAME AND SCOPE OF WORK PERFORMED:** \_\_\_\_\_

Total Cost of Work performed \$ \_\_\_\_\_ Original Bid Amount \_\_\_\_\_  
Year Completed \_\_\_\_\_ Original Contract Days \_\_\_\_\_ Actual Completed Contract Time \_\_\_\_\_  
Owner of Work Performed : \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ e-mail address \_\_\_\_\_

**NAME AND SCOPE OF WORK PERFORMED:** \_\_\_\_\_

Total Cost of Work performed \$ \_\_\_\_\_ Original Bid Amount \_\_\_\_\_  
Year Completed \_\_\_\_\_ Original Contract Days \_\_\_\_\_ Actual Completed Contract Time \_\_\_\_\_  
Owner of Work Performed : \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ e-mail address \_\_\_\_\_

**NAME AND SCOPE OF WORK PERFORMED:** \_\_\_\_\_

Total Cost of Work performed \$ \_\_\_\_\_ Original Bid Amount \_\_\_\_\_  
Year Completed \_\_\_\_\_ Original Contract Days \_\_\_\_\_ Actual Completed Contract Time \_\_\_\_\_  
Owner of Work Performed : \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ e-mail address \_\_\_\_\_

**NAME AND SCOPE OF WORK PERFORMED:** \_\_\_\_\_

Total Cost of Work performed \$ \_\_\_\_\_ Original Bid Amount \_\_\_\_\_  
Year Completed \_\_\_\_\_ Original Contract Days \_\_\_\_\_ Actual Completed Contract Time \_\_\_\_\_  
Owner of Work Performed : \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ e-mail address \_\_\_\_\_

**NAME AND SCOPE OF WORK PERFORMED:** \_\_\_\_\_

Total Cost of Work performed \$ \_\_\_\_\_ Original Bid Amount \_\_\_\_\_  
Year Completed \_\_\_\_\_ Original Contract Days \_\_\_\_\_ Actual Completed Contract Time \_\_\_\_\_  
Owner of Work Performed : \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ e-mail address \_\_\_\_\_

Bidder \_\_\_\_\_

<b>SUBCONTRACTOR REFERENCES</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
---

Identify each subcontractor that will perform 5% or more of work as part of this bid, identifying previous clients for similar Work performed over last three years. Make copies of this form as necessary. Attach information regarding additional references, if any.

Subcontractor Contact Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Current Telephone (Daytime): \_\_\_\_\_  
Reference based on related Work: \_\_\_ YES \_\_\_ NO  
Project: \_\_\_\_\_ Date completed: \_\_\_\_\_

Subcontractor Contact Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Current Telephone (Daytime): \_\_\_\_\_  
Reference based on related Work: \_\_\_ YES \_\_\_ NO  
Project: \_\_\_\_\_ Date completed: \_\_\_\_\_

Subcontractor Contact Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Current Telephone (Daytime): \_\_\_\_\_  
Reference based on related Work: \_\_\_ YES \_\_\_ NO  
Project: \_\_\_\_\_ Date completed: \_\_\_\_\_

Subcontractor Contact Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Current Telephone (Daytime): \_\_\_\_\_  
Reference based on related Work: \_\_\_ YES \_\_\_ NO  
Project: \_\_\_\_\_ Date completed: \_\_\_\_\_

Subcontractor Contact Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Current Telephone (Daytime): \_\_\_\_\_  
Reference based on related Work: \_\_\_ YES \_\_\_ NO  
Project: \_\_\_\_\_ Date completed: \_\_\_\_\_

**Indicate number of additional copies of this form that are attached, if any: \_\_\_\_\_**







Bidder \_\_\_\_\_

<b>ORGANIZATIONAL STRUCTURE</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
---

Bidders Primary Work must be construction of municipal infrastructure. The bidder must have completed 5 projects within the last 3 years that are similar in size, scope, and cost to this project.

BIDDER NAME, ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

PHONE # \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

Type of Business \_\_\_\_\_

How many years in business: \_\_\_\_\_.

How many years in business under the present business name: \_\_\_\_\_.

Under what other or former names has your organization operated:

If a corporation, answer the following:

Date of incorporation: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

President's name: \_\_\_\_\_

Vice president's name(s): \_\_\_\_\_

Secretary's name: \_\_\_\_\_

Treasurer's name: \_\_\_\_\_

If a partnership or joint venture, answer the following:

Date of organization: \_\_\_\_\_

Type of partnership (if applicable): \_\_\_\_\_

Name(s) of general partners: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If individually owned, answer the following:

Date of organization: \_\_\_\_\_

Name of owner: \_\_\_\_\_

Federal Employer's Identification Number: \_\_\_\_\_

Commercial General Liability Insurance:

Insurance Company Name: \_\_\_\_\_

Amount of Limits: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Bidder \_\_\_\_\_

<p style="text-align: center;"><b>ORGANIZATIONAL CLAIMS AND SUITS</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)</p>
--

Claims and suits (if the answer to any of the questions below is yes, please attach details including Project Name, Project Description, Project Owner, Claim Amount, Litigation Filed Date, and Outcome).

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

NO  YES (details attached)

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

NO  YES (details attached)

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

NO  YES (details attached)

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

NO  YES (details attached)

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

NO  YES (details attached)

Similar information is required for Bidder's Subcontractors.

Bidder \_\_\_\_\_

<b>BID BOND</b> (MUST BE COMPLETED AND SUBMITTED WITH PRICE BID PACKAGE)
---

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

WHEREAS, the Principal is about to submit, or has submitted to the Town, a Bid Proposal for the purpose of:

Scope of work shall include, but not limited to:

Installation of approximately 3.2 miles of a new 12-inch to 16-inch potable water transmission main via open cut and directional drilling technologies along the eastern FDOT right-of-way (ROW) of State Road 789 (Gulf of Mexico Drive) from Bay Isles Road to 280 Gulf of Mexico Drive. The work shall progress as to maintain uninterrupted potable water service to Town customers. The work includes, but is not limited to, pipeline installation via horizontal directional drilling and open cut technologies, maintenance of traffic, tapping sleeve and valve installation, live taps, sitework, pressure and leakage tests, cleaning and disinfection, dewatering, compaction, site restoration, roadway restoration, ROW restoration, landscape restoration, sidewalk restoration, erosion and sediment control, and necessary appurtenances.

The pipeline route is in a heavily utility congested FDOT ROW. Field verification of existing utilities, daily record drawings including survey, and compliance with FDOT Utility permit, Health Department Construction of New Water Main permit and federal, state and local codes and regulations are required. The active project area for installation, testing and restoration of the transmission main is anticipated to proceed in 2,000-foot increments. Construction and/or opening of larger areas of the pipeline route will not be allowed. It is the Town's intention to issue the Notice to Proceed as soon as possible in order to facilitate completion of most of the work prior to January 1, 2010 and therefore avoiding the busiest portion of traffic season. Utility and field verifications and shop drawing submittals may begin after the Notice to Proceed is issued. Limited material storage and staging areas will be provided by the Town at the Overlook Park on the South-end of Longboat Key. Security measures will be provided by the Contractor. Any additional staging and related security will be the responsibility of the Contractor. Storage of pipeline and equipment beyond the active project area within the ROW will not be allowed.

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

NOW THEREFORE, the conditions of this obligation are such if the Bid Proposal is accepted, the Principal shall, within ten (10) Days after the date of receipt of written Notice of Award of Contract execute a Contract For Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass in accordance with the Bid Proposal and upon the terms, conditions and price set forth therein, in the form and manner contained in the Contract Documents and execute a sufficient and satisfactory Public Construction Payment and Performance Bond payable to Town, in the amount of 100 percent (100%) of the total Contract Sum, in form and with surety satisfactory to said Town, then this obligation to be void, otherwise to be and remain in full force and virtue in law, and the surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above,

Bidder \_\_\_\_\_

immediately pay to the aforesaid Town, upon demand, the amount of this Bond, in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

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

In testimony thereof, the Principal and Surety have caused these presents to be duly signed and sealed this

\_\_\_\_\_ Day of \_\_\_\_\_, 2009. \_\_\_\_\_

Principal

by \_\_\_\_\_

seal

State of Florida, County of Sarasota

The foregoing instrument was acknowledged before me this \_\_\_\_\_ Day of \_\_\_\_\_, 2009, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed Name

Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Surety

Countersigned \_\_\_\_\_

by \_\_\_\_\_

Local Producing Agent for \_\_\_\_\_

seal

seal

State of Florida, County of Sarasota

The foregoing instrument was acknowledged before me this \_\_\_\_\_ Day of \_\_\_\_\_, 2009, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

Bidder \_\_\_\_\_

\_\_\_\_\_  
Typed Name

Commission Expires: \_\_\_\_\_

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

Bidder \_\_\_\_\_

<p style="text-align: center;"><b>STATEMENT OF COMPLIANCE WITH TRENCH SAFETY ACT</b> Florida Statutes Section 553.60 (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)</p>
---

Trench Safety Act Compliance

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 et seq., which became effective October 1, 1990, shall be in effect during the period of construction of the project. Bidder by signing and submitting the bid is, in writing, assuring that it will perform any trench excavation in accordance with the applicable trench safety standards as well as the method of compliance.

Method of Compliance

Cost

Bidder acknowledges that this cost is included in the applicable items of the bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and Town and Engineer are not, responsible to review or assess safety precautions, programs, or costs, or the means, methods, techniques or technique adequacy, reasonableness of cost, sequences or procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Florida Statute Section 553.60 cited as the "Trench Safety Act." Bidder is, and Town and Engineer are not, responsible to determine if any safety or safety related standards apply to the project, including, but not limited to, the "Trench Safety Act."

BIDDER:

\_\_\_\_\_  
Print or type name of entity

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Print or type title

\_\_\_\_\_  
Date

Bidder \_\_\_\_\_

<p style="text-align: center;"><b>DRUG FREE WORKPLACE CERTIFICATION</b> (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)</p>
--

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

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

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

BIDDER:

\_\_\_\_\_  
Print or type name of entity

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Print or type title

\_\_\_\_\_  
Date

Bidder \_\_\_\_\_

**Drug Free Workplace Certification, page 2 of 2**

State of Florida, County of Sarasota

The foregoing instrument was acknowledged before me this \_\_\_\_\_ Day of \_\_\_\_\_, 2009, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed Name

Commission Expires: \_\_\_\_\_

Bidder \_\_\_\_\_

**EQUAL EMPLOYMENT OPPORTUNITY**  
(MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)

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

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

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

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

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

\_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Typed name of bidder)

Phone # \_\_\_\_\_ Fax # \_\_\_\_\_ e-mail \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_.

