BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: November 16, 2011 Division: Engineering/Public Works

Bulk Item: Yes X No ___ Department: Project Management

Staff Contact Person/Phone #: Jerry Barnett X4416

AGENDA ITEM WORDING: Approval of a Contract with D.L. Porter Constructor's Inc. for up to 200 linear feet of Perimeter Fence Replacement at the West Martello Tower.

ITEM BACKGROUND: On September 29, 2011, a bid opening was held for the West Martello Fence Replacement project, with two contractors submitting bids. D.L. Porter Constructors, Inc. submitted the lower of the two bids.

PREVIOUS RELEVANT BOCC ACTION: On January 19, 2011 the BOCC awarded a contract to Bella Construction of Key West, Inc. for approximately 190 LF of Fence Replacement at the West Martello Towers. This project has since been completed, and additional funding was awarded by the TDC to continue with Fence Replacement for fiscal year 2012.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: $32,521.00 **INDIRECT COST:** _____ **BUDGETED:** Yes X No ___

DIFFERENTIAL OF LOCAL PREFERENCE: N/A

COST TO COUNTY: $32,521.00 **SOURCE OF FUNDS:** TDC

REVENUE PRODUCING: Yes ___ No X **AMOUNT PER MONTH** ____ **Year** ___

APPROVED BY: County Atty ✓ OMB/Purchasing ✓ Risk Management ____

DOCUMENTATION: Included X Not Required ____

DISPOSITION: _____ **AGENDA ITEM #** _____

Revised 7/09

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: D.L. Porter

Contract #_____

Effective Date: 11/16/11

Expiration Date: _____

Contract Purpose/Description:
For the replacment of up to 200 LF of perimeter fencing at the West Martello Tower

Contract Manager: Ann Riger (Name) X4439 (Ext.) Facilities Devel/Stop #1 (Department/Stop #)

for BOCC meeting on 10/19/11 Agenda Deadline: 10/04/11

CONTRACT COSTS

Total Dollar Value of Contract: $ 32,521.00 Current Year Portion: $ 32,521.00

Budgeted? Yes ☒ No ☐ Account Codes: 117-77040-530410-~~TB07668Y~~-_____

Grant: $ N/A _____-_____-_____-TM176068Y

County Match: $ N/A _____-_____-_____-_____-_____

_____-_____-_____-_____-_____

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr For: _____

(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	10-27-2011	Yes ☐ No ☑		10-27-2011
Risk Management	10-25-11	Yes ☐ No ☑		10-25-11
O.M.B./Purchasing	10-25-11	Yes ☐ No ☑		10-25-1
County Attorney	10/24/11	Yes ☐ No ☑		10/24/11

Comments: _____

OMB Form Revised 2/27/01 MCP #2

BUDGET AND FINANCE DEPARTMENT
PURCHASING OFFICE
TABULATION SHEET
OPEN DATE: SEPTEMBER 29 , 2011 AT 3:00 PM,

TITLE: RFP-WEST MARTELLO FENCE PROJECT MONROE COUNTY FLORIDA

RESPONDENT	BID BOND	BID AMOUNT
BELLA CONSTRUCTION OF KEY WEST, INC.	5%	$ 35,825.00
D.L. PORTER CONSTRUCTORS, INC.	5%	$ 35,021.00

Bid Committee Present: Carlos Victores - Purchasing Office
Members of the Public Present: None

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Carlos Victores - Purchasing Manager

Agreement
Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the Nineteen day of October in the year of Two Thousand and Eleven (In Words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Monroe County Board of County Commissioners
500 Whitehead Street
Key West, Florida 33040

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and the Contractor:
(Name and address)

D.L. Porter Constructors, Inc.
6574 Palmer Park Circle
Sarasota, FL 34238

For the following Project: **W. MARTELLO- FENCE PROJECT**

1.2 **SCOPE OF WORK**

A. Project consists of installation of up to 200 linear feet of additional perimeter fencing at The West Martello Tower, Key West, Florida. The fort is a National Register listed historic site. All work activities must be undertaken with sufficient care to protect this historic resource and must be supervised by personnel who are familiar with the Secretary of Interiors Standards for Rehabilitation.

B. The work will include, but not necessarily be limited to, the following items: Replacement of up to 200 linear feet of perimeter fencing, including the removal of existing deteriorated metals, installation of new concrete at fence posts around the perimeter of the fort, and instatllation of new aluminum fencing

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Project Management

The Director of Project Management
Monroe County Project Management
1100 Simonton Street
Second Floor-Room 2-216
Key West, Florida, 33040

The Architect is:

Bender & Associates Architects, P.A.
410 Angela Street
Key West, FL 33040

The Owner and Contractor agree as set forth below.

ARTICLE 1
The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions, Supplementary and other Conditions), Drawings, Specifications, Requsest for Proposal Documents, Addenda issued prior to execution of this Agreement, the Contractor's Bid, and other documents listed in this Agreement and Modifications issued after execution of this Agreement: these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2
The Work of this Contract

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows: N/A

ARTICLE 3
Date of Commencement and Substantial Completion

3.1 The date of commencement shall be the date established in the notice to proceed issued by the Owner.

The Contractor shall achieve Substantial Completion of the entire Work not later than Sixty (60) calendar days after the date of commencement or issuance of a Notice to Proceed. The time or times stipulated in the contract for completion of the work of the contract or of specified phases of the contract shall be the calendar date or dates listed in the milestone schedule.

Liquidated damages will be based on the Substantial Completion Date for all work, modified by all approved extensions in time as set forth by the Director of Project Management's signature of approval on the Certificate of Substantial Completion. The liquidated damages table below shall be utilized to determine the amount of liquidated damages.

CONTRACT AMOUNT	FIRST 15 DAYS	SECOND 15 DAYS	31ST DAY & THEREAFTER
Under $50,000.00	$50.00/Day	$100.00/Day	$250.00/Day
$50,000.00-99,999.00	100.00/Day	200.00/Day	750.00/Day
$100,000.00-499,999.00	200.00/Day	500.00/Day	2,000.00/Day
$500,000.00 and Up	500.00/Day	1,000.00/Day	3,500.00/Day

The Contractor's recovery of damages and sole remedy for any delay caused by the Owner shall be an extension of time on the Contract.

ARTICLE 4
Contract Sum

4.1 The owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract the sum of Thirty Two Thousand Five Hundred Twenty One Dollars and 00/100 ($32,521.00) subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Alternate #1 – Deduct alternate for the performance by others for the demolition and removal of the existing fence and the removal of cacti and any other vegation that may need to be removed. Two Thousand Five Hundred Dollars and 00/100 ($2,500.00). The Owner reserves the right to allow the Contractor to remove the existing fence and vegation at a later date.

4.3 Unit prices, if any, are as follows: N/A

ARTICLE 5
Progress Payments

5.1 Based upon Applications for Payment submitted by the Contractor to the Director of Project Management, and upon approval for payment issued by the Director of Project Management and Architect, the Owner shall make progress payments on account of the Contract Sum to the contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for payment shall be one calendar month ending on the last day of the month, or as follows:

5.3 Payment will be made by the Owner in accordance with the Local Government Prompt Payment Act, section 218.735, Florida Statutes.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Director of Project Management or Architect may require. This schedule, unless objected to by the Director of Project Management or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included in applications for Payment. No item in the Schedule of Values shall exceed $25,000.00 without prior approval from Monroe County Project Management and the Board of County Commissioners if required under county policy or code. For items greater than $25,000.00, the amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the net cost to the Owner, less Overhead, Profit and Documented Costs incurred prior to the Change Request, as indicated in the corresponding line item in the Approved Schedule of Values for that line item as confirmed by the Director of Project Management. For items less than $25,000.00, the amount of credit to be allowed by the Contractor to the Owner for a deletion or change which

results in a net decrease in the Contract Sum shall be pursuant to negotiation as outlined in General Conditions, Section 00750, Article 7.2. When both additions and credits covering related Work or substitutions are involved in a change the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage;

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Director of Project Management or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 Retainage will be withheld in accordance with section 218.735 (8), Florida Statutes

5.8 Reduction or limitation of retainage, if any, shall be as follows: Monroe County is exempt from and not subject to Florida Statutes 255.078, "Public Construction Retainage". Reduction or limitation of retainage, if any, shall be reduced incrementally at the discretion of and upon the approval of the Director of Project Management.

ARTICLE 6
Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment, and (2) a final approval for payment has been issued by the Director of Project Management and Architect. Such final payment shall be made by the Owner not more than 20 days after the issuance of the final approval for payment:

ARTICLE 7
Miscellaneous Provisions

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payment shall be made according to the Florida Local Government Prompt Payment Act.

7.3 Temporary facilities and services: As described in Section 01500 of the General Requirements

7.4 Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners.

7.5 A person or affiliate who has been placed on the convicted vendor list following a

conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as 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 36 months from the date of being placed on the convicted vendor list.