1. Bidder has participated in a previous contract or subcontract, subject to the Equal Opportunity Clause: YES\_\_\_ NO\_\_\_
2. Compliance Reports were required to be filed in connection with such contract or subcontract:  
YES\_\_\_ NO\_\_\_  
If YES, state what reports were filed and with what agency.
3. Bidder has filed all compliance reports due under applicable instructions:  
YES\_\_\_ NO\_\_\_

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

Bidder \_\_\_\_\_

<b>SWORN STATEMENT ON PUBLIC ENTITY CRIMES</b> Florida Statutes Section 287.133(3)(a) (MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)
--

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

1. This sworn statement is submitted to the

\_\_\_\_\_ (print name of the public entity)

by \_\_\_\_\_ (print individual's name and title)

for \_\_\_\_\_ (print name of entity submitting sworn statement)

whose business address is \_\_\_\_\_

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

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

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or materiel misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means finding of guilt of a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes means:
  - A. A predecessor or successor of a person convicted of a public entity crime; or
  - B. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who

Bidder \_\_\_\_\_

has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

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

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

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

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

Bidder \_\_\_\_\_

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

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_ Notary Public – State of \_\_\_\_\_

My commission expires \_\_\_\_\_

(Type of identification)

(Printed, typed or stamped commissioned name of notary public)

**INDEMNITY, LIABILITY AND INSURANCE REQUIREMENTS**  
(MUST BE COMPLETED AND SUBMITTED WITH QUALIFICATION PACKAGE)

**INDEMNIFICATION AND HOLD HARMLESS**

The bidder covenants and agrees to indemnify and hold harmless the TOWN and its authorized representatives from any and all claims for bodily injury (including death), personal injury, and property damage (including attorney's fees) which arise out of, in connection with, or by reason of services provided by the firm or any of its Subcontractor in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the firm or its Subcontractor in any tier, their employees, or agents and as more clearly defined in section 6.5 of the General Conditions.

**GENERAL INSURANCE REQUIREMENTS**

The firm is responsible for ensuring that all such insurance obtained will extend protection to any Subcontractor firm who may perform any part of this contract or require any such Subcontractor firm to obtain insurance consistent with this section. Such insurance will be required during the entire term of the contract.

**Qualification packages shall include proof as evidence of the required insurance either Certificate(s) of Insurance or a certified copy of the actual insurance policy(ies).**

TOWN, at its sole discretion, has the right to request a certified copy of any or all insurance policies required by this section. Required insurance with the TOWN as the certificate holder must be provided prior to commencement of work.

Insurance policies must be provided by a company authorized to transact business in the state of Florida and companies must maintain a minimum rating of A-VI, as assigned by the A.M. Best Company.

The Commercial General Liability must include TOWN as an additional insured and primary and non-contributory (Note: the proof of insurance included with the proposal does not have to include TOWN as an additional insured or list primary and non-contributory. *(This will only be required of the awarded bidder).*)

- Commercial General Liability with minimum limits of \$5,000,000 Combined Single Limit to include, as a minimum:
  - Premises Operations
  - Products and Completed Operations
  - Blanket Contractual Liability
  - Personal Injury Liability
  - Expanded Definition of Property Damage

If coverage is provided on a claims made policy, its provisions should include coverage for which claims filed on or after the effect date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by TOWN.

- Vehicle Liability with combined single limits of \$ 5,000,000 Combined Single Limit (CSL) to cover all vehicles to be used in fulfilling contract. Owned, Non-Owned and Hired Vehicles.

Bidder \_\_\_\_\_

- Statutory Workers' Compensation Benefits with Employer's Liability limits of not less than:
  - (Or proof of exemption)
  - \$500,000 Bodily Injury
  - \$500,000 Bodily Injury by Disease, policy limits
  - \$500,000 Bodily Injury by Disease, each employee
- Liability with minimum limits of not less than \$5,000,000.

Forward all certificates of insurance to Town, Benefits and Insurance Administrator with construction service identified on it.

**Information described above has been read and agreed to with applicable supporting material attached.**

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2009

Personally known \_\_\_\_\_

Or Produced Identification \_\_\_\_\_ Notary Public – State of \_\_\_\_\_

My commission expires \_\_\_\_\_

(Type of identification)

(Printed, typed or stamped commissioned name of notary public)

SECTION 00500

DRAFT CONTRACT

**DRAFT CONTRACT FOR POTABLE WATER MAIN UPSIZING – BAY ISLES ROAD TO NEW PASS**

This Contract For Potable Water Main Upsizing – Bay Isles Road to New Pass (hereinafter “Contract”) is entered into by and between the Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228, a Municipality organized under the laws of the State of Florida (hereinafter “Town” or “Owner”), and Contractor Name, whose address is Contractors Address, (hereinafter “Contractor”), as of the date appearing on the signature lines below.

**Article 1 - WORK**

Contractor shall complete all work as specified or indicated in the Technical Specifications, Plans prepared by Engineering Visions, Inc. and TGW Engineering, Inc., dated Date of the Technical Provisions, Plans and Specifications and all Contract Documents as enumerated herein and in accordance with the General Conditions incorporated herein by reference. The work (hereinafter “Work”) is generally described as Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass all as more fully stated in this Contract and the Contract Documents.

**Article 2 - ENGINEER**

The project has been designed by Engineering Visions, Inc. and TGW Engineering, Inc., (hereinafter “Engineer” and sometimes referred to as “Professional” in the General Conditions and other Contract Documents). The Engineer is to act as Owner's representative and assume all duties and responsibilities and have the rights and authority assigned to Engineer or Professional in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

**Article 3 - CONTRACT TIME**

3.1 The Contract Time (as defined in the General Conditions incorporated by reference into this Contract) shall commence to run on the date specified in the Notice to Proceed, which Notice to Proceed shall be issued following execution of this Contract, and shall become part of the Contract Documents.

3.2 The Work shall be substantially completed within Two Hundred and Ten days (210 Days) calendar days from the date the Contract Time commences to run as specified in the Notice To Proceed, and all Work shall be completed, accepted, and ready for final payment within Two Hundred and Fifty-five Days (255 Days) calendar days after the date the Contract Times commence to run as specified in the Notice to Proceed.

3.3 Liquidated Damages. Owner and Contractor recognize and agree that time is of the essence of this Contract and for the Work to be performed pursuant to this Contract and the Contract Documents, and that Owner will suffer financial loss if the Work is not completed within the times specified in this Contract and the Contract Documents, plus any extensions thereof allowed in accordance with Article 13 of the General Conditions. They also recognize and agree that the delays, expense and difficulties involved in proving the actual loss or damages suffered by Owner if the Work is not completed within the time specified by this Contract and the Contract Documents render proof of actual loss uncertain. Accordingly, instead of requiring any such proof, Owner and



## **Article 6 - CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Contract, Contractor makes the following representations, upon which the Owner has actually and justifiably relied:

6.1 That Contractor has examined and carefully studied all Contract Documents, and that Contractor has the experience, expertise and resources to perform all required Work as specified within the times stated in this Contract and the Contract Documents.

6.2 That Contractor has visited the site and at least a fair representative sample of the Project Area and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work to be performed pursuant to this Contract and the Contract Documents.

6.3 That Contractor is familiar with and can and shall comply with all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishing of the Work to be performed pursuant to this Contract and the Contract Documents.

6.4 That Contractor has carefully studied all 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. Contractor acknowledges that the Town and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to physical conditions, including, but not limited to Underground Facilities at or contiguous to the site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Sum, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5 That Contractor is aware of the general nature of work to be performed by Owner and others at the site, if any, that relates to the Work to be performed pursuant to this Contract and the Contract Documents.

6.6 That Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, specifications, and Drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7 That Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work to be performed pursuant to this Contract and the Contract Documents.

6.8 That Contractor has had duly issued and executed all required Payment and Performance Bonds and Certificates of Insurance required by this Contract and the Contract Documents.

**Article 7 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the scope and nature of the Work, and its performance, consist of the following which are incorporated by reference:

7.1 This Contract;

7.2 The General Conditions attached hereto;

7.3 The Plans, Technical Specifications, prepared by the Engineer relative to this Project, all as more specifically described in this Contract, the Invitation for Qualification and Bid, Instructions to Bidders and the General Conditions;

7.4 Certificates of Insurance, with endorsements, Performance and Payment Bond, Bid Bond, Notice of Award, Notice to Proceed, Change Orders and Construction Change Directives;

7.5 The following, which may be delivered or issued after the Effective Date of the Contract, and are not attached hereto: all written Amendments, Addenda and other documents amending, modifying, or supplementing the Contract Documents;

7.6 The Invitation for Qualification and Bid, Instructions to Bidders, and all completed Bid Submittal Forms.

**Article 8 - MISCELLANEOUS**

8.1 Terms used in this Contract, which are defined in the Bid Documents, General Conditions or other Contract Documents, shall have the meanings indicated in the Bid Documents, General Conditions or other Contract Documents as the case may be.

8.2 No assignment by either party to this Contract of any rights under or interests in this Contract and the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract and the Contract Documents.

8.3 Contractor binds itself, its partners, successors, assigns, and legal representatives to the Town and any of the Town's successors, assigns, and legal representatives of the Town in respect of all covenants, contracts, and obligations contained in this Contract and the Contract Documents. No employees, agents or representatives of the Town are personally or individually bound by this Contract.

8.4 Any provision or part of this Contract or the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that this Contract and the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Bidder \_\_\_\_\_

8.5 Notice Provision: Any notice or other communications concerning material changes to the Contract, shall be sent via facsimile or certified U.S. Mail, return receipt requested, postage prepaid to the addresses listed below.

To Owner:

Bruce St Denis, Town Manager  
Town of Longboat Key  
Town Hall  
501 Bay Isles Road  
Longboat Key, FL 34228  
Facsimile: (941) 316-1656

Juan J. Florensa, Public Works Director  
Town of Longboat Key  
Public Works Building  
600 General Harris  
Longboat Key, FL 34228  
Facsimile: (941) 316-1984

With Copy to:  
Laura Andrews, P.E., BCEE  
Engineering Visions, Inc.  
4400 El Conquistador Parkway, Suite 26  
Bradenton, FL 34210

Thomas Walker, P.E., BCEE  
TGW Engineering, Inc.  
909 Tamiami Trail South, Suite 210  
Nokomis, FL 34275

David Persson, Esq.  
Hankin, Persson, Davis,  
McClenathen & Darnell  
1820 Ringling Blvd.  
Sarasota, Florida 34236  
Facsimile: (941) 365-3259

To Contractor:

**Contractors Name, Contract, Address, Fax#**

Bidder \_\_\_\_\_

To Contractor:

IN WITNESS WHEREOF, the parties hereto have made and executed this CONTRACT as of the day and year last written below. OWNER AND CONTRACTOR have signed this Contract in two originals in counterpart. One counterpart each has been delivered to the OWNER and the CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

**ATTEST:**

As to **(Contractors Name)**

**Contractor Name**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Title of Authorized Representative)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Title)

\_\_\_\_\_  
(Print or Type Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Seal:

**ATTEST:**

As to Town of Longboat Key, Florida

**OWNER**

**Town of Longboat Key, Florida**

By: \_\_\_\_\_  
**Trish Granger, Town Clerk**

By: \_\_\_\_\_  
**Bruce St. Denis, Town Manager**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Seal:

Review of Contract As To Form:

By: \_\_\_\_\_  
David Persson, Town Attorney

SECTION 00700

GENERAL CONDITIONS

**ARTICLE 1 - CONTRACT DOCUMENTS**

- 1.0 The Contract Documents comprise the entire contract between the Town and the Contractor and shall consist of the documents listed in Article 7 of the Contract for Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass (hereinafter “Contract”):

**ARTICLE 2 - DEFINITIONS**

- 2.0 Whenever used in any of the Contract Documents, the following meaning shall be given to the terms herein defined:
- .1 The term **Addendum or Addenda** means any changes, revisions or clarifications of the Contract Documents, which have been duly issued by the Town to prospective Bidders prior to the time of receiving Bids.
  - .2 The term **Amendment** means written modification to the Contract Documents, signed by Town and Contractor, on or after the Effective Date of the Contract and normally dealing with non-engineering or non-technical aspects of the Work.
  - .3 The term **Application for Payment** means the pay request accepted by Professional or Town which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  - .4 The term **Bid Documents** means the Public Notice, Invitation for Qualification and Bid, all Forms contained in the Bid Documents, Definitions, Instructions to Bidders, Technical Specifications, General Conditions, submitted bid forms, proposed Contract Documents, addenda issued prior to public bid opening, , Drawings and other material provided as Bid Documents to define the Work.
  - .5 The term **Bid Proposal** means the offer or proposal of the Bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.
  - .6 The term **Bonds** means the Bid and Public Construction Payment and Performance Bond and other instruments of security furnished by the Contractor and its Surety in accordance with the Contract Documents.
  - .7 The term **Change Order** means a written recommendation by Engineer, signed by Contractor and Town, which authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Sum or the Contract Time, issued on or after the Effective Date of the Contract.
  - .8 The term **Construction Change Directive** means a written Directive for changes in the Work, which, if not expeditiously implemented, might delay the project. In contrast to a Change Order, a Construction Change Directive is to be used where owner and Contractor have not reached agreement on proposed changes in Contract Sum or Contract Time. Upon receipt of such directive, Contractor must promptly proceed with the change in the Work described. A Construction Change Directive will not change the Contract Sum or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, of the Contract Sum or Contract Time.

Bidder \_\_\_\_\_

- .9 The term **Contractor** means the person, firm or corporation entering into the Contract with the Town to perform the Work as defined in the Contract and Contract Documents.
- .10 The term **Contract Documents** means the Contract, General Conditions, Plans and Specifications prepared by the Engineer relative to this project, Certificates of Insurance with endorsements, Performance and Payment Bond, Bid Bond, Notice of Award, Notice to Proceed, Change Orders, Construction Change Directives, Amendments, Addenda, Supplementary Conditions, and the Bid Documents.
- .11 The term **Contract Sum** means the moneys payable by Town to Contractor for completion of the Work in accordance with the Contract Documents.
- .12 The term **Contract Time**, unless otherwise provided, means the period of time as stated in the Notice To Proceed, including adjustments by Change Order, allotted in the Contract Documents for Substantial Completion of the Work.
- .13 The term **Defective** means an adjective which when modifying the word "Work" refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents.
- .14 The term **Day** is a calendar day. If a calendar Day shall fall on a legal holiday that Day will be omitted from the computation of Days for total Contract Time. Legal Holidays: New Year's Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.
- .15 The term **Drawings** means the Drawings as specifically referred to as such (or as "plans") in these documents or addenda that are produced by the Engineer. Drawings or plans issued after the execution of the contract to explain further or to illustrate, or to show changes in Work, will be known as "supplementary Drawings" and shall be binding upon the Contractor with the same force as the Drawings.
- .16 The term **Effective Date of the Contract** means the last date on which the Contract has been signed by either party to the Contract.
- .17 The term **Engineer** means Engineering Visions, Inc. and TGW Engineering, Inc., or its authorized representatives acting within the scope of duties established by contract with the Town. The term shall also encompass the term "Professional".
- .18 The term **Field Order** means a written direction to the Contractor from the Professional that modifies Technical Specifications, Drawings or any other Contract Document without changing Contract Sum or Contract Time.
- .19 The term **Final Completion** means the stage at which all incomplete and Defective Work has been completed or corrected in accordance with Contract Documents.
- .20 The Term **Milestone** means a principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of the Work.
- .21 The term **Notice of Award** means the written notice issued by the Town to the successful bidder.
- .22 The Term **Notice of Bid Action** means written notice by Town to all bidders stating the apparent successful bidder. A Contract in the form of the Contract For Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass included in the Bid Documents will be executed by the Town upon compliance by the apparent successful bidder with conditions set forth in the Bid Documents.
- .23 The term **Notice to Proceed** means a written notice issued by the Town to the Contractor fixing the date on which the Contract Time will commence and upon which the Contractor shall start to perform the obligations under the Contract Documents, unless otherwise specified in the Notice

Bidder \_\_\_\_\_

- to Proceed. The actual Start Date shall be within ten (10) Days of Notice to Proceed date or when all applicable Permits have been secured, unless otherwise stated.
- .24 The term **Permits** means any regulatory agency, Federal, State, County or local that requires Permits for Work being performed.
- .25 The term **Professional** means the Architectural/Engineering firm or individual retained by the Town or in-house licensed person designated to perform the design and/or resident Engineer services for the Work. The term shall also encompass the term “Engineer”.
- .26 The term **Proposal Request** – is a written request used to obtain price quotations required in the negotiation of Change Orders.
- .27 The term **Project Area** (also sometimes referred to as “Site” in the Contract Documents) means the area within which are the specified contract limits of the improvements contemplated to be constructed in whole or in part under the Contract Documents.
- .28 The term **Project Manager** means Town representative in charge, employed by said Town, for the purpose of directing or having in charge the Work provided for in the Contract and the Contract Documents.
- .29 The term **Purchasing Manager** means the Manager of the Town Purchasing Department or its authorized representatives.
- .30 The term **Site** means the area of Work for this project located at Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass.
- .31 The term **Supplementary Conditions** means any additional or supplementary conditions, if any, prepared and attached to and incorporated in the General Contract at the time of the execution of the General Contract.
- .32 The term **Substantial Completion** means the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete and in accordance with the contract, so that the Work (or a specified part) can be utilized for the purposes for which it is intended; or, if no such certificate is issued, when the Work is complete and ready for final payment.
- .33 The term **Start Date** means the date of commencement of the Work.
- .34 The term **Subcontractor** means an individual, firm, or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- .35 The term **Specifications** – means descriptions of materials, equipment, construction systems, standards and Workmanship as applied to the Work and applicable administrative details as listed in or contained or specified in the Technical Specifications or other Contract Documents.
- .36 The term **Technical Reports** means the reports issued by the Town Contractor or Project Manager consisting of written technical material.
- .37 The term **Town** means the Town of Longboat Key, a Municipality organized under the laws of the State of Florida (also, sometimes referred to as “Owner”).
- .38 The Term **Underground Facilities** means all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: Electricity, Gas, Steam, Liquid Petroleum Products, Telephone or other Communications, Cable Television, Sewage and Drainage Removal, Traffic or other Control Systems, or Water.

Bidder \_\_\_\_\_

- .39 The term **Unit Price Work** means Work to be paid for on the basis of unit prices.
- .40 The term **Work** means the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment in the construction and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

## **ARTICLE 3 - PRELIMINARY MATTERS**

### **3.1 Delivery of Bonds and Insurance Certificates**

3.1.1 When the Contractor delivers the executed Contract to the Town, the Contractor shall also deliver to the Town the original and fully completed Payment and Performance Bonds and Insurance Certificates specified by the Contract Documents, including, but not limited to those matters and documents specified in Article 3.5.3 of these General Conditions. Failure to timely deliver said Bonds and evidence of insurance will be deemed the breach of a material condition precedent to the entry into a General Contract and shall prevent the formation of any contract between the Town and the successful bidder.

### **3.2 Copies of Documents**

3.2.1 After the award of the Contract, the Town shall furnish the Contractor, at no cost, a maximum of five (5) sets of plans and Contract Documents for execution of the Work.

### **3.3 Commencements of Contract Times; Notice to Proceed**

3.3.1 The Contract Time shall commence as established in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Contract.

### **3.4 Starting the Work**

3.4.1 The Contractor shall begin the Work on the date the Contract Time commences. No Work shall be done prior to the date on which the Contract Time commences. Any Work performed by the Contractor prior to date on which Contract Time commences shall be at the sole risk of the Contractor.

### **3.5 Before Starting Construction**

3.5.1 Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to the Professional any conflict, error, defect, ambiguity or discrepancy which the Contractor may discover in the Contract Documents and shall obtain a written interpretation or clarification from the Professional before proceeding with any Work affected thereby. The Contractor shall be liable to the Town for failure to report any conflict, error, defect, ambiguity or discrepancy in the Contract Documents, if the Contractor knew or reasonably should have known thereof.

3.5.2 Within fifteen (15) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit to the Professional and the Project Manager for review and ultimate approval the following:

3.5.2.2. Contractor's proposed Work schedule showing start and completion dates of Work to be performed. Work schedule will include a planned sequence of project work and installation methods.

3.5.2.3. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Sum and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction or a schedule with sufficient breakdown of lump sum prices to identify items of Work and show retainage. Such amounts will include an appropriate amount of overhead and profit applicable to each item of Work.

3.5.2.4. A copy of the schedule of values shall be sent to the Project Manager and the Professional.

3.5.3 Prior to the Effective Date of the Contract, the Contractor shall deliver to the Town, an executed Insurance certificate, ACORD form # 25-S (7/97), in the amounts not less than identified in Article 6. The Acord certificate shall include separate endorsements for each insurance policy identified in the Acord certificate showing the Town as an additional insured, original policy or certified copies of each insurance policy (and other evidence of insurance which the Town may reasonably request) which the Contractor is required to purchase and maintain in accordance with Article 6.

3.5.4 Before any Work at the site is started and within 10 Days of the Notice To Proceed, a pre-construction conference scheduled by the Contractor, Project Manager, Professional 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 3.5.2, procedures for handling Shop Drawings and other submittal, processing applications for payment and maintaining required records.

3.5.5 Unless otherwise provided in the Contract Documents, at least ten (10) calendar Days before submission of the first Application for Payment a conference attended by the Contractor, Project Manager, Professional and others as appropriate will be held to review for acceptability to the Professional the schedules submitted in accordance with 3.5.2. Contractor shall have an additional ten (10) calendar Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Contractor until the schedules are submitted to and acceptable to the Professional. The progress schedule will be acceptable to the Professional as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on the Professional responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve the Contractor from Contractor's full responsibility therefore. The Contractor's schedule of Shop Drawing and Sample submissions will be acceptable to the Professional as providing a workable arrangement for reviewing and processing the required submittal. The Contractor's schedule of values shall be approved by the Professional as to form and substance.