7.6 The following items are included in this contract:

a) Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Contractor.

b) Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Contractor agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. The Parties waive their rights to trial by jury. The County and Contractor agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

c) Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Contractor agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

d) Attorney's Fees and Costs. The County and Contractor agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs as an award against the non-prevailing party, and shall include attorney's fees and courts costs in appellate proceedings.

e) Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Contractor and their respective legal representatives, successors, and assigns.

f) Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law. Each party agrees that it has had ample opportunity to submit this Contract to legal counsel of its choice and enters into this agreement freely, voluntarily and with advise of counsel.

g) Claims for Federal or State Aid. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

h) Adjudication of Disputes or Disagreements. County and Contractor agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This Agreement is not subject to arbitration.

i) Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Contractor agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Contractor specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

j) Nondiscrimination. County and Contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

k) Covenant of No Interest. County and Contractor covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree

with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

l) Code of Ethics. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

m) No Solicitation/Payment. The County and Contractor warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

n) Public Access. The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

o) Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the Contractor and the County in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

p) Hold Harmless. Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the Contractor covenants and agrees that he shall indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) claims, actions or causes of action, (ii) litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY's elected and appointed officers and employees from liabilities damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the indemnifying party in the performance of the construction contract. The monetary limitation of liability under this contract shall be not less than $1 million per occurrence pursuant to F. S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the

Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

The first ten dollars ($10.00) of remuneration paid to the Contractor is for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

q) Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

r) Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

s) Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

t) Attestations. Contractor agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

u) No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

v) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall

constitute one and the same instrument and any of the parties hereto may execute this Agreement by singing any such counterpart

w) Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

x) Disadvantaged Business Enterprise (DBE) Policy and Obligation. It is the policy of the County that DBE's, as defined in C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with County funds under this agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The County and its Contractor agree to ensure that DBE's have the opportunity to participate in the performance of the Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that DBE's have the opportunity to compete and perform contracts. The County and Contractor and subcontractors shall not discriminate on the basis of race, color, national origin or sex in award and performance of contracts, entered pursuant to this Agreement.

Special Conditions, if any are detailed in Section 00990 of the Project Manual for this Project.

ARTICLE 8
Termination or Suspension

8.1 The Contract may be terminated by the Owner as provided in Article 14 of the General Conditions.

Article 9
Enumeration of Contract Documents

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in Article 1 of this agreement, and as follows: Project Manual dated August 2011, Contractor's bid September 29, 2011, General Specifications Sections 00030, 00100, 00110, 00163, 00230, 00300, 00350, 00400, 00500, 00750, 00970, 00980, 00990, 01010, 01015, 01027, 01030, 01040, 01045, 01050, 01200, 01301, 01310, 01370, 01385, 01395, 01400, 01410, 01421, 01500, 01520, 01550, 01560, 01590, 01595, 01600, 01630, 01640, 01700, 01710, 01720, 01730, 01740. Technical Specifications Sections 02070, 02110, 02820, 03300, 05120, 09900. Drawings A1, A2, A3. Addendum #1 dated September 16, 2011.

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated August 2011.

9.1.4 The Specifications are those contained in the SPECIFICATIONS for WEST MARELLO PERIMETER FENCNG AMENDMENT ONE dated July 25, 2011.

9.1.5 The Drawings issued by the Architect for the Replacement of Perimeter Fencing are A1, A2, and A3.

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
1	09/16/11	2

9.1.7 The Alternates, if any, are as follows:
Alternate #1 – Deduct Alternate for scope reduction allowing the performance by others for the demolition and removal of the existing fence and the removal of cacti and any other vegetation that may need to be removed.

END ALTERNATES

Portions of Addenda relating to proposal requirements are not part of the Contract Documents unless the proposal requirements are also enumerated in this Article 9.

9.1.8 Other documents, if any, forming part of the contract Documents are as follows:
Insurance Documents.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
AGREEMENT CONTINUES ON FOLLOWING PAGE

Article 10
Execution of Agreement

10.1 This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to Project Management and Architect for use in the administration of the Contract, and the remainder to the Owner.

10.1.2 Execution by the Contractor must be by a person with authority to bind the entity. **SIGNATURE OF THE PERSON EXECUTING THE DOCUMENT MUST BE NOTARIZED AND WITNESSED .**

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

By: _____
Deputy Clerk

Date _____

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By _____
Mayor/Chairman

Witness:
By: _____

Print Name: Paulette Jewell

Title: Corp. Secretary

Date: 10/7/11

D. L. Porter Constructors, Inc.

By: _____

Print name: C. Marshall White

Title: Vice President

Date: 10/7/11

STATE OF FLORIDA
COUNTY OF Sarasota
On this 7 day of Oct, 2011 before me ,the undersigned notary public, Personally appeared C. Marshall White, known to me to be the Person whose name is subscribed above or who produced xxxxxxxxxxxxx as identification, and acknowledged that he/she is the person who executed the above contract with Monroe County for the construction of the WEST MARTELLO FENCE PROJECT. for the purposes therein contained.

_____
Notary Public

Print Name
My commission expires: _____

PAULETTE JEWELL
COMMISSION # DD795552
EXPIRES JUL 16 2012
BONDED THROUGH
RLI INSURANCE COMPANY
NOTARY PUBLIC STATE OF FLORIDA

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
_____
NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date 10/24/2011

END OF SECTION

General Conditions of the Contract for Construction

made as of the Nineteen day of October in the year of Two Thousand and Eleven
between Monroe County Board of County Commissioners and D. L. Porter Constructors, Inc.

Table of Articles

1. General Provisions
2. Owner
3. Contractor
4. Administration of the Contract
5. Subcontractors
6. Construction by Owner or By Other Contractors
7. Changes in the Work
8. Time
9. Payments and Completion
10. Protection of Persons and Property
11. Insurance and Bonds
12. Uncovering and Correction of Work
13. Miscellaneous Provisions
14. Termination or Suspension of the Contract

ARTICLE 1

GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 **The Contract Documents:** The Contract Documents consist of the Agreement between Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, Owners bid/request for proposal documents, other documents listed in the Agreement and Modifications issued after execution of the Contract, and the Contractor's bid and supporting documentation. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

1.1.2 **The Contract:** The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification approved by the Board of County Commissioners. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between Project Management and Contractor, (3) between the Architect and Project Management, (4) between the Owner and a Subcontractor or (5) between any persons or entities other than the Owner and Contractor. The Owner shall, however, be entitled to enforce the obligations under the Contract intended to facilitate performance of the duties of Project Management and Architect.

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

1.1.4 **The Project:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces including persons or entities under separate contracts not administered by Project Management.

1.1.5 **The Drawings:** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 **The Specifications:** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 **The Project Manual:** The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 Execution, Correlation and Intent

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Document is to include all items necessary for the proper execution and completion of the Work by the contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to all other like portions of the Work.

1.3 Ownership and Use of Architect's Drawings, Specifications and Other Documents

1.3.1 The Drawing, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to Project Management, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to the Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment suppliers unless they are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of copyright or other reserved rights

1.3.2 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, two (2) original sealed copies and one (1) electronic copy of Drawings, Specifications and the Project Manual free of charge for the execution of the Work. Additional copies may be obtained from Project Management at a fee of $5.00 per page for full size drawings (.25 per page for written specifications or 11"x 17" drawings).

1.4 Capitalization

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 Interpretation

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 Definition

2.1.1 The Owner is Monroe County. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 Information and Services Required of the Owner

2.2.1 The owner shall furnish initial site surveys describing any known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Owner does not warrant the surveys as complete particularly in cases of historical buildings or sites.

2.2.2 For existing facilities the Owner shall secure and pay for necessary approvals, easements, assessments and charges, required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities except for permits and fees which are the responsibility of the Contractor under the Contract Documents. It is the Contractor's responsibility to secure and pay for the building permit(s) for the project.

2.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, two (2) original sealed copies and one (1) electronic copy of Drawings, Specifications and the Project Manual free of charge for the execution of the Work as provided in Subparagraph 1.3.2.

2.2.5 The Owner shall forward all communications to the Contractor through Project Management and shall contemporaneously provide the same communications to the Architect.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 Owner's Right to Stop the Work

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of

the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2. 4 Owner's Right to Carry Out the Work

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such second three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for another contractor or subcontractor or Project Management's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. If payments then, or thereafter, due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event of clean-up issues, Owner has right to provide a minimum of 24 hours notice. In the event of safety issues determined to be of a serious nature, as determined by Project Management, notice will be given, and contractor is required to rectify deficiency immediately.

ARTICLE 3

CONTRACTOR

3.1 Definition

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The plural term "Contractors" refers to persons or entities who perform construction under Conditions of the Contract that are administered by Project Management, and that are identical or substantially similar to these Conditions.

3.2 Review of Contract Documents and Field Conditions by Contractor

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to Project Management and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Project Management or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to Project Management and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Project Management and Architect, the Contractor shall

assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Project Management and Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 Supervision and Construction Procedures

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of Project Management as provided in Subparagraphs 4.6.3 and 4.6.5.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Project Management or Architect in their administration of the Contract, or by test, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent work.