3.5.5.1 The Contractor, in addition to preparing an initially acceptable schedule, shall be responsible for maintaining the schedule, including updating the schedule. Schedule updates shall include progression of Work as compared to scheduled progress on Work. Schedule updates shall accompany each pay request.

## **ARTICLE 4 - CONTRACT DOCUMENTS, INTENT, DISCREPANCIES, AMENDING, AND REUSE**

### **4.1 Precedence**

4.1.1 The Contract Documents comprise the entire Contract between the Town and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Laws of the State of Florida.

4.1.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished by and performed by the Contractor with no change to the Contract Sum whether or not specifically called for. When words or phrases, which have a well-known technical or construction industry or trade meaning, are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by the Professional.

4.1.3 Except as otherwise specifically stated in the Contract Documents, or as may be provided by Amendment or supplement thereto issued by one of the methods indicated in 4.3.1 or 4.3.2, 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 the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the

Contract Documents) and the provisions of any such Laws or Regulations application 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).

4.1.4 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

#### **4.2 Conflicts**

4.2.1 If during the performance of the Work, the Contractor discovers any conflict, error, defect, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any supplier, the Contractor shall report it to the Professional in writing at once, and, the Contractor shall not proceed with the Work affected thereby (except in an emergency) until an Amendment or supplement to the Contract Documents has been issued by one of the methods indicated in 4.3.1 or 4.3.2. The obligation of the Contractor as stated herein is in addition to the obligation of the Contractor pursuant to 3.5.1

4.2.2 No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the Town, Contractor or Professional, or any of their Subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Town, Professional or any of the Professional's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of 10.7.1 or any other provision of the Contract Documents.

#### **4.3 Amending**

4.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions to the Work or to modify the terms and conditions thereof by a Change Order.

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

4.3.2.1 A Field Order or Memo

4.3.2.2 Professional's written interpretation or clarification

#### **4.4 Reuse of Documents**

4.4.1 The Contractor, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Town shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other Contract Documents (or copies of any thereof) prepared by or bearing the seal of the Professional or Professional's consultant, and shall not reuse any of such Drawings, Specifications, other Contract Documents or copies on extensions of the Project or any other project without written consent of the Town and specific written verification or adoption by the Professional.

### **ARTICLE 5 - PROJECT CONDITIONS**

#### **5.1 Availability of Lands**

5.1.1 The Town shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Contractor. Upon reasonable written request, the Town shall furnish the Contractor with a correct statement of record legal title and legal description of the lands upon which the

Work is to be performed. The Town shall identify any encumbrances or restrictions not of general application, but specifically related to use of lands so furnished with which the Contractor will have to comply in performing the Work. Necessary easements or rights-of-way will be obtained and expenses will be borne by the Town. If the Contractor and the Town are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Sum or the Contract Times as a result of any delay in the Town's furnishing these lands, rights-of-way or easements, the Contractor may make a claim therefore as provided in Articles 12 and 13. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## **5.2 Subsurface Physical Conditions**

5.2.1 Reference is made to the Technical Specifications and other pertinent provisions of the Contract Documents for identification of those reports of exploration and tests of subsurface conditions at or contiguous to the Project Area that have been utilized in preparing the Contract Documents, and those Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized in preparing the Contract Documents.

## **5.3 Limited Reliance by Contractor Authorized Technical Data**

5.3.1 The Contractor may rely upon the general accuracy of the technical data contained in the Contract Documents only to the extent specified in the Technical Specifications. Except for such reasonable general reliance on such technical data, the Contractor may not rely upon or make any claim against the Town, Professional, or any of Professional's Consultants with respect to:

5.3.1.1 the completeness of any reports, drawings or other portions of the Contract Documents for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the Contractor and safety precautions and programs incident thereto, or

5.3.1.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

5.3.1.3 Any Contractor interpretation or conclusion drawn from any technical data, opinions or information.

## **5.4 Unknown or Concealed Conditions**

5.4.1 If conditions are encountered, excluding Underground Facilities, at the Project Area which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall give the Town notice, through the Professional, thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

5.4.2 The Project Manager and Professional shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Project Manager and Professional shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Project Manager and Professional determine that the conditions at the Site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents and that no change in the terms of the Contract Sum and/or Contract Time is justified, the Professional shall notify the Contractor of the determination in writing. The Work shall be performed after direction is provided by the Professional.

## **5.5 Physical Conditions - Underground Facilities**

5.5.1 The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Project Area is based on information and data furnished to the Town or the Professional by the owners of such Underground Facilities or by others.

5.5.1.1 The Town and Professional shall not be responsible for the accuracy or completeness of any such information or data; and

5.5.1.2 The cost of all of the following will be included in the Contract Sum and the Contractor shall have full responsibility for (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities, and repairing any damage thereto resulting from the Work.

5.5.2 If an Underground Facility is uncovered or revealed at or contiguous to the Project Area which was not shown or indicated in the Contract Documents, the 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), identify the owner of such Underground Facility and given written notice to that owner and to the Town through the Professional. The Project Manager and Professional 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 of the Underground Facility. If the Project Manager concludes that a change in the Contract Documents is required, a Change Order will be issued as provided in Article 11 to reflect and document such consequences. During such time, the Contractor shall be responsible for the safety and protection of such Underground Facility. The Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence and nature of such Underground Facility. If the Town and the Contractor are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Sum or Contract Time, the Contractor may make a claim, therefore as provided in Articles 12 and 13. The Town and the Professional shall not be liable to the Contractor for any claims, costs, losses or damages incurred or sustained, direct or indirect, consequential, incidental or otherwise, by the Contractor on or in connection with any other project or anticipated project.

## **5.6 Reference Points**

5.6.1 The Town through its Professional, shall provide the Contractor reference points for construction, which in the Town's judgment are necessary to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Town. The Contractor shall report to the Professional whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

## **5.7 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material**

5.7.1 The Town shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the Project Area which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the Project Area. The Town shall not be responsible for any such materials brought to the site by the Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible.

5.7.2 The Contractor shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by 7.12), and (ii) notify the Town and the Professional (and thereafter confirm such notice in writing). The Town shall promptly consult

with the Professional concerning the necessity for the Town to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. The Contractor shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after the Town has obtained any required Permits related thereto and delivered to the Contractor special 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 the Town and the Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Sum or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by the Contractor to be resumed, either party may make a claim therefore as provided in Articles 12 and 13.

5.7.3 If after receipt of such special written notice, the 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 the Contractor may order such portion of the Work that is in connection with such hazardous conditions or in such affected area to be deleted from the Work. If the Town and the Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Sum or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefore as provided in Articles 12 and 13. The Town may have such deleted portion of the Work performed by the Town's own forces or others in accordance with Article 8.

## **ARTICLE 6 - BONDS, INSURANCE, INDEMNIFICATION**

### **6.1 Public Construction Bond and Other Bonds:**

6.1.1 The Contractor shall furnish a Public Construction Bond, in an amount equal to the Contract Sum as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. This Bond 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. The Contractor shall also furnish such other Bonds as may be required by any Supplementary Conditions. 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 Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, and A.M. Best rated A-8 or better.

6.1.2 The Contractor shall be required to furnish additional coverage for added Work.

6.1.3 If the surety on any bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state, or it ceases to meet the requirements of 6.1.1, the Contractor shall within ten Days thereafter substitute another bond and surety, both of which must be acceptable to the Town.

### **6.2 Licensed Sureties and Insurers; Certificates of Insurance**

6.2.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Florida to issue Bonds or insurance policies for the limits and coverages so required. All Bonds signed by an agent must be accompanied by a certified copy of authority to act. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.2.2 The Contractor shall deliver to the Town, with copies to each additional insured identified in 6.3.1, an original or a certified copy of the complete insurance policy for each policy required, certificates of insurance (and other evidence of insurance requested by the Town or any other additional insured) which the Contractor is required to purchase and maintain in accordance with 6.3.1.

**6.3 Contractor’s Liability Insurance**

6.3.1 The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from Contractor’s performance and furnishing of the Work and the Contractor’s other obligations under the Contract Documents, whether it is to be performed or furnished by the Contractor, any Subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for those acts any of them may be liable. The Contractor shall purchase and maintain in force during the contract period with an insurer licensed to do business in the State of Florida; rated AAA or better by A.M. Best Rating Company for Class VII financial size category, and acceptable to the Town the following insurances. The limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by applicable Laws and Regulations.

a. Workers Applicable Compensation Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida	Yes
Employer’s Liability	\$500,000
All States Endorsement	Statutory
USL & H Endorsement	Statutory
Voluntary Compensation	Statutory

b. Commercial General Liability Insurance, including Town and Contractor Protective, Contractual, Products and Completed Operations Liability coverage on an occurrence policy form in limits not less than those listed and deductible amounts not to exceed \$25,000.

Aggregate Combined:	\$5,000,000.00
Each Occurrence:	\$5,000,000.00
M&C/CGL	\$1,000,000.00
Broad Form CGL	\$1,000,000.00
Contractual Liability	\$1,000,000.00
Products	\$1,000,000.00
Completed Operation	\$5,000,000.00
Personal Injury	\$1,000,000.00
Independent Contractors	\$1,000,000.00
XCU Property Damage Excel	\$1,000,000.00
Umbrella Liability	\$5,000,000.00

Regarding Completion Operations Liability: Continue coverage in force for three (3) years after Town’s acceptance of the project.

c. Automobile Liability Insurance. Coverage shall be maintained by the Contractor as to the ownership, maintenance, and use of all of its owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily injury & Property Damage Liability	\$5,000,000.00
Combined Single Limit Each Accident	\$5,000,000.00

These policies will provide that:

- 1) The insurer(s) waive their rights of subrogation against the Town, their officials, employees, agents and consultants.
- 2) The Town shall be named as an additional insured on all Policies required by the Contract Documents. The Certificate of Insurance must state the Bid No. and the Bid Title. A Thirty (30) Day prior written notice of cancellation or material alteration is required. Renewal notices to be sent to the Purchasing Department.

3) The Contractor shall not be given Notice to Proceed under the Contract until he has obtained all the insurance required by the Contract Documents and submitted all certificates of insurance and proofs of insurance as required by the Contract Documents and all such materials had been delivered to and have been approved by the Town. The insurance certificates shall be given to:

Town Purchasing Department  
Attention: Gerald Wilson  
501 Bay Isles Road  
Longboat Key, Florida 34228

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

6.3.2 Notwithstanding any other provision of these Contract Documents to the contrary, the Contractor shall not provide Builder's Risk or Architects and Engineers Professional Liability Insurance unless specially requested by the Town. The Town has Builder's Risk coverage and will provide the Contractor with appropriate Certificate of Insurance upon request. The Town's Builder's Risk policy does not insure the Contractor's tools, machinery or equipment that is stored at the job site. If the Contractor is required to store tools, machinery or equipment at the job site, the Contractor should provide insurance in the form of an equipment floater for Contractor's tools and equipment. The Town should be named as an additional insured on the Contractor's policy, with an appropriate waiver of subrogation as to any claims the Contractor or the Contractor's insurer may have against the Town arising from the storage of Contractor's tools and equipment.

6.3.3 The Contractor shall not allow a Subcontractor to work on the Project or be present on the Project Area without either Subcontractor carrying his own Workers Compensation and Liability insurance or the Contractor covering the Subcontractor under his policies. The policy is the same for each succeeding sub-tier Contractor. The Town may request proof of such coverage for any Subcontractor at any time during the performance of the Work.

6.3.4 Any additional insurance, if required, will be as specified in any Supplementary Conditions.

#### **6.4 Receipt and Application of Insurance Proceeds**

6.4.1 Any insured loss under the policies of insurance required by the Contract Documents will be adjusted with the Town and made payable to the Town as fiduciary for the insured as their interest may appear. The Town shall account for all money 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 money so received applied on account thereof, and the Work and cost thereof covered by an appropriate Change Order or written Amendment as determined by the Town.

#### **6.5 Indemnification**

6.5.1 The Contractor does hereby indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorneys fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons or entities employed or utilized by the Contractor in the performance of the Work. The monetary limitation to the extent of this indemnification is \$4,000,000. The parties acknowledge and agree that at the time this Contract was prepared for inclusion in the Bid Documents for the Work, being prior to the time that bids were solicited and received, there was no way for the Town to know the precise amount of the Contract Sum, and the parties hereto expressly acknowledge and agree that the monetary limitation on the extent of the indemnification provided herein bears a reasonable commercial relationship to this Contract and the Work to be performed pursuant to the Contract and the Contract Documents.

6.5.2 In any and all claims against the Town or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or

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for the Contractor or any Subcontractor under Workmen's compensation acts, disability benefit acts, or other employee benefit acts.

6.5.3 The Contractor shall and does hereby indemnify and hold harmless the Town and anyone directly or indirectly employed by it from and against all claims, suits, demands, damages, losses, and expenses (including attorney's fees) arising out of any infringement of patent or copyrights held by others and shall defend all such claims in connection with any alleged infringement of such rights.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.1 Supervision and Superintendence**

7.1.1 The Contractor shall supervise 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be responsible for the negligence of others 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. The Contractor shall be responsible to see that the completed Work complies with the Contract Documents.

7.1.2 The Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Town, through the Professional, except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications to the superintendent shall be as binding as if given to the Contractor. The Town reserves the right to require the Contractor to remove and replace the superintendent of this Project within 15 Days of notice.

### **7.2 Labor, Materials, and Equipment**

7.2.1 The Contractor shall provide and pay for competent, suitable, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order on the site.

7.2.2 The Contractor shall furnish and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, and sanitary facilities, and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents. Town will supply potable water to the Contractor for the execution, testing, initial operation, and completion of the Work.

7.2.3 All materials and equipment shall be new and of good quality, except as otherwise provided in the Contract Documents. If required by the Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

### **7.3 Substitute Materials or Equipment**

7.3.1 If the Contractor wishes to furnish or use a proposed substitute after the award of the Contract, it shall within thirty (30) Days after Notice to Proceed make written application to the Professional and Project Manager for consideration of such substitute, certifying in writing that the proposed substitute will perform adequately the duties imposed by the general design, be similar and of equal substance or quality to that specified, and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the prior written approval of the Professional. The application shall also contain an itemized estimate of all costs that may result directly or indirectly from acceptance of such substitute, including costs of redesign, delays, maintenance, and claims of other Contractors affected by the resulting change, all of which shall be considered by the

Project Manager and Professional in evaluating the proposed substitute. Approval of any change in costs or schedule as a result of acceptance of the substitute by the Professional shall be by Change Order.

7.3.2 This paragraph applies to any cost reduction proposal (hereinafter referred to as a Value Engineering Change Proposal or VECPs) initiated and developed by the awarded Contractor during the construction process for the purpose of refining the Contract Documents so as to contribute to design cost effectiveness or significantly improve the quality of the end result. VECPs must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. The awarded Contractor must state that he is submitting a VECP proposal. The VECP shall be submitted to the Town through the Professional. The Town reserves the right to reject at its discretion any VECP submittal. As a minimum, the following information shall be submitted by the awarded Contractor with each VECP:

- 1) A description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages;
- 2) Separate detailed cost estimates for both the existing Contract requirement and the proposed change.

#### **7.4 Subcontractors**

7.4.1 The Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent as if they were employed by the Contractor. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town or any obligation on the part of the Town to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. The Town may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor for specific Work done.

7.4.2 The Contractor shall identify and provide information on Subcontractors, Suppliers and other persons or organizations, which shall be used by the Contractor in accordance with requirements of the Contract Documents.

7.4.3 The divisions and sections of the Technical Specifications, and the identifications of any Drawings shall not control the Contractor in dividing Work among Subcontractor or delineating the Work to be performed by any specific trade.

7.4.4 The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents, including but not limited to the General Conditions (specifically, but without limitation all indemnity provisions in favor of the Town) and any Supplemental Conditions, for the benefit of the Town.

7.4.5 All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written subcontract between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the Town as trustee. The Contractor shall pay each Subcontractor an appropriate amount, determined by value of the Work, of any insurance monies received by the Contractor under this insurance.

#### **7.5 Patent Fees and Royalties**

7.5.1 The Contractor shall pay all license fees and royalties and assume all costs incident to the use of any invention, design, process, or device which is the subject of patent rights or copyrights held by others. The Contractor shall and does hereby indemnify and hold harmless the Town and its employees and agents from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

## **7.6 Permits**

7.6.1 All Permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Contractor, except to the extent that any permits are issued and acquired by the Town as stated below prior to the entry into a Contract for the Work to be performed pursuant to the Contract Documents.

If Contractor performs any Work without obtaining, or contrary to, such Permits or licenses, Contractor shall bear all costs arising there from. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

7.6.2 Permits required for the Work - paid for and obtained by the Town are referenced in the Technical Specifications.

7.6.3 Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

7.6.4 The permits obtained by the Town apply only to the Work to be performed pursuant to the Contract and the Contract Documents.

## **7.7 Laws and Regulations**

7.7.1 The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the Contractor observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, it will notify the Professional promptly in writing. Any necessary changes shall then be adjusted by an appropriate Change Order. If the Contractor performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Professional, it shall bear all related costs.

## **7.8 Taxes**

7.8.1 The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the Laws and Regulations of the place of the Project, which are applicable during the performance of the Work.

## **7.9 Use of Premises**

7.9.1 The Contractor shall confine its equipment, the storage of materials and equipment, and the operations of its Workers to the areas permitted by law, ordinances, Permits, or the requirements of the Contract Documents. The Contractor shall not unreasonably encumber the site with materials and equipment. Any loss or damage to the Contractor's or any Subcontractor's equipment is solely at the risk of the Contractor.

7.9.2 During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris or contaminates resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall leave the site clean and ready for occupancy by the Town at Substantial Completion of the Work. The Contractor shall restore to original condition all property so designated for alteration by the Contract Documents.

7.9.3 The Contractor shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure. The Contractor shall not subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

## **7.10 Record Documents**

7.10.1 The Contractor shall keep at the Project Area and in good order one record copy of the Contract Documents and all Drawings and Specifications. These documents shall be annotated on a continuing and daily basis to show all changes made during the construction process. These shall be available to the Professional and the Project Manager during the Project Work and shall be submitted with the Application for Final Payment.

## **7.11 Safety and Protection**

7.11.1 The Contractor shall take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury, or loss to:

7.11.1.2 All employees on the Work and other persons who may be affected by it.

7.11.1.3 All the Work and all materials or equipment to be incorporated, whether in storage on or off the site. The Contractor shall assume all risk of loss for stored equipment or materials, irrespective of whether the Contractor has transferred the title of the stored equipment or materials to the Town.

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

7.11.2 The Contractor is responsible for observing all Occupational Safety and Health Administration (OSHA) regulations and shall self inspect to ensure this is accomplished. Including, but not limited to, those specified in the Technical Specifications. The Contractor shall ensure that all personnel are properly trained and shall be able to provide documentation for their personnel that have attended training courses. Examples of such training courses are, without limitation: Hazard Communications, Traffic Work Zone Safety, Personal Protective Equipment, First Aid/CPR, Permit Required Confined Space, Lock out/Tag out of hazardous energy.

7.11.3 A Town representative may periodically monitor Work site safety. Should there be safety and/or health violations, classified as Serious, Willful, or Criminal/Willful Violations, the Town's representative has the authority, but not the duty, to report to OSHA and require the Contractor to correct the violation in an expeditious manner. Neither the Town nor its representative shall have or assume any responsibility or duty whatsoever with respect to OSHA compliance for any work being performed, and the Contractor shall have the sole and exclusive duty and responsibility for compliance with all OSHA and other safety requirements with respect to the Work and the performance of the Work.

7.11.4 Should the Work site be in a hazardous area, the Town may furnish the Contractor with information concerning hazards such as types or identification of known toxic material, machine hazards, Material Safety Data Sheets, or any other information that would assist the Contractor in the planning of a safe Work site.

7.11.5 The Contractor shall be aware that while performing any Work pursuant to the Contract Documents, representatives from agencies such as the United States Department of Labor, OSHA, and the Division of Safety, State of Florida, are invitees and need not have warrants or permission to enter the Work site. These agencies, along with any authorized representative of the Town shall enter the Work site at the pleasure of the Town.

7.11.6 The Contractor shall designate a competent person of its organization whose duty shall be the prevention of accidents at the site. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Professional. All communications to the superintendent shall be as binding as if given to the Contractor. This provision shall not be deemed to in any way limit or define the obligations of Contractor as established by OSHA and/or other applicable rules and regulations.

7.11.7 Should there be catastrophic injuries, as defined by OSHA, or a fatality on the Worksite, the Project Manager shall be notified immediately.

7.11.8 Should the Town or Professional, require the OSHA 200 Log, or written safety and health plan & training documents, those documents shall be at his office within 24 hours of the request. Failure to provide the documentation within that time frame may cause the Project to be shut down, at no expense to the Town, until such documents are received.

## **7.12 Emergencies**

7.12.1 In emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the Professional if time or circumstances do not permit, is obligated to prevent or mitigate threatened damage, injury, or loss. The Contractor shall give the Professional written notice that the emergency provision has been invoked and shall state the reasons therefore within twenty-four (24) hours of the incident. If the Contractor believes the emergency results in additional Work, a claim for a Change Order may be submitted in accordance with the procedures set forth herein.

7.12.1.1 The Contractor shall immediately notify the Professional of all events involving personal injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other event resulting in property damage of any amount within five (5) Days of the occurrence.

7.12.1.2 If the Professional determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Change Order will be issued to document the consequences of such action.