3.3.5 The Contractor shall verify that the Construction Documents being worked with are the most recent and updated available, including all Addenda information. Also the Contractor will perform the work strictly in accordance with this contract.

3.4 Labor and Materials

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 The Contractor is responsible for the conduct of his employees at all times. Misconduct, destruction of property, unsafe practices, or violation of any Federal or State regulations including abuse of alcohol or drugs, will be cause for permanent dismissal from the project. If any Contractor's employee is determined to be detrimental to the Project, as deemed by Project Management, the Contractor will remove and/or replace the employee at the request of Project Management. Employees dismissed from the project will be transported from the job site at the Contractor's expense.

3.4.4 The Contractor shall be totally responsible for the security of his work, materials, equipment, supplies, tools, machinery, and construction equipment.

3.4.5 The Contractor shall be responsible for complete, timely and accurate field measurements as necessary for proper coordination, fabrication and installation of his materials and equipment. The Contractor agrees to cooperate with Project Management, if required, to accommodate any discovered variations or deviations from the Drawings and Specifications so that the progress of the Work is not adversely affected.

3.5 Warranty

3.5.1 The Contractor warrants to the Owner, Project Management and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Project Management or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 Taxes

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 Permits, Fees and Notices

3.7.1 The Contractor shall secure and pay for all permits, impact fees, governmental fees, licenses, inspections, testing, surveys and utility fees required by Federal, State, Municipal or Utility entities having jurisdiction over the project for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. The Owner will assess Monroe County building permit and Monroe County impact fees. The Contractor will be responsible for all building permit costs or impact fees required for this project. The Contractor shall secure and pay for all building and specialty permits including plumbing, electrical, HVAC, etc.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify Project Management, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Project Management , Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.9 Superintendent

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall be satisfactory to Project Management and shall not be changed except with the consent of Project Management, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his employ.

3.10 Contractor's Construction Schedule

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and Project Management's approval a Contractor's Construction Schedule for the Work. Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. This schedule, to be submitted within fourteen (14) days after Contract Award, shall indicate the dates for the starting and completion of the various stages of construction, shall be revised as required by the conditions of the Work, and shall be subject to Project Management's approval.

3.10.2 The Contractor shall cooperate with Project Management in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces.

3.10.4 The Contractor shall conform to the most recent schedules.

3.10.5 Architect and Project Management will schedule and conduct a project meeting at a minimum of one meeting per month in each month which the Contractor shall attend. At this meeting, the parties can discuss jointly such matters as progress, scheduling, and problems.

3.11 Documents and Samples at the Site

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Project Management and Architect and shall be delivered to Project Management for submittal to the Owner upon completion of the Work.

3.12 Shop Drawings, Product Data and Samples

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Project Management is subject to the limitations of Subparagraph 4.6.12.

3.12.5 The Contractor shall review, approve and submit to Project Management, in accordance with the schedule and sequence approved by Project Management, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Contractor shall cooperate with Project Management in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Project Management and Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Project Management or Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed Project Management and Architect in writing of such deviation at the time of submittal and Project Management and Architect have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Project Management's and Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Project Management and Architect on previous submittals.

3.12.10 Informational submittals upon which Project Management and Architect are not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Project Management and Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12.12 If materials specified in the Contract Documents are not available on the present market, the Contractor may submit data on substitute materials to Project Management for approval by the Owner.

3.13 Use of Site

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, Project Management before using any portion of the site.

3.14 Cutting and Patching

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly; He shall also provide protection of existing work as required.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Contractors by cutting, patching, excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by other Contractors or by the Owner's own forces except with written consent of Project Management, Owner and such other contractors: such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work. When structural members are involved, the written consent of Project Management shall also be required. The Contractor shall not unreasonably withhold from Project Management or any separate contractor his consent to cutting or otherwise altering the Work.

3.14.3 The Contractor shall arrange for any blockouts, cutouts, or openings required for the installation of his materials and equipment and the execution of his work, whether or not shown or indicated on the Drawings. The Contractor shall be further responsible for sealing and/or finishing, in an acceptable fashion and meeting any applicable code requirements, and such block-out, cutout opening, or other hole in any fire-related floor, ceiling, wall, security wall, or any other finished surface.

3.15 Cleaning Up

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the project waste materials rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. Clean up shall be performed to the satisfaction of the Owner or Project Management.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, Project Management may do so with the Owner's approval and the cost thereof shall be charged to the Contractor.

3.16 Access to Work

3.16.1 The Contractor shall provide the Owner, Project Management and Architect access to the Work in preparation and progress wherever located.

3.17 Royalties and Patents

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, Project Management and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 Indemnification and Hold Harmless

3.18.1 **Hold Harmless and Indemnification:** Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, the Contractor covenants and agrees that he shall indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) ~~any~~ claims, actions or causes of action, (ii) ~~any~~ litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) ~~any~~ costs or expenses that may be asserted against, initiated with respect to, or sustained by the County and the COUNTY's elected and appointed officers and employees from liabilities damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the indemnifying party in the performance of the construction contract. The monetary limitation of liability under this contract shall be not less than $1 million per occurrence pursuant to F. S. 725.06. Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this Agreement, this section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

In the event the completion of the project (including the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

The first ten dollars ($10.00) of remuneration paid to the Contractor is for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

ARTICLE 4

ADMINISTRATION OF THE CONTACT

4.1 Architect

4.1.1 The Architect is the person lawfully licensed to practice architecture or any entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. **Bender and Associates** is the Architect on this project.

4.2 Project Management

4.2.1 Project Management is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Project Management" means Monroe County Project Management or Project Management's authorized representative.

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

4.4 In case of termination of employment of Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

4.5 Not Used

4.6 Administration of the Contract

4.6.1 Project Management and Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. Project Management and Architect will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Document, unless otherwise modified by written instrument in accordance with other provision of the Contract.

4.6.2 Project Management and Architect will determine in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.6.3 Project Management will provide for coordination of the activities of other Contractors and of the Owner's own forces with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and Project Management and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall constitute the schedules to be used by the Contractor, other Contractors, Project Management and the Owner until subsequently revised.

4.6.4 Not used.

4.6.5 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required

to make exhaustive or continuous onsite inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the work.

4.6.6 Project Management, except to the extent required by Architect, will not have control over or charge of and will not be responsible for construction means, method, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Neither Project Management nor the Architect will have control over, or charge of, or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.6.7 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through Project Management, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through Project Management and shall be contemporaneously provided to the Architect.

4.6.8 The Architect will review and certify all Applications for Payment by the Contractor, including final payment. Project Management will assemble each of the Contractor's Applications for Payment with similar Applications from other Contractor into a Project Application for Payment. After reviewing and certifying the amounts due the Contractors, the Project Application for Payment, along with the applicable Contractors' Applications for Payment, will be processed by Project Management.

4.6.9 Based on the Architect 's observations and evaluations of Contractors' Applications for Payment, Project Management will certify the amounts due the Contractors and will issue a Project Approval for Payment.

4.6.10 The Architect will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying Project Management. Subject to review by the Architect, Project Management will have the authority to reject Work which does not conform to the Contract Documents. Whenever Project Management considers it necessary or advisable for implementation of the intent of the Contract Documents, Project Management will have authority to require additional inspection or testing of the work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. The foregoing authority of Project Management will be subject to the provisions of Subparagraphs 4.6.18 through 4.6.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor Project Management's authority to act under this Subparagraph 4.6.10 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Project Management to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

4.6.11 The Architect will receive from the Contractor and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from other Contractors, and transmit to Project Management those recommended for approval. The

Architect's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of other Contractors or the Owner.

4.6.12 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such promptness consistent with the constraints of the project schedule so as to cause no delay in the Work of the Contractor or in the activities of the other Contractors, the Owner, or Project Management, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.6.13 Project Management will prepare Change Orders and Construction Change Directives.

4.6.14 Following consultation with Project Management, the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7 and will have authority to order minor changes in the Work as provided in Paragraph 7.4.

4.6.16 The Contractor will assist the Architect in conducting inspections to determine the dates of Substantial completion and final completion, and will receive and forward to the Architect written warranties and related documents required by the Contract and assembled by the Contractor. The Architect will forward to Project Management a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

4.6.17 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.6.18 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of Project Management, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.6, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.6.19 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.6.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.7 Claims and Disputes

4.7.1 **Definition**. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the claim.

4.7.2 **Meet and Confer**. The Contractor, Project Management and Architect shall try to resolve the claim or dispute with meet and confer sessions to be commenced within 15 days of the dispute or claim. Any claim or dispute that the parties cannot resolve shall be decided by the Circuit Court, 16th Judicial Circuit, Monroe County, Florida.

4.7.3 **Time Limits on Claims**. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. This notice is not a condition precedent to any other legal action or suit.

4.7.4 **Continuing Contract Performance**. Pending final resolution of a Claim unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.7.5 **Waiver of Claims: Final Payment**. The making of final payment shall constitute a waiver of Claim by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

4.7.6 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site 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 notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions, and the parties will follow the procedure in paragraph 4.7.2.

4.7.7 **Claims for Additional Cost**. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) a written order for a minor change in the Work issued by the Architect, (3) failure of payment by the Owner, (4) termination of the Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.7.8 Claims for Additional Time.

4.7.8.1. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given.

4.7.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.7.9 **Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.7.7 or 4.7.8.

ARTICLE 5

SUBCONTRACTORS

5.1 Definitions

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

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

5.2 Award of Subcontracts and Other Contracts for Portions of the Work

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Project Management for review by the Owner, Project Management and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Project Management will promptly reply to the Contractor in writing stating whether or not the Owner, Project Management or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Project Management to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Project Management or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Owner, Project Management, or Architect has made reasonable objection.

5.2.3 If the Owner or Project Management refuses to accept any person or entity on a list submitted by the Contractor in response to the requirements of the Contract Documents, the Contractor shall submit an acceptable substitute; however, no increase in the Contract Sum shall be allowed for any such substitution.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Project Management or Architect makes reasonable objection to such change.

5.3 Subcontractual Relations

5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, Project Management and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Project Management and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. When appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 Contingent Assignment of Subcontracts

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under public construction bond covering the Contract.

i. If the work has been suspended for more then 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

6.1.1 The Owner reserves the right to perform construction or operations released to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by Project Management. The Owner further reserves the right to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver or subrogation.

6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by Project Management, the Owner shall provide for coordination of such forces with the Work of the Contractor who shall cooperate with them.

6.1.3 It shall be the responsibility of the Contractor to coordinate his work with the work of other contractors on the site. The Owner and Project Management shall be held harmless for any and all costs associated with improper coordination.

6.2 Mutual Responsibility

6.2.1 The Contractor shall afford the Owner's own forces, Project Management and other contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Project Management and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the Contractor. The Contractor's sole remedy as against the Owner for costs caused by delays or improperly timed activities or defective construction shall be an extension of time.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or other contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and other contractors shall be subject to the provisions of Paragraph 4.7 provided the other contractors have reciprocal obligations.

6.2.6 The Owner and other contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.2.7 Should the Contractor contend that he is entitled to an extension of time for completion of any portion or portions of the work, he shall, within (72) hours of the occurrence of the cause of the delay, notify Project Management in writing, of his contention: setting forth (A) the cause for the delay, (B) a description of the portion or portions of work affected thereby, and (C) all details pertinent thereto. A subsequent written application for the specific number of days of extension of time requested shall be made by the Contractor to Project Management within (72) hours after the delay has ceased to exist.

.1 It is a condition precedent to the consideration or prosecution of any claim for an extension of time that the foregoing provisions be strictly adhered to in each instance and, if the Contractor fails to comply, he shall be deemed to have waived the claim.

.2 The Contractor agrees that whether or not any delay, regardless of cause, shall be the basis for an extension of time he shall have no claim against the Owner or Project

Management for an increase in the Contract price, nor a claim against the Owner or Project Management for a payment or allowance of any kind for damage, loss or expense resulting from delays; nor shall the Contractor have any claim for damage, loss or expense resulting from interruptions to, or suspension of, his work to enable other contractors to perform their work. The only remedy available to the Contractor shall be an extension of time.

6.3 Owner's Right to Clean Up

6.3.1 If a dispute arises among the Contractor, other contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as Project Management, in consultation with the Architect, determines to be just.

ARTICLE 7
CHANGES IN THE WORK

7.1 Changes

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Project Management, Architect and Contractor; a Construction Change Directive require agreement by the Owner, Project Management and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 Change Orders

7.2.1 A change Order is a written instrument prepared by Project Management and signed by the Owner, Project Management, Architect and Contractor, stating their agreement upon all of the following:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Sum, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

7.2.2 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following methods:

.1 mutual acceptance of lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and payment, and approved by the appropriate authority in writing;

.2 unit prices stated in the Contract Documents or subsequently agreed upon, and approved by the appropriate authority in writing;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

.4 or by method provided in subparagraph 7.2.3.

7.2.3 If none of the methods set forth in Clauses 7.2.1 or 7.2.2 is agreed upon, the Contractor, provided a written order signed by the Owner or Project Management is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by daily force accounts in a form acceptable to the Owner and Project Management. The daily force account forms shall identify Contractor and /or Subcontractor personnel by name, total hours for each man, each piece of equipment and total hours for equipment and all material(s) by type for each extra Work activity claim. Each daily force account form shall be signed by the designated Project Management representative no later than the close of business on the day the Work is performed to verify the items and hours listed. Extended pricing of these forms shall be submitted to Project Management with all supporting documentation required by Project Management for inclusion into a change order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; works' or workmen's compensation insurance; and the rental value of equipment and machinery. Markups for overhead and profit will be in accordance with subparagraph 7.2.4. Pending final determination of cost, payments on account shall be made as determined by Project Management. The amount of credit to be allowed by the Contractor for any deletion or change, which results in a net decrease in the Contract Sum, will be the amount of the actual net cost to the Owner as confirmed by Project Management. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any with respect to that change.

7.2.4 The actual cost of Changes in the Work may include all items of labor or material, power tools, and equipment actually used, utilities, pro rata charges for foreman, and all payroll charges such as Public Liability and Workmen's Compensation Insurance. No percentage for overhead and profit shall be allowed on items of Social Security and Sales Tax. If deductions are ordered the amount of credit shall be net cost to Owner as defined in section 5.6.1 of the Contract. Items considered as overhead shall include insurance other than that mentioned above, bond or bonds, superintendent, timekeeper, clerks, watchmen, use of small tools, miscellaneous supplies, incidental job costs, warranties, and all general home/field office expenses. The actual cost of Changes in the Work (other than those covered by unit prices set forth in the Contract Documents) shall be computed as follows:

.1 if the Contractor performs the actual Work, the maximum percentage mark-up for overhead shall be five percent (5%) and the maximum percentage for profit shall be five percent (5%);

.2 if the Subcontractor performs the actual Work, the subcontractor's percentage mark-up for overhead and profit shall be a maximum addition of ten percent (10%). If the Contractor

does not perform the Work, the maximum mark-up for managing the Work will be five percent (5%);

3. if the Subcontractor performs part of the actual Work, his percentage mark-up for overhead and profit shall be a maximum addition of ten percent (10%) on his direct Work only. If the Contractor performs part of the actual Work, his percentage mark-up for overhead and profit shall be a maximum addition of ten percent (10%) on his direct Work only.

7.2.5 The Contractor shall furnish to the Owner through Project Management, an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered. Any additional supporting documentation requested by Project Management such as certified quotations or invoices shall be provided by the Contractor to Project Management at no additional cost to the Owner.

7.2.6 If the Contractor claims that any instructions given to him by Project Management, by drawings or otherwise, involve extra Work not covered by the Contract, he shall give Project Management written notice thereof within five (5) days after the receipt of such instructions and before proceeding to execute the work, except in emergencies endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3.

.1 The written notice to Project Management for the Extra Work shall include a complete description of the extra Work, the total cost and a detailed cost breakdown by labor, material and equipment for each additional activity required to be performed. Mark-ups shall be limited as specified elsewhere in this Article.

.2 Except as otherwise specifically provided, no claim for additional cost shall be allowed unless the complete notice specified by this subparagraph is given by the Contractor.

7.2.7 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute or claim proceeding, and Owner shall continue to make payments to the Contractor in accordance with the Contract Documents. Disputes unresolved shall be settled in accordance with subparagraph 4.7. The Contractor shall maintain completed daily force account forms in accordance with subparagraph 7.2.3 for any dispute or claim item.

7.4 Authority

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through Project Management and shall be binding on the Owner and Contractor. The Contractor shall carry out such written order promptly.

ARTICLE 8

TIME

8.1 Definitions

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by Project Management in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.1.5 The Owner/Project Management shall be the final judge as to whether Substantial Completion has been achieved and certifies the date to the Contractor and Architect.

8.2 Progress and Completion

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 Delays and Extensions of Time

8.3.1 If the Contractor is delayed, at any time, in the progress of the Work by any act or neglect of the Owner, Project Management, or the Architect/Engineer, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, Project Management, or by any other cause which Project Management determines may justify the delay, then the Contract Time shall be extended by no cost Change Order for such reasonable time as Project Management may determine, in accordance with subparagraph 6.2.7.

8.3.2 Any claim for extension of time shall be made in writing to Project Management not more than Seventy-two (72) hours after the commencement of the delay in accordance with paragraph 6.2.7; otherwise it shall be waived. Any claim for extension of time shall state the cause of the delay and the number of days of extension requested. If the cause of the delay is continuing, only one claim is necessary, but the Contractor shall report the termination of the cause for the delay within seventy-two (72) hours after such termination in accordance with paragraph 6.2.7; otherwise, any claim for extension of time based upon that cause shall be waived.

8.3.3 No claim for an increase in the Contract Sum for either acceleration or delay will be allowed for extensions of time pursuant to this Paragraph 8.3 or for other changes in the Construction Schedules.