## **7.13 Submittal and Samples**

7.13.1 After checking and verifying all field measurements, the Contractor shall promptly submit to the Professional for approval, in accordance with the accepted schedule of submittal, all submittal and samples required by the Contract Documents. All submittal and samples shall have been checked by and stamped with the approval of the Contractor and identified as the Professional may require. The data shown on or with the submittal will be complete with respect to dimensions, design criteria, materials and any other information necessary to enable the Professional to review the submittal as required. At the time of each submission, the Contractor shall give notice to the Professional of all deviations that the submittal or sample may have from the requirements of the Contract Documents.

7.13.1.1 The Professional shall review and approve submittal and samples. The Professional's review and approval shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor will make any corrections required by the Professional and resubmit the required number of corrected copies until approved. The Contractor's stamp of approval on any submittal or sample shall constitute its representation to the Professional and the Town that the Contractor has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that each submittal or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents.

7.13.1.2 No Work requiring a submittal or sample submission shall commence until the submission has been approved by the Professional. A copy of each approved submittal and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Professional and the Town staff. Any delays associated with the submittal process will be considered for time extensions only, and no damages or additional compensation for delay will be allowed.

7.13.1.3 The Professional's approval of submittal or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Professional's attention to each such variation at the time of submission and the Project Manager has given written approval to the specific deviation; any such approval by the Professional shall not relieve the Contractor from responsibility for errors or omissions in the submittal.

7.13.1.4 Where a shop drawing or sample is required by the Contract Documents or the schedule of shop Drawings and sample submissions accepted by the Professional as required, any related Work performed prior to Professional's review and approval of the pertinent submittal will be at the sole expense and responsibility of the Contractor.

## **ARTICLE 8 - OTHER WORK**

8.1 The Town may perform additional Work related to the Project with its own forces or may let other direct contracts. The Contractor shall provide the other contractors who are parties to such direct contracts, including but not limited to the other contractor's employees, agents, Subcontractors, and suppliers (or the Town's forces performing the additional Work), reasonable opportunity for the introduction and storage of materials and equipment and the execution of Work, and shall properly connect and coordinate its Work with theirs. The Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other Work. The 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 the Professional and the others whose Work will be affected. Contractor is not entitled to exclusive use of the Site.

8.1.1 If any part of the Contractor's Work depends (for proper execution or results) upon the Work of any such other contractor (or the Town), the Contractor will inspect and promptly report to the Professional in writing any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. The Contractor's failure to report shall constitute an acceptance of the other Work, except as to defects and deficiencies, which may appear in the other Work after the execution of its Work.

## **ARTICLE 9 – TOWN'S RESPONSIBILITIES**

9.1 Except as otherwise provided in these General Conditions, the Town shall issue all communications to the Contractor through the Professional.

9.1.1 The Town shall furnish the data required under the Contract Documents and shall make payments to the Contractor when due as provided in Article 15.

9.1.2 The Town's responsibilities for providing lands, easements, and engineering surveys to establish reference points are set forth in Article 5.

## **ARTICLE 10 - PROFESSIONAL'S STATUS DURING CONSTRUCTION**

### **10.1 Town's Representative**

10.1.1 The Professional shall be a representative of the Town during the construction period. The duties, responsibilities, and limitations of authority of the Professional as the Town's representative during construction are set forth in these General Conditions and the Technical Specifications.

### **10.2 Visits to the Site**

10.2.1 The Professional shall make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

### **10.3 Clarifications and Interpretations**

10.3.1 The Professional shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by the Contractor, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles it to an increase in the Contract Sum, and/or Contract Time, the Contractor may make a claim as provided for in Articles 11, 12, and 13.

#### **10.4 Rejecting Defective Work**

10.4.1 The Professional has the authority to disapprove or reject Work, which is Defective. The Professional also has authority to require special inspection or testing of the Work at the Contractor's expense, as provided in Article 14, whether or not the Work is fabricated, installed, or completed.

#### **10.5 Resident Engineer or Architect**

10.5.1 The Professional may furnish a full or part-time Resident Engineer or Architect and other personnel to assist them in carrying out services at the site. The duties, responsibilities, and limitations of authority of any such Resident Engineer or Architect and other personnel are set forth in the Supplemental Conditions, if applicable.

#### **10.6 Decisions on Disagreements**

10.6.1 The Professional shall interpret the requirements of the Contract Documents and determine the acceptability of the Work. If the Contractor disagrees with the Professional's opinion, the Contractor shall refer claims, disputes, and other matters relating to the acceptability of the Work or their interpretation of the requirements of the Contract Documents initially to the Professional in writing with a request for a formal decision. The Professional will render in writing its opinion concerning the Contractor's request for a formal decision and shall submit it to the Project Manager. After receipt of the Professional's written opinion and all information requested from the Contractor, the Project Manager shall render a formal decision in writing, which shall then be conveyed to the Contractor by the Professional. Written notice of each such claim, dispute, and other matter shall be delivered by the Contractor to the Professional within seven (7) calendar Days of the occurrence first happening. Written supporting data will be submitted to the Professional within fifteen (15) calendar Days after such occurrence unless the Professional allows additional time. If the Contractor fails to strictly comply with these notices and submittal time periods, the Contractor shall be deemed to have waived its right to assert a claim the Contractor might otherwise have had concerning such matter.

#### **10.7 Limitation on Professional's Responsibilities**

10.7.1 Neither the Professional's authority to act under this Article or elsewhere in the Contract Documents, nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of the Professional to the Contractor, any Subcontractor, any of their agents or employees.

10.7.1.1 The Professional shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. The Professional shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

10.7.1.2 The Professional shall not be responsible for the acts or omissions of the Contractor, any Subcontractors, any agents or employees, or any other persons performing any of the Work.

### **ARTICLE 11 - CHANGES IN THE WORK**

#### **11.1 Changes**

11.1.1 Without invalidating the Contract, the Town may at any time or from time to time order additions, deletions, or revisions in the Work. The Professional shall provide the Contractor with a Proposal Request, identifying the Work to be added, deleted or revised. Upon receipt, the Contractor shall promptly submit a written proposal for the changed Work prepared in accordance with Articles 12 and 13. If the Proposal Request calls only for the deletion of Work, the Professional may order the partial suspension of any Work related to the proposed deletion, in which case the Contractor must cease performance as directed; the Contractor shall not be entitled to claim lost profits on deleted Work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

11.1.2 Additional Work performed by the Contractor without authorization of a Change Order will not entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, except in

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the case of an emergency as provided in Article 7.12 The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.

11.1.3 Upon Contract as to changes in the Work to be performed, Work performed in an emergency as provided in Article 7, and any other claim of the Contractor for a change in the Contract Time or the Contract Sum, the Professional will prepare a written Change Order to be signed by the Professional and the Contractor and submitted to the Town for approval.

11.1.4 It is the Contractor's responsibility to notify its Surety of any changes affecting the general scope of the Work, Contract Sum, or Contract Time.

11.1.5 In the absence of a Change Order as provided in 11.1.3, the Town or Professional at the direction of the Town may; at its sole discretion issue a Construction Change Directive to the Contractor. Pricing of the Construction Change Directive will be in accordance with Article 12.

11.1.6 The Construction Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by the Town. If the Contractor fails to sign such Construction Change Directive, the Contractor may submit a claim in accordance with Articles 11, 12, and 13, but the Contractor shall nevertheless be obligated to fully perform the Work as directed by the Construction Change Directive.

11.1.7 The Contractor shall proceed diligently with performance of the Work as directed by the Town, regardless of pending claim actions, unless otherwise agreed to in writing.

## **ARTICLE 12 - CHANGE OF CONTRACT SUM**

### **12.1 The Contract Sum**

12.1.1 The Contract Sum constitutes the total compensation (subject to written authorized adjustments) payable to the Contractor for performing the Work based upon an extension of the units and unit prices as shown on Contractor's Submitted Bid. All duties, responsibilities and obligations assigned to or undertaken by Contractor to perform the Work shall be at the Contractor's expense without change in the Contract Sum.

12.1.2 The Contract Sum may only be increased or decreased by a written Change Order or Construction Change Directive. Any claim for an increase shall be in writing and delivered to the Professional within seven (7) calendar Days of the occurrence first happening. Written supporting data will be submitted to the Professional within fifteen (15) calendar Days after such occurrence unless the Town allows additional time.

12.1.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Sum will be determined by the following procedures:

12.1.3.1 Designated Unit Price (Field Measure). The Contractor and the Town recognize and acknowledge that the quantities shown for those items designated in the Contractor's Submitted Bid as unit price items are approximations prepared by the Town for bid purposes and that the actual compensation payable to the Contractor shall be based upon the application of unit prices to the actual quantities of items involved as measured in the field and required to complete the Work as originally defined in the Contract Documents.

When it is determined by the Town that an addition, deletion, or revision to the Work as defined in these Contract Documents is required and affects the quantities required for items designed in the Submitted Bid as unit price items, the Contractor and the Town agree that the compensation payable to the Contractor for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Submitted Bid to the quantity of the unit price item required to complete the Work as defined in the Contract Documents.

12.1.3.2 Other Unit Prices: For items not designated in the Submitted Bid as unit prices, the Town and the Contractor may establish unit prices as agreed on by Change Order.

12.1.3.3 Lump Sum: When it is determined by the Town that an addition, deletion or revision to the Work is required which results in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.

12.1.4 If the pricing methods specified in 12.1.3 are inapplicable, or if the parties are unable to agree on a price for the changed Work, a reasonable price for the same shall be established by the Town in accordance with 12.2. The Town shall then process a unilateral Change Order, specifying the said reasonable price. The Contractor shall perform the Work as directed in the Change Order.

12.1.5 Failure on the part of the Contractor to construct any item to plan or authorized dimensions within the specification tolerances shall result in: reconstruction to acceptable tolerances at no additional costs to the Town; acceptance at no pay; or acceptance at reduced final pay quantity or reduced unit price, all at the discretion of the Town. Determinations of aggregate monetary change for items identified, as lump sum quantities shall be made by the Town based upon an analysis of the scope of the Contractor's failure to construct to plan or authorized dimensions.

## 12.2 Cost of Work

12.2.1 The term, Cost of Work, for the purpose of Change Orders, or Construction Change Directivemeans the costs necessarily incurred and paid by the Contractor in the proper performance of the Change Order Work. Except as may be agreed to in writing by the Professional, such costs shall be in amounts no higher than those prevailing in the area of the Work and may include the following categories:

- 12.2.1.1 Labor (payroll, taxes, fringe benefits, Worker's compensation, health and retirement benefits, sick leave):
- 12.2.1.2 Owned Equipment (at lowest applicable equipment rate manual rate)
- 12.2.1.3 Rented Equipment (at actual rental rate)
- 12.2.1.4 Materials
- 12.2.1.5 Supplies
- 12.2.1.6 Subcontractors Costs
- 12.2.1.7 Bonds and Insurance
- 12.2.1.8 Contractor's Fee (per 12.3)

12.2.2 The Contractor shall require all Subcontractors and suppliers to comply with all requirements of, and provide itemizations of all claims in accordance with this Article.