8.3.4 If the Project is delayed as a result of the Contractor's refusal or failure to begin the Work on the date of commencement as defined in Paragraph 8.1.2, or his refusal or failure to

carry the Work forward expeditiously with adequate forces, the Contractor causing the delay shall be liable for, but not limited to, delay claims from other Contractors which are affected.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 Contract Sum

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 Schedule of Values

9.2.1 Before submittal of the first Application for Payment, the Contractor shall submit to the Architect, through Project Management, a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Project Management and Architect may require. This schedule, unless objected to by Project Management or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 Applications for Payment

9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner, Project Management or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

.1 Such applications may include request for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which approval for payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. All Subcontractors and Sub-subcontractors shall execute an agreement stating that title will so pass, upon their receipt of payment from the Contractor. The warranties are for the administrative convenience of the Owner only and do not create an obligation on the part of the Owner to pay directly any unpaid subcontractor, laborer or materialmen. Such persons must seek payment from the Contractor or his public construction bond surety only.

9.4 Approval for Payment

9.4.1 The Architect will assemble a Project Application for Payment by combining the Contractor's applications with similar applications for progress payments from other Contractors and certify the amounts due on such applications.

9.4.2 After the Architect's receipt of the Project Application for Payment, Project Management and Architect will either approve the Application for Payment, with a copy to the Contractor, for such amount as Project Management and Architect determine is properly due, or notify the Contractor in writing of Project Management's and Architect's reasons for withholding approval in whole or in part as provided in Subparagraph 9.5.1.

9.4.3 The issuance of a separate Approval for Payment will constitute representations made separately by Project Management and Architect to the Owner, based on their individual observations at the site and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of Project Management's and Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Project Management or Architect. The issuance of a separate Approval for Payment will further constitute a representation that the Contractor is entitled to payment in the amount approved. However, the issuance of a separate Approval for Payment will not be a representation that Project Management or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 Decisions to Withhold Approval

9.5.1 Project Management/Architect may decline to approve an Application for Payment if, in his opinion, the application is not adequately supported. If the Contractor and Project Management cannot agree on a revised amount, Project Management shall process the Application for the amount it deems appropriate. Project Management may also decline to approve any Application for Payment because of subsequently discovered evidence or subsequent inspections. It may nullify, in whole or part, any approval previously made to such extent as may be necessary in its opinion because of: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims; (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to Project Management, the Owner, or another contractor

working at the project; (6) reasonable evidence that the Work will not be completed within the contract time; (7) persistent failure to carry out the Work in accordance with the Contract Documents.

No payment shall be made to the Contractor until certificates of insurance or other evidence of compliance by the Contractor, with all the requirements of Article 11, have been filed with the Owner and Project Management.

9.5.2 When the above reasons for withholding approval are removed, approval will be made for amounts previously withheld.

9.6 Progress Payments

9.6.1 After Project Management and Architect have issued an Approval for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify Project Management and Architect. From the total of the amount determined to be payable on a progress payment, a retainage in accordance with the Florida Local Government Prompt Payment Act, Chapter 218, Florida Statutes will be deducted and retained by the Owner until the final payment is made. The balance of the amount payable, less all previous payments, shall be approved for payment.

.1 It is understood and agreed that the Contractor shall not be entitled to demand or receive progress payment based on quantities of Work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by Project Management to be a part of the final quantity for the item of Work in question.

.2 No progress payment shall bind the Owner to the acceptance of any materials or Work in place, as to quality or quantity. All progress payments are subject to correction at the time of final payments.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 Project Management will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Project Management and Architect on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner, Project Management nor Architect shall have an obligation to pay, or to see to, the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 All material and work covered by partial payments made shall thereupon become the sole property of the Owner, and by this provision shall not be construed as relieving the

Contractor from the sole responsibility for the materials and Work upon which payments have been made or the restoration for any damaged material, or as a waiver of the right of the Owner or Project Management to require the fulfillment of all the terms of the Contract.

9.6.8 Except in case of bona fide disputes, or where the Contractor has some other justifiable reason for delay, the Contractor shall pay for all transportation and utility services not later than the end of the calendar month following that in which services are rendered and for all materials, tools, and other expendable equipment which are delivered at the site of the Project. The Contractor shall pay to each of his Subcontractors, not later than the end of the calendar month in which each payment is made to the Contractor, the representative amount allowed the Contractor on account of the Work performed by the Subcontractor. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his suppliers and Sub-subcontractors in a similar manner.

9.8 Substantial Completion

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and Project Management shall jointly prepare and submit to the Architect a comprehensive 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 such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the list, Project Management, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the 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 Architect. The Contractor shall then submit a request for another inspection by Project Management, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, Project Management will prepare a Certificate of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents 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 Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

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

9.9 Partial Occupancy or Use

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph

11.3.1 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Project Management shall jointly prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of Project Management.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Project Management and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 Final Completion and Final Payment

9.10.1 Upon completion of the Work, the Contractor shall forward to Project Management a written Notice that the Work is ready for final inspection and acceptance and shall also forward to Project Management a final Contractor's Application for Payment. Upon receipt, Project Management will forward the Notice and Application to the Architect who will promptly make such inspection. When the Architect, based on the recommendation of Project Management, finds the Work acceptable under the Contract Documents and the Contract fully performed, Project Management and Architect will promptly issue a final Approval for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Approval is due and payable. Project Management's and Architect's final Approval for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through Project Management (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is made, is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract.

9.10.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described Subparagraph 4.7.5.

9.11 Payment of Subcontractors

9.11.1 Any requirement of this Article 9 that the Contractor furnish proof to the Owner, Architect, Project Management that the subcontractors and materialmen have been paid is for the protection and convenience of the Owner only. Unpaid subcontractors and materialmen may only seek payment from the Contractor and the surety that provided the Contractor's Public Construction Bond. **The Contractor must insert this paragraph 9.11 in all its contracts with subcontractors and materialmen.**

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to Project Management for review and coordination with the safety programs of other Contractors.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Project Management and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Project Management in writing. The Owner, Contractor and Project Management shall then proceed in the same manner described in Subparagraph 10.1.2.

10.1.6 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Project Management the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and Project Management will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor or Project Management has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and Project Management have no reasonable objection.

10.2 Safety of Persons and Property

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

.4 construction or operations by the Owner or other Contractors.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of property qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Clauses 10.2.1.2, 10.2.1.3, 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Project Management or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Project Management and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 Emergencies

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

11.1.1 Prior to commencement of Work governed by this contract (including the prestaging of personnel and material), the Contractor shall obtain, at its own expense, insurance as specified in the schedule set forth in Section 00110 Proposal Form which are made part of this Agreement. The Contractor will ensure that the insurance obtained will extend protection to all subcontractors engaged by the Contractor. As an alternative the Contractor may require all subcontractors to obtain insurance consistent with the attached schedules.

11.1.2 The Contractor will not be permitted to commence Work governed by the Agreement (including pre-staging of personnel and material) until satisfactory evidence of the required insurance has been furnished to the County as specified below. Delays in the commencement of Work resulting from the failure of the Contractor to provide satisfactory evidence of the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence of insurance.

11.1.3 The Contractor shall maintain the required insurance throughout the entire term of this contract and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all Work until the required insurance has been reinstated or replaced. Delays in the completion of Work resulting from the failure of the Contractor to maintain the required insurance shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the Work commenced on the specified date and time, except for the Contractor's failure to provide satisfactory evidence of insurance.

11.1.4 The Contractor shall provide, to the County in care of Project Management as satisfactory evidence of the required insurance, either:

Certificate of Insurance

or

A certified copy of the actual insurance policy

11.1.5 The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this Contract.

11.1.6 All insurance policies must specify that they are not subject to cancellation, nonrenewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the insurer.

11.1.7 The acceptance and/or approval of the Contractor's insurance shall not be construed as relieving the Contractor from any liability or obligation assumed under this contract or imposed by law.

11.1.8 The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Worker's Compensation.

11.1.9 In addition, the County will be named as an additional insured and loss payee on all policies covering County-owned property.

11.1.10 Any deviations from these General Insurance Requirements must be requested in writing on the County prepared form entitled "Request for Waiver of Insurance Requirements" and approved by the Monroe County's Risk Manager.

11.2 Builder's Risk Insurance

11.2.1 The Owner **shall** require the contractor to furnish Builder's Risk insurance in an amount equal to the contract cost.

11.3 Public Construction Bond

11.3.1 A public construction bond shall be required under this contract unless the contractor awarded the bond is specifically exempted by the Monroe County Board of County Commissioners pursuant to F.S. 255.051(1)(a).

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 Uncovering of Work

12.1.1 If a portion of the Work is covered contrary to Project Management's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either Project Management or Architect, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which Project Management or Architect has not specifically requested to observe prior to its being covered, Project Management or Architect may request to see such Work and it shall be uncovered by the Contractor, if such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner, if such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

12.2 Correction of Work

12.2.1 The Contractor shall promptly correct Work rejected by Project Management or Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Project Management's and Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.9, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial

Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through Project Management, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for Project Management's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 Acceptance of Nonconforming Work

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Governing Law

13.1.1 The contract shall be governed by the laws of the State of Florida. Venue for any claims or disputes arising under this contract shall be in the Circuit Court of the 16th Judicial Circuit of the State of Florida.

13.2 Successors and Assigns

13.2.1 The Owner or Project Management (as the case may be) and the Contractor each binds himself, his partners, successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

13.2.2 The Contractor shall not assign any monies due or to become due under this Contract without prior written consent of the Owner or Project Management.

13.3 Written Notice

13.3.1 Any written notices or correspondence given pursuant to this contract shall be sent by United States Mail, certified, return receipt requested, or by courier with proof of delivery. Notice shall be sent to the following persons:

For Contractor: D.L. Porter Constructor's Inc.

6574 Palmer Park Circle

Sarasota, FL 34238

For Owner:	Director of Project Management	County Administrator
	1100 Simonton St., Room 2-216	1100 Simonton St.
	Key West, Florida 33040	Key West Florida 33040

13.4 Rights and Remedies

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Project Management, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 Tests and Inspections

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give Project Management and Architect timely notice of when and where tests and inspections are to be made so Project Management and Architect may observe such procedures. The Owner shall bear costs of test, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If Project Management, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not

included under Subparagraph 13.5.1, Project Management and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to Project Management and Architect of when and where tests and inspections are to be made so Project Management and Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for Project Management's and Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to Project Management for transmittal to the Architect.

13.5.5 If Project Management or Architect is to observe tests, inspections or approvals required by the Contract Documents, Project Management or Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.7 Commencement of Statutory Limitation Period

13.7.1 The statute of limitations applicable to this contact are as provided in Section 95.11 (3) (C), Florida Statutes.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the Owner for Cause

14.1.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

.or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.1.2 When any of the above reasons exist, the Owner, after consultation with Project Management, and upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, 72 hours written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.1.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2 Suspension or Termination by the Owner for Convenience

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

14.2.2 In the event of Termination the Owner shall pay for work completed to date of Termination.

END OF SECTION

D.L. Porter acknowledges receipt of General Conditions _____
Signature

SECTION 00110

PROPOSAL FORM

The Proposal shall be submitted on the forms included in this section of the Request for Porposal Documents as previously instructed herein.

Item	Description	Pages
1.	Proposal Form	3 - 4
2.	Bid Bond	5
3.	Non-Collusion Affidavit	6
4.	Lobbying and Conflict of Interest Clause	7
5.	Drug-Free Workplace Form	8
6.	Local Preference Form	9
7.	Sub-Contractor Listing Form	10
8.	Insurance Agent and Bidder's/Proposer's Statements	11-12
9.	Contractor License Current Copy to Be Submitted with Bid/Proposal Subcontractor Licenses to Be Submitted Prior to Award of Notice to Proceed	

10. In order to determine if the persons or entity submitting bid/proposals are responsible, all proposals for contracts to be awarded under this section must contain the following information:

    A. A list of the entity's shareholders with five (5) percent or more of the stock or, if a general partnership, a list of the general partners; or, if a limited liability company, a list of its members; if a solely owned proprietorship, names(s) of owner(s). A copy of documentation demonstrating that the entity is a legally viable entity shall be attached. See attached 2011 for Profit Corporation Annual Report.

    B. A list of the officers and directors of the entity; See attached Corp. Annual Report.

    C. Relevant Experience: The number of years the person or entity has been operating and, if different, the number of years it has been providing the service, goods, or construction services called for in the bid specifications (include a list of similar projects); 34 yrs. See attached for list of projects.

    D. The number of years the person or entity has operated under its present name and any prior names; D.L. Porter Constructors, Inc. (13 years)
    D.L. Porter Construction, Inf. (34 years)

    E. Answers to the following questions regarding claims and suits:

a. Has the person, principals of the entity, entity or its officers, major shareholders or directors, ever failed to complete work or provide the goods for which it has contracted? (If yes, provide details.) No

b. Are there any judgments, claims, arbitration proceeding or suits pending or outstanding against the person, principal of the entity, or entity, or its officers, directors, or general partners? (If yes, provide details.) **No**

c. Has the person, principal of the entity, entity, or its officers, major shareholders or directors within the last five (5) years, been a party to any law suits or arbitrations with regard to a contract for services, goods or construction services similar to those requested in the specifications with private or public entities? (If yes, provide details.) Yes, Gato Bldg. Final Order of Dismissal 4/15/09

d. Has the person, principal of the entity, or its officers, owners, partners, major shareholders or directors, ever initiated litigation against the County or been sued by the County in connection with a contract to provide services, goods or construction services? (If yes, provide details.) Yes, Gato Bldg. Final Order of Dismissal 4/15/09

e. Whether, within the last five (5) years, the Owner, an officer, general partner, principal, controlling shareholder or major creditor of the person or entity was an officer, director, general partner, principal, controlling shareholder or major creditor of any other entity that failed to perform services or furnish goods similar to those sought in the request for bids; No

f. Customer references (minimum of three), including name, current address and current telephone number; See attached

g. Credit References (minimum of three),), including name, current address and current telephone number; See attached

h. Financial statements for the prior three years. See attached
("Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s.24(a), Art. 1 of the State Constitution.")

SECTION 00110

PROPOSAL FORM

PROPOSAL TO: **MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**
c/o PURCHASING DEPARTMENT
1100 SIMONTON STREET
ROOM 1-213
KEY WEST, FLORIDA 33040

PROPOSAL FROM: D.L. PORTER CONSTRUCTORS, INC.
6574 Palmer Park Circle
Sarasota, FL 34238

The undersigned, having carefully examined the Work and reference Drawings, Specifications, Proposal, and Addenda thereto and other Contract Documents for the construction of:

WEST MARTELLO FENCE PROJECT, 1000 ATLANTIC BLVD, KEY WEST, FLORIDA 33040

and having carefully examined the site where the Work is to be performed, having become familiar with all local conditions including labor affecting the cost thereof, and having familiarized himself with material availability, Federal, State, and Local laws, ordinances, rules and regulations affecting performance of the Work, does hereby propose to furnish all labor, mechanics, superintendents, tools, material, equipment, transportation services, and all incidentals necessary to perform and complete said Work and work incidental hereto, in a workman-like manner, in conformance with said Drawings, Specifications, and other Contract Documents including Addenda issued thereto.

The undersigned further certifies that he has personally inspected the actual location of where the Work is to be performed, together with the local sources of supply and that he understands the conditions under which the Work is to be performed. The successful bidder shall assume the risk of any and all costs and delays arising from the existence of any subsurface or other latent physical condition which could be reasonably anticipated by reference to documentary information provided and made available, and from inspection and examination of the site.

The Base Proposal shall be furnished below in words and numbers. If there is an inconsistency between the two the Proposal in words shall control.

Thirty five thousand Twenty one ~ 00/100 Dollars.
(Total Base Bid- words)

$ 35,021.00
(Total Base Bid – numbers)

I acknowledge Alternates as follows:
Alternate #1:
Demolition of Fence & Removal of Vegetation - Deduct ($-2500.00)

I acknowledge receipt of Addenda No.(s)

No. 1 Dated 9/16/11
No.____ Dated_____
No.____ Dated_____
No.____ Dated_____
No.____ Dated_____

I have included pages 00110 - 3 through 12 of the Proposal which entails the Proposal Form X, and the required Bid/Proposal Security X, the Non-Collusion Affidavit X, the Lobbying and Conflict of Interest Clause X, the Drug-Free Workplace Form X, the Local Preference Form X, the Subcontractor Listing Form X, Insurance Requirements–Hold Harmless Statement and an Insurance Agent's Statement (pages 00110-11) X, and Supplementary Bid Form For Unit Prices (page 00310 – 1 and 2). In addition, I have included a certified copy of current Contractor's License, Florida State active and legally viable entity status of corporation, and Monroe County Occupational License.

(Check mark items above, as a reminder that they are included.)

Mailing Address: D.L. PORTER CONSTRUCTORS, INC.
6574 Palmer Park Circle
Sarasota, FL 34238

Phone Number: 941-929-9400

Date: 9/29/11 Signed: C. [signature]

C. Marshall White
(Name)

Vice President
(Title)

Witness: [signature]
Paulette Jewell

(Seal)

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we

D.L. Porter Constructors, Inc.
6574 Palmer Park Circle
Sarasota, FL 34238

(Here insert name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

(Here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of as Surety, hereinafter called the Surety, are held and firmly bound unto

Monroe County Board of County Commissioners
1100 Simonton Street
Key West, FL 33040

(Here insert full name and address or legal title of Owner)

Five Percent of Amount Bid (5% of Amount Bid)

as Obligee, hereinafter called the Obligee, in the sum of Dollars ($), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and serverally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

West Martello Fence Project - RFP-ENG-272-93-2011-PUR/CV
Key West, FL

(Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contact with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. Any action instituted by a claimant under this bond must be in accordance with the notice and time limitations provisions in Section 255.05(2), Florida Statutes.