12.2.3 The term Cost of the Work shall not include any of the following:

12.2.3.1 Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor whether at the site or in its principal or a branch office for general administration of the Change Order Work and not specifically included in the agreed upon schedule of job classifications, all of which are to be considered administrative costs covered by the Contractor's fee.

12.2.3.2 Extraordinary fringe benefits not specifically identified in Article 12.2.1.1.

12.2.3.3 Expenses of Contractor's principal and branch offices other than the Contractor's office at the site.

12.2.3.4 Any part of the Contractor's capital expenses, including interest on the Contractor's capital used for the Change Order Work and charges against the Contractor for delinquent payments.

12.2.3.5 Cost of premiums for all Bonds and insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

12.2.3.6 Costs due to the negligence of the 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.

12.2.3.7 Overhead or general expense costs of any kind (other than as provided in 12.3).

### **12.3 Contractor's Fee**

12.3.1 The maximum percentage allowed for the Contractor's combined overhead and profit shall be as follows:

12.3.1.1 For all such Change Order Work or Construction Change Directive done a fixed percentage of the total adjustment to the Contract Sum shall be negotiated and shall not exceed ten (10) percent.

12.3.2 For all changes, the Contractor shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Professional. When a credit is due, the amount of credit to be allowed by the Contractor to the Town for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the Professional, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

## **ARTICLE 13 - CHANGE OF CONTRACT TIME**

13.1 Any change to the Contract Time will only be authorized by a written Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to the Professional within seven (7) calendar Days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to the Project Manager within fifteen (15) calendar Days after such occurrence unless the Professional allows additional time. All claims submitted by the Contractor for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond the Contractor's control or fault.

13.1.1 If the Contractor is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of or by the Town or the Professional, or by an employee of either, or by any separate contractor employed by the Town, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by the Contractor using reasonable diligence, or any causes beyond the Contractor's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as the Town may determine. The Contractor shall be entitled to an extension of time for such causes only for the number of Days of delay which the Town may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if the Contractor shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which the Town or the Professional may be responsible in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from the Town. The Contractor's sole and exclusive remedy against the Town for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein.

## **ARTICLE 14 - WARRANTY AND GUARANTEE: ACCEPTANCE OF DEFECTIVE WORK**

### **14.1 Warranty and Guarantee**

14.1.1 The Contractor warrants and guarantees to the Town that all materials and equipment will be new unless otherwise specified, and that all Work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article and other applicable provisions of the Contract Documents. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered Defective. Notice of all defects or Defective Work, will be given to the Contractor in writing by the Project Manager and/or Professional. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

14.1.2 If, after approval of final payment and prior to the expiration of one year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work or materials are found to be Defective, incomplete, or otherwise not in accordance with the Contract Documents, the Contractor shall promptly, without cost to the Town and in accordance with the Town's written instructions, either correct such Defective Work, or if it has been rejected by the Town, remove it from the Site and replace it with non-Defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Town may have the Defective Work corrected, removed, or replaced. All costs (direct or indirect) for Defective Work will be paid by the Contractor.

#### **14.2 Tests and Inspections**

14.2.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor shall give the Professional timely notice of readiness therefore. The testing firm(s), (if assigned by the Town to this Work), and all such inspections, tests, or approvals provided for by the Town shall be identified in writing by the Professional to the Contractor. All other inspections, tests or approvals shall be at the Contractor's expense including additional expenses for inspection and tests required as a result of delays by the Contractor or hours Worked in excess of 40 hours per week. For all required inspections, tests, and approvals on any Work prepared, performed, or assembled away from the site, the Contractor will furnish the Professional with the required Certificates of Inspection, testing, or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. Materials or Work in place that fail to pass acceptability tests shall be retested at the direction of the Professional and at the Contractor's expense.

14.2.2 Neither observations by the Professional or Project Manager nor inspections, tests, or approvals by persons other than the Contractor shall relieve the Contractor of its obligations to perform the Work in accordance with the requirements of the Contract Documents.

#### **14.3 Access to the Work**

14.3.1 For the duration of the performance of the Work, the Professional and its representatives, other designated representatives of the Town, and authorized representatives of any regulatory agency shall at all time be given access to the Work. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing by others.

#### **14.4 Uncovering the Work**

14.4.1 If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of the Professional, or if any Work is covered contrary to the request of the Project Manager, the Work shall, if requested by the Professional, be uncovered for observation, inspection, testing or approval and replaced at the Contractor's expense.

14.4.2 If any Work has been covered which either the Professional or the Project Manager has not specifically requested to observe, or if the Professional or the Project Manager considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, upon written request of the

Professional, shall uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is Defective, the Contractor shall bear the expense of such uncovering, exposure, observation, inspection, testing, and satisfactory reconstruction. If, however, such Work is not found to be Defective, the Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, if it makes a claim as provided in Articles 11, 12 and 13.

#### **14.5 Stop Work**

14.5.1 When Work is Defective or when the Contractor fails to supply sufficient skilled Workmen or suitable materials or equipment, or make prompt payments to Subcontractors for labor, materials, or equipment, or if the Contractor violates any provisions of these Contract Documents, the Town may order the Contractor to stop the Work until the cause for such order has been eliminated. However, this right of the Town to stop the Work shall not give rise to any duty on the part of the Town to exercise this right for the benefit of the Contractor or any other party. The Contractor shall have no right to claim an increase in the Contract Sum or Contract Time or other damages for a stop Work order under this paragraph.

#### **14.6 Correction or Removal of Defective Work**

14.6.1 When directed by the Professional, the Contractor shall promptly, without cost to the Town, and as specified by the Professional, either correct the Defective Work, whether fabricated, installed, or completed, or remove it from the site and replace it with non-Defective Work. If the Contractor does not correct such Defective Work or remove and replace such Defective Work within a reasonable time, all as specified in a written notice from the Professional, the Town may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by the Contractor or deducted from payment to Contractor. The Contractor will also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the Defective Work.

#### **14.7 Acceptance of Defective Work**

14.7.1 If, instead of requiring correction or removal and replacement of Defective Work, the Town prefers to accept it, the Town may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Sum, shall be issued. If the acceptance occurs after approval of final payment, the Contractor shall pay within 60 days to the Town an appropriate sum to compensate for the defect in the Work.

#### **14.8 Neglected Work by Contractor**

14.8.1 If the Contractor neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the Professional may direct the Contractor to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen, and/or equipment, and Working extended hours and additional Days, all at no cost to the Town in order to put the Work back on schedule. If the Contractor fails to correct the deficiency or take appropriate corrective action, the Town may terminate the contract or Contractor's right to proceed with that portion of Work and have the Work done by others. The cost of completion under such procedure shall be charged against the Contractor. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Sum. If the payments due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Town within 60 days.

14.8.2 Should the Contractor Work overtime, weekends or holidays to regain the schedule, all costs to the Town of associated inspection, construction management and resident engineering shall be identified to the Contractor and the Contract Sum reduced by a like amount via Change Order.

### **ARTICLE 15 - PAYMENT AND COMPLETION**

#### **15.1 Schedule of Values**

15.1.1 The schedule of values established as provided in 3.5.5 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Professional and the Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed. The provisions of the Technical Specifications shall apply to all payments and Applications For Payment.

### **15.2 Application for Progress Payment**

15.2.1 At least twenty (20) calendar Days before the date established for each progress payment (but not more often than once a month), Contractor shall submit to the Professional for review an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application For Payment 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 Town has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Town's interest therein, all of which will be satisfactory to Town. Payment is subject to a ten percent (10%) retainage that will be held until the final payment or acceptance by the Town. The Professional shall process Applications for Payment as specified in the Technical Specifications.

### **15.3 Contractor's Warranty of Title**

15.3.1 Contractor warrants and guarantees that title to the Work, materials and equipment covered by any Application for Payment, whether incorporated in the Work or not, will pass to the Town no later than the time of payment free and clear of all liens.

### **15.4 Processing of Applications for Payment**

15.4.1 The Professional will, within ten (10) calendar Days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application for Payment to the Town, or return the Application for Payment to Contractor indicating in writing Professional's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application For Payment. The Town shall, within thirty-one (31) calendar Days of presentation to them of the Application for Payment with Professional's recommendation of the amount for payment, pay Contractor amount recommended, unless the Town has reasons to refuse or contest the amount of the Application for Payment.

15.4.2 The Professional's recommendation of any payment requested in an Application for Payment will constitute a representation by the Professional to the Town based on the Professional's review of the Application for Payment and the accompanying data and schedules, that to the best of Professional's knowledge, information and belief that:

The Work has progressed to the point indicated on the Application for Payment;

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 and to any other qualifications stated in the recommendation), and;

The conditions precedent to the Contractor being entitled to such payment appears to have been fulfilled in so far as it is the Professional's responsibility to observe the Work.

15.4.3 By recommending any such payment, the Professional will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Professional in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might

entitle the Contractor to be paid additionally by the Town or entitle the Town to withhold payment to the Contractor.

15.4.4 The Professional's recommendation of any payment, including final payment, shall not mean that the Professional is 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 the Contractor to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of the Contractor to perform or furnish Work in accordance with the Contract Documents.

15.4.5 The Professional may refuse to recommend the whole or any part of any payment if, in the Professional's opinion, he/she is unable to make the representation that the Application for Payment is acceptable to the Town. The Professional may refuse to recommend payment on the basis of the factors enumerated in the Technical Specifications, or for any other reason where it in good faith determines that it cannot recommend payment in the amount stated in the Application for Payment. The Professional may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Professional's opinion to protect the Town from loss because or by reason of any of the factors or conditions as specified in the Technical Specifications.

15.4.6 The Town will give the Contractor immediate notice stating the reasons for such action and promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by the Town and the Contractor, when Contractor corrects to the satisfaction of the Town and Professional the reasons for such action.

## **15.5 Substantial Completion**

15.5.1 Substantial Completion is the stage in the progress of the Work when the Work or specified portion thereof is sufficiently complete in accordance with the Contract Documents so the Town can occupy or utilize the Work for its proposed use.

15.5.2 When the Contractor considers that the Work, or a specified portion thereof, which the Town agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Professional a thorough and inclusive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on this list does not relieve the Contractor of the responsibility to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Professional and Project Manager will visit the site to determine whether the Work or designated portion thereof is substantially complete. If the Professional's and the Project Manager's visit discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Professional. The Contractor shall then submit a request for another visit by the Professional to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance and then to the Town for acceptance and issuance.

15.5.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Professional, the Town shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

15.5.4 The Town shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but the Town shall allow the Contractor reasonable access to complete or correct items on the list.