Signed & sealed September 23, 2011

D.L. Porter Constructors, Inc.

(Principal) (Seal)

C. Marshall White

Vice President

(Title)

(Witness) Paulette Jewell

Liberty Mutual Insurance Company

(Surety) (Seal)

(Witness) Sharon Daugherty

(Title) Anett Cardinale Attorney-in-Fact & FL Licensed Resident Agent

Inquiries 813-281-2095

3027000

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

DAVID H. CARR, JAMES W. DUNN, ANETT CARDINALE, CAROL H. HERMES, MARGARET A. GINEM, LINDA HORN, KEVIN F. MCGRATH, ALL OF THE CITY OF TAMPA, STATE OF FLORIDA

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **ONE HUNDRED FIFTY MILLION AND 00/100**********DOLLARS ($ **150,000,000.00**********) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 14th day of July, 2010.

LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 14th day of July, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

TERESA PASTELLA COMMONWEALTH OF PENNSYLVANIA NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 23rd day of September, 2011.

By David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call

SECTION 00110

NON-COLLUSION AFFIDAVIT

I, C. Marshall White of the city Sarasota, FL according to law on my oath, and under penalty of perjury, depose and say that:

1. I am Vice President

   of the firm of D.L. Porter Constructors, Inc.
   the bidder making the Proposal for the project described in the notice for calling for bids for:

   West Martello Fence Project

   and that I executed the said proposal with full authority to do so;

2. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

3. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and

4. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit, or not to submit, a bid for the purpose of restricting competition; and

5. The statements contained in this affidavit are true and correct, and made with full knowledge that said project.

(Signature of Bidder) 9/29/11 (Date)

STATE OF: FL

COUNTY OF: Sarasota

PERSONALLY APPEARED BEFORE ME, the undersigned authority, C. Marshall White

who, after first being sworn by me, (name of individual signing) affixed his/~~her~~ signature in the space provided above

on this 29th day of September, 20 11.

NOTARY PUBLIC

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
PAULETTE JEWELL
COMMISSION # DD795552
EXPIRES JUL 16 2012
BONDED THROUGH
RLI INSURANCE COMPANY

SECTION 00110

LOBBYING AND CONFLICT OF INTEREST CLAUSE

SWORN STATEMENT UNDER ORDINANCE NO. 010-1990
MONROE COUNTY, FLORIDA

ETHICS CLAUSE

" D.L. PORTER CONSTRUCTORS, INC. "
(Company)

"... warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former County officer or employee in violation of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the County may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee".

(Signature) C. Marshall White, VP

Date: 9/29/11

STATE OF: FLORIDA

COUNTY OF: SARASOTA

Subscribed and sworn to (or affirmed) before me on September 29, 2011 (date)

by C. Marshall White (name of affiant). He/~~She~~ is personally known to me

~~or has produced~~ _____ as identification. (Type of identification)

NOTARY PUBLIC

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
PAULETTE JEWELL
COMMISSION # DD795552
EXPIRES JUL 16 2012
BONDED THROUGH
RLI INSURANCE COMPANY

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that:

D.L. PORTER CONSTRUCTORS, INC.
(Name of Business)

1. Publishes 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 actions that will be taken against employees for violations of such prohibition.

2. Informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

3. Gives 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), notifies 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 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

5. Imposes 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, or any employee who is so convicted.

6. Makes 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 firm complies fully with the above requirements.

Proposer/Bidder Signature

9/29/11

Date

LOCAL PREFERENCE FORM

A. Vendors claiming a local preference according to Ordinance 023-2009 must complete this form.

Name of Bidder/Proposer D.L. Porter Const., Inc. Date: 9/29/11

1. Does the vendor have a valid receipt for the business tax paid to the Monroe County Tax Collector dated at least one year prior to the notice or request for bid or proposal? yes (Please furnish copy.)

2. Does the vendor have a physical business address located within Monroe County from which the vendor operates or performs business on a day to day basis that is a substantial component of the goods or services being offered to Monroe County? Yes

List Address: 302 Southard St., Suite #209

Telephone Number: 305-293-2931

B. Does the vendor/prime contractor intend to subcontract 50% or more of the goods, services or construction to local businesses meeting the criteria above as to licensing and location? Yes

If yes, please provide:

1. Copy of Receipt of business tax paid to the Monroe County Tax Collector by the subcontractor dated at least one year prior to the notice or request for bid or proposal.

2. Subcontractor Address within Monroe County from which the subcontractor operates:

D.L. Porter Constructors, Inc. Tel. Number

Signature and Title of Authorized Signatory for Bidder/Responder

Print Name: C. Marshall White

STATE OF FL

COUNTY OF Sarasota

On this 29th day of Sept, 2011, before me, the undersigned notary public, personally appeared C. Marshall White, known to me to be the person whose name is subscribed above or who produced _____ as identification, and acknowledged that he/she is the person who executed the above Local Preference Form for the purposes therein contained.

Notary Public

Print Name

PAULETTE JEWELL
COMMISSION # DD795552
EXPIRES JUL 16 2012
BONDED THROUGH
RLI INSURANCE COMPANY

NOTARY PUBLIC STATE OF FLORIDA

My commission expires

Seal

2010 / 2011
MONROE COUNTY BUSINESS TAX RECEIPT
EXPIRES SEPTEMBER 30, 2011

RECEIPT# 30140-60602

Business Name: D L PORTER CONSTRUCTORS INC

Owner Name: GARY A LOER QUALIFIER
Mailing Address: 302 SOUTHARD ST STE 209
KEY WEST, FL 33040

Business Location: MO CTY
KEY WEST, FL 33040
Business Phone: 941-929-9400
Business Type: CONTRACTORS (GENERAL CONTRACTOR CGC051066)

Rooms	Seats	Employees	Machines	Stalls
		20		

CGCA51066

For Vending Business Only

Number of Machines: Vending Type:

Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
50.00	0.00	50.00	5.00	0.00	0.00	55.00

Paid 000-10-00000083 10/20/2010 55.00

THIS RECEIPT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS

THIS BECOMES A TAX RECEIPT WHEN VALIDATED

Danise D. Henriquez, CFC, Tax Collector
PO Box 1129, Key West, FL 33041

THIS IS ONLY A TAX. YOU MUST MEET ALL COUNTY AND/OR MUNICIPALITY PLANNING AND ZONING REQUIREMENTS.

MONROE COUNTY BUSINESS TAX RECEIPT
P.O. Box 1129, Key West, FL 33041-1129
EXPIRES SEPTEMBER 30, 2011

RECEIPT# 30140-60602

Business Name: D L PORTER CONSTRUCTORS INC

Owner Name: GARY A LOER QUALIFIER
Mailing Address: 302 SOUTHARD ST STE 209
KEY WEST, FL 33040

Business Location: MO CTY
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Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
50.00	0.00	50.00	5.00	0.00	0.00	55.00

Paid 000-10-00000083 10/20/2010 55.00

WEST MARTELLO FENCE PROJECT – KEY WEST

SUBCONTRACTOR LISTING FORM

Div.	Subcontractor	Contact Person	Ph # w/area code	Fax:	Address
2	Fencing:				
	D.L. Porter Constructors, Inc.	Marshall White	941-929-9400	941-929-9500	302 Southard St., Ste #201 Key West, FL 33040
3	Concrete:				
	D.L. Porter Constructors, Inc.	Marshall White	941-929-9400	941-929-9500	302 Southard St., Ste #201 Key West, FL 33040
5	Structural Steel:				
	D.L. Porter Constructors, Inc.	Marshall White	941-929-9400	941-929-9500	302 Southard St., Ste #201 Key West, FL 33040
9	Painting:				
	D.L. Porter Constructors, Inc.	Marshall White	941-929-9400	941-929-9500	302 Southard St., Ste #201 Key West, FL 33040

PROPOSER/BIDDER'S INSURANCE AND INDEMNIFICATION STATEMENT

INSURANCE REQUIREMENTS

Worker's Compensation	Statutory Limits
Employers Liability	$100,000/500,000/100,000
General Liability, including Premise Operation Blanket Contractual Expanded Definition of Property Damage Products and Completed Operations Personal Injury	$300,000 Combined Single Limit
Vehicle Liability (Owned, nonowned, and hired vehicles)	$100,000 Combined Single Limit

INDEMNIFICATION AND HOLD HARMLESS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

The Contractor covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damage, and expenses (including attorney's fees, court costs and expenses) which arise out of, in connection with, or by reason of services provided by the contractor or any of its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the contractor or its Subcontractor(s) in any tier, their employees, or agents.

In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the Contractor's failure to purchase or maintain the required insurance, the Contractor shall indemnify the County from any and all increased expenses resulting from such delay.

The first ten dollars ($10.00) of remuneration paid to the contractor is for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

PROPOSER/BIDDER'S STATEMENT

I understand the insurance that will be mandatory if awarded the contract and will comply in full with all the requirements.