## **15.6 Beneficial Use**

15.6.1 Use by the Town or General Public, at the Town's option, of any substantially completed part of the Work which is identified in the Contract Documents, or portions of the Work which the Town, Professional, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Town or General Public for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

15.6.2 The Town at any time may request the Contractor in writing to permit the Town or General Public to use any such part of the Work which the Town believes to be ready for its intended use and substantially complete. If the Contractor agrees that such part of the Work is substantially complete, the Contractor will certify to the Town and the Professional in writing that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request the Professional to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the Town, Contractor and Professional shall make an inspection of that part of the Work to determine its status of completion. If the Professional does not consider that part of the Work to be substantially complete, the Professional will notify the Town and the Contractor in writing giving the reasons therefore. If the Professional considers that part of the Work to be substantially complete, the provisions of 15.5 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. The Town, may at its discretion, reduce the amount of retainage subject to this declaration of partial Substantial Completion.

### **15.7 Final Inspection**

15.7.1 Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Professional will make a final inspection with the Town and the Contractor and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

### **15.8 Application for Final Payment**

15.8.1 After the Contractor has completed all such corrections to the satisfaction of the Professional and the Town and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance as required by the Contract Documents, certificates of inspection, marked-up record documents and other documents, and after the Professional has indicated that the completed Work is acceptable and in accordance with the Contract Documents, the Contractor may make Application for Final Payment following the procedure for progress payments. The Application for Final Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to Town) of any and all claims of any person or entity providing labor, services or materials to the Project. In lieu of such releases or waivers of liens and as approved by Town, Contractor may furnish receipts or release in full and an affidavit of the Contractor that (i) the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Town or Town's property might in any way be responsible, have been paid or otherwise satisfied. If any Subcontractor or supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to the Town to indemnify Town against any lien.

15.8.2 No Application for Final Payment will be recommended for payment by the Professional or accepted by the Town until each and every document to be delivered by the Contractor pursuant to the Contract Documents are accepted and approved by the Professional.

15.8.3 Notwithstanding any other provision of these Contract Documents to the contrary, the Town and the Professional are under no duty or obligation whatsoever to any vendor, materials provider, Subcontractor, laborer or other party to ensure that payments due and owing by the Contractor to any of them are or will be made. Such parties shall rely only on the Contractor's surety Bonds for remedy of nonpayment by him. The Contractor agrees to defend and resolve all claims made by Subcontractors,

indemnifying the Town and the Professional for all claims arising from or resulting from Subcontractor or supplier or material men or laborer services in connection with this project.

### **15.9 Final Payment and Acceptance**

15.9.1 If, on the basis of the Professional's observation of the Work during construction and final inspection, and the Professional's review of the Application for Final Payment and accompanying documentation as required by the Contract Documents, the Professional is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Professional will, within fifteen (15) Working Days after receipt of the Application for Final Payment, indicate in writing the Professional's recommendation of payment and present the Application for Final Payment to the Town for payment. Otherwise, the Professional will return the Application for Final Payment to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application for Final Payment. After the presentation to the Town of the Application for Final Payment and accompanying documentation, in appropriate form and substance, and with the Professional's recommendation and notice of acceptability, the amount recommended by the Professional will become due and will be paid by the Town to the Contractor, along with any retainage not yet paid, within thirty (30) days after receipt of the Professional's recommendation for Final Payment.

15.9.2 If, through no fault of the Contractor, Final Completion of the Work is significantly delayed and if the Professional so confirms, the Town shall, upon receipt of the Contractor's Application for Final Payment and recommendation of the Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the Town for Work not fully completed or corrected is less than the retainage stipulated in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Professional 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.

### **15.10 Waiver of Claims**

15.10.1 Submission of an Application for Final Payment and receipt of payment as a result thereof shall operate as and constitute a waiver and release of any and all claims by the Contractor against the Town other than those previously made in writing and still unsettled.

15.10.2 Conditions of the Technical Specifications are hereby reiterated.

## **ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION**

### **16.1 Suspension of Work**

16.1.1 At any time and without cause, the Town may suspend the Work or any portion thereof for a period of not more than ninety (90) Days by notice in writing to the Contractor and the Professional, which will fix the date on which Work will be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an adjustment in the Contract Sum or an extension of the Contract Times, or both, directly attributable to any such suspension if the Contractor makes any approved claim therefore as provided in Articles 12 and 13.

16.1.2 If through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) calendar Days by the Town or under an order of court or other public authority, or the Professional fails to act on any Application for Payment within thirty (30) calendar Days after it is submitted or the Town fails for thirty-one (31) calendar Days to pay the Contractor any sum recommended for payment by the Professional, then the Contractor may upon seven (7) Working Days written notice to the Town and the Professional, and provided the Town or the Professional did not remedy such suspension or failure within that time, terminate the Contract and recover from the Town payment on the same terms as provided in 16.3. In lieu of terminating the Contract and without prejudice to any other right or remedy, if the Professional has failed to act on an Application for Payment within thirty (30) calendar Days after it is submitted, or the Town has failed for thirty-one (31) calendar Days to pay the Contractor any sum

recommended for payment by the Professional, the Contractor may upon seven (7) Day's written notice to the Town and the Professional stop the Work until payment of all such amounts due the Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude the Contractor from making claim under Articles 12 and 13 for an increase in Contract Sum or Contract Times or otherwise for expenses or damage directly attributable to the Contractor's stopping Work as permitted by this paragraph.

## **16.2 Termination For Cause**

16.2.1 Upon the occurrence of any one or more of the following events:

If the Contractor fails 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);

If the Contractor disregards Laws or Regulations of any public body having jurisdiction;

If the Contractor disregards the authority of the Professional or Project Manager or;

If the Contractor otherwise violates in any substantial way any provisions of the Contract Documents;

The Town may, after giving the Contractor seven (7) Working Days' written notice, and to the extent permitted by Laws and Regulations, terminate the services of the Contractor and terminate the Contract, exclude the Contractor from the site and take possession of the Work and of all the Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the Town has paid the Contractor but which are stored elsewhere, and finish the Work as Town may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment beyond an amount equal to the value of the Work actually completed and the value of materials and equipment not incorporated in the Work but delivered and suitably stored, less the aggregate of payments previously made. If the direct and indirect costs of completing the Work exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Town within 60 days. Such costs incurred by the Town shall be verified by the Professional and incorporated in a Change Order, but in finishing the Work the Town shall not be required to obtain the lowest figure for the Work performed. The Contractor's obligations to pay the difference between such costs and such unpaid balance shall survive termination of the Contract.

16.2.2 In the event the Town terminates the Contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision will be the means for disposition of the balance of the Contract obligations.

16.2.3 Notwithstanding, the Town may terminate this Contract immediately upon any lapse in the insurance coverage to be retained by the Contractor.

## **16.3 Termination for Convenience**

16.3.1 Upon seven (7) Working Days' written notice to the Contractor and the Professional, the Town may, without cause and without prejudice to any other right or remedy of the Town, elect to terminate the Contract. In such case, the Contractor shall be paid (without duplication of any items):

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;

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;

For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and

Bidder \_\_\_\_\_

For reasonable expenses directly attributable to termination.

The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or incidental or consequential damages of any type or nature arising out of or resulting from such termination.

## **17 Disputes**

17.1 All disputes arising under the Contract of Contract Documents or their interpretation, whether involving law or fact or both, or extra Work, and all claims for alleged breach of contract shall within ten (10) Working Days of the commencement of the dispute be presented by the Contractor to the Town for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the Contractor shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) Days of its commencement, the claim will be considered only for a period commencing ten (10) Days prior to the receipt by the Town of notice thereof. Each decision by the Town will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested, directed to his last known address.

17.1.1 If the Contractor does not agree with any decision of the Town, he shall seek mediation by a certified circuit court civil mediator who will be agreed to by the parties or, if the parties cannot agree to a mediator within thirty (30) calendar Days of the request for mediation, said mediator will be chosen by the Town. The parties will cooperate in good faith with the mediator with the cost of the mediator split equally between the parties.

17.1.2 If the Contractor does not agree with any decision of the Town, or the mediation is unsuccessful, he shall in no case allow the dispute to delay the Work but shall notify the Town promptly that he is proceeding with the Work under protest and may then except the matter in question from the final release.

## **18 Miscellaneous**

18.1 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 address specified in the Contract.

18.2 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. A calendar Day of twenty-four hours measured from midnight to the next midnight will constitute a Day.

18.3 All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of the Contract. Also the obligation of the Contractor to maintain the Work until initiation of operation shall survive final payment and termination completion of the Contract.

18.4 The Contractor shall keep adequate records and supporting documentation applicable to this Work and Contract. Said records and documentation shall be retained by the Contractor for a minimum of five (5) years from the date of Final Completion or termination of the Contract. The Town shall have the right to audit, inspect, and copy all such records and documentation as often as the Town deems necessary during the period of the Contract and for a period of five (5) years thereafter provided, however, such activity shall be conducted only during normal business hours. The Town, during this period of time, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the Contractor as concerns the aforesaid records and supporting documentation.

Bidder \_\_\_\_\_

18.5 In the event of any litigation arising from the performance of the Work or any alleged breach of the Contract or Contract Documents the prevailing party shall be entitled to recover reasonable attorneys fees (at both the trial and appellate level) and venue of any such action shall be in a court of competent jurisdiction in Sarasota or Manatee County. Each party to this Contract waives and relinquishes their right to intimate or pursue any action in any court except for the court of competent jurisdiction in Sarasota or Manatee County, Florida.

Bidder \_\_\_\_\_

Bond # \_\_\_\_\_

SECTION 00710

PERFORMANCE AND PAYMENT BOND

BY THIS BOND, we \_\_\_\_\_, as Principal, and \_\_\_\_\_, a corporation, as Surety, are bound to the Town of Longboat Key, herein called Owner, in the sum of \$ \_\_\_\_\_ (words) (\_\_\_\_\_) Performance and Payment Bond in the amount of 100% of total Contract Sum) for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_\_, 2009, between Principal and Owner for Qualification and Bidding for Potable Water Main Upsizing – Bay Isles Road to New Pass, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1) Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the Work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all Work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

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

Changes in the Contract Sum shall be immediately reflected in the amount of the bond and Principal shall provide copy of verification from Surety to the Owner regarding such changes.

Dated on \_\_\_\_\_.

Bidder \_\_\_\_\_

**Performance and Payment Bond, page 2 of 2**

Any claims under this bond may be addressed to the name and address of Surety below. IN WITNESS WHEREOF, the PRINCIPAL and SURETY signed and sealed this instrument this \_\_\_\_\_ Day of \_\_\_\_\_, 2009.

SURETY: \_\_\_\_\_

LICENSE: \_\_\_\_\_

Surety's Attorney in Fact: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

By: \_\_\_\_\_ as Attorney in Fact.

State of Florida, County of Sarasota

The foregoing instrument was acknowledged before me this \_\_\_\_\_ Day of \_\_\_\_\_, 2009, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification and who did (did not) take an oath and who acknowledged before me that he executed the same for the purposes therein expressed.

\_\_\_\_\_

NOTARY PUBLIC

\_\_\_\_\_

Typed Name

Commission Expires: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_

Principal's Attorney in Fact: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_ as Attorney in Fact.

APPROVED as to form:

BY: \_\_\_\_\_

David Persson, Town Attorney