D.L. Porter Constructors, Inc.
Proposer/Bidder

Signature

INSURANCE AGENT'S STATEMENT

I have reviewed the above requirements with the bidder named above. The following deductibles apply to the corresponding policy.

POLICY	DEDUCTIBLES
Workers Compensation	N/A
General Liability	N/A
Auto Liability	N/A

Liability policies are X Occurrence _____ Claims Made

Bouchard Insurance
Insurance Agency

Signature

END SECTION 00110

2011 FOR PROFIT CORPORATION ANNUAL REPORT

FILED
Mar 10, 2011
Secretary of State

10. A.
10. B.

DOCUMENT# P98000042047

Entity Name: D. L. PORTER CONSTRUCTORS, INC.

Current Principal Place of Business:

6574 PALMER PARK CIR
SARASOTA, FL 34238

New Principal Place of Business:

Current Mailing Address:

6574 PALMER PARK CIR
SARASOTA, FL 34238

New Mailing Address:

FEI Number: 65-0848440 **FEI Number Applied For ( )** **FEI Number Not Applicable ( )** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

WHITE, C. MARSHALL
6574 PALMER PARK CIRCLE
SARASOTA, FL 34238 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent Date

OFFICERS AND DIRECTORS:

Title: VP
Name: WHITE, C. MARSHALL
Address: 6574 PALMER PARK CIR
City-St-Zip: SARASOTA, FL 34238

Title: P
Name: LOER, GARY A
Address: 6574 PALMER PARK CIR
City-St-Zip: SARASOTA, FL 34238

Title: S
Name: JEWELL, PAULETTE
Address: 6574 PALMER PARK CIRCLE
City-St-Zip: SARASOTA, FL 34238

Title: T
Name: WHITE, C. MARSHALL
Address: 6574 PALMER PARK CIRCLE
City-St-Zip: SARASOTA, FL 34238

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: PAULETTE JEWELL S 03/10/2011

Electronic Signature of Signing Officer or Director Date

Relevent Experience

WEST MARTELLO FENCE PROJECT
RFP-ENG-272-93-2011-PUR/CV

Name of Owner	Name, location & description of project	Type of work	Architect/Engineer	Contract Amt	Completion Dates
Southernmost Beach Motels Dale Rands 248-321-5900	**Southernmost Tiki Bar** 1319 Duval St., Key West, FL Demo existing & construct new tiki bar, new pavers & shade arbors	General Contractor	Peter Pike Architect Peter Pike 305-296-1692	$ 900,730.00	April 2011
Senior Care Center Kevin McGuinness 813-341-2700	**Key West Health & Rehabilitation Center** 5860 W. College Rd., Key West, FL Interior & exterior renovation to existing 26000sf skilled nursing facility.	General Contract Restoration	Hathaway Resources	$ 3,040,009.00	10/1/10
Sloppy Joe's Enterprises Chris Mullins 305-294-4080	**Sloppy Joe's Concrete Repair** 201 Duval St., Key West, FL Concrete restoration	General Contractor Exterior Concrete Restoration	Bender & Assoc. Bert Bender 305-296-1347	$ 109,260.00	2/15/09
Key West Housing Authority Larry Keys 305-296-5621	**Senior Citizens Plaza Concrete Repair** 1400 Kennedy Dr, Key West, FL Structural repairs to concrete beams & door & window replacements (200 units)	General Contractor Restoration & Renovation	Wiss, Janney, Elstner John Duntemann 847-272-7400	$ 7,841,206.00	12/2/09
Wesley House Family Services	**Inez Martin Child Care Facility** Key West, FL 5000sf Renovation/Restoration of a certified historical building	General Contractor Restoration & Renovation	Bender & Assoc. Bert Bender 305-296-1347	$ 953,216.00	3/25/08
Cat House at Casa Marina	**Casa Marina Owner LLC** Key West, FL Renovation of 1920's built facility	General Contractor Renovation	Gonzalez Architects 912-201-9888	$ 2,137,508.00 $ 2,306,683.00	10/16/07
Southernmost Beach Motel Dale Rands 248-762-5595	**Gingerbread Bathroom Renovations** Key West, FL 44 room bathroom renovation	General Contractor Interior Renovation	Peter Pike Architect 305-296-1692	$ 1,155,309.00 $ 1,377,023.00	3/15/2007
City of Key West, FL	**Retail Store Expansion** 201 William St., Key West Interior Fit-up	General Contractor Interior fit-up	Peter Pike Arch. Peter Pike 305-296-1692	$ 122,796.00 $ 122,796.00	4/17/09

CUSTOMER REFERENCES

10. E. f.

Name	Address	Phone
Southernmost Beach Motels Ltd ATTN: Dale Rands / Craig Singer	121 W. Long Lake Rd. (3rd Flr) Bloomfield Hills, MI 48304	248-321-5900
El Rancho Motel ATTN: Tejas Soni	830 Truman Ave. Key West, FL 33040	305-304-8140
Gonzalez Architects ATTN: Jose Gonzalez	32 E. Bay St. Savannah, GA 31401	912-201-9888
Bender & Associates ATTN: Bert Bender	410 Angela St. Key West, FL 33040	305-296-1347

CREDIT REFERENCES

10. E. g.

Name	Address	Phone
Power Air Conditioning, Inc. ATTN: Bob Castiglione	1525 N. Osprey Ave. Sarasota, FL 34236	941-362-8801
Florida Keys Electric, Inc. ATTN: Raymond Vazquez	5730 2nd Ave. Key West, FL 33040	305-296-4028
Gary's Plumbing, Inc. ATTN: Gary Centonze	6409 2nd Terrace #1 Key West, FL 33040	305-296-6013
Douglas H. Kresge LLC ATTN: Doug Kresge	5103 Brandeis Cir., N. Sarasota, FL 34243	941-358-6251

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD

SEQ# L1008250195

DATE	BATCH NUMBER	LICENSE NBR
08/25/2010	10804734 9	CGCA51066

The GENERAL CONTRACTOR
Named below IS CERTIFIED
Under the provisions of Chapter 489 FS
Expiration date: AUG 31, 2012

LOER, GARY ALAN
D L PORTER CONSTRUCTORS INC
6574 PALMER PARK CIRCLE
SARASOTA FL 34238

CHARLIE CRIST
GOVERNOR

CHARLIE LIEM
SECRETARY

DISPLAY AS REQUIRED BY LAW

SEAL OF THE STATE OF FLORIDA
IN GOD WE TRUST

WORKING COPY

2011 / 2012
MONROE COUNTY BUSINESS TAX RECEIPT
EXPIRES SEPTEMBER 30, 2012

RECEIPT# 30140-60602

Business Name: D L PORTER CONSTRUCTORS INC

Owner Name: GARY A LOER QUALIFIER
Mailing Address: 302 SOUTHARD ST STE 209
KEY WEST, FL 33040

Business Location: MO CTY
KEY WEST, FL 33040
Business Phone: 941-929-9400
Business Type: CONTRACTORS (GENERAL CONTRACTOR CGC051066)

Rooms	Seats	Employees	Machines	Stalls
		20		

CGCA51066

For Vending Business Only
Number of Machines: Vending Type:

Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
50.00	0.00	50.00	0.00	0.00	0.00	50.00

Paid 000-10-00002671 09/13/2011 50.00

THIS RECEIPT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS

THIS BECOMES A TAX RECEIPT WHEN VALIDATED

Danise D. Henriquez, CFC, Tax Collector
PO Box 1129, Key West, FL 33041

THIS IS ONLY A TAX. YOU MUST MEET ALL COUNTY AND/OR MUNICIPALITY PLANNING AND ZONING REQUIREMENTS.

MONROE COUNTY BUSINESS TAX RECEIPT
P.O. Box 1129, Key West, FL 33041-1129
EXPIRES SEPTEMBER 30, 2012

Business Name: D L PORTER CONSTRUCTORS INC
RECEIPT# 30140-60602

Owner Name: GARY A LOER QUALIFIER
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KEY WEST, FL 33040

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KEY WEST, FL 33040
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CGCA51066

For Vending Business Only
Number of Machines: Vending Type:

Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
50.00	0.00	50.00	0.00	0.00	0.00	50.00

Paid 000-10-00002671 09/13/2011 50.00

2010 / 2011
MONROE COUNTY BUSINESS TAX RECEIPT
EXPIRES SEPTEMBER 30, 2011

RECEIPT# 30140-60602

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		20		

CGCA51066

	For Vending Business Only					
	Number of Machines:			Vending Type:		
Tax Amount	Transfer Fee	Sub-Total	Penalty	Prior Years	Collection Cost	Total Paid
50.00	0.00	50.00	5.00	0.00	0.00	55.00

Paid 000-10-00000083 10/20/2010 55.00

THIS RECEIPT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS

THIS BECOMES A TAX RECEIPT WHEN VALIDATED

Danise D. Henriquez, CFC, Tax Collector
PO Box 1129, Key West, FL 33041

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