

June 15, 2018

City of Clearwater  
Mr. Ed Chesney, P.E.  
25 Causeway Blvd.  
Clearwater Florida, 33767

RE: Wave Attenuator Replacement  
GMP

Dear Mr. Chesney,

Thank you for the opportunity to provide Construction Management Services for the Wave Attenuator (100ft) replacement at Clearwater Marina. Due to the urgent nature of this project, all pricing is based on meetings with Erickson Consulting Engineers, City of Clearwater, Marinetek (wave attenuator fabricator), and Speeler (pile & dock installer). All clarifications, assumptions and pricing are attached.

#### **OVERVIEW**

On September 10-11, 2018, during the passing of Hurricane Irma, the Harbor Marina's north facing wave attenuator sustained severe damage. Due to the exposure of the north facing "Fishing Pier" wave attenuator to the direction of maximum sustained winds during the passing of this storm, this 100 ft attenuator experienced exposure to the highest wave regime. Post Hurricane Irma storm damage videos, photographs and damage assessments that were prepared after Irma, showed large cracks in the north 100 ft wave attenuator concrete docks and interior floats/foam panels and significant damage to the four (4) 24-inch square concrete piles. The four piles that support the attenuators were found out of plumb by approximately 10+ degrees towards the south, and potentially cracked at the sediment/rock interface. It appears combined load forces may have caused the pile to shear or a lateral displacement occurred. Due to the failed conditions of the piles and the Shore Master wave attenuator, it is not feasible to repair or remediate the existing structural components.

#### **PROJECT SUMMARY**

The following is a Summary of the Scope included in this Estimate.

- Dispose of existing 100ft wave attenuator.
- Remove three (3) existing concrete piles.
- Install new 24" steel piles (50ft)
- Install new "Marinetek" wave attenuators (100ft)

If you have any question or require additional information, please do not hesitate to contact us. We appreciate the opportunity and look forward to a successful project.

Sincerely,



Roderick C. Voigt  
Executive Vice President

Encl: Clarifications and Assumptions, GMP Division Summary, Marinetek Proposal, Speeler Proposal



## Clarifications and Assumptions

### Preface

The proposal incorporates a number of assumptions regarding the project that further explains the scope, program, or quality of construction. The following are a summary of these assumptions. These assumptions and clarifications take precedence over all contract documents.

### General Clarifications

This proposal is based on the Scope of services provided by Erickson Consulting Engineers, Inc. and complementary subcontractor pricing proposals.

1. The cost for Builder's Risk Insurance and related deductibles for any and all perils, are not included in the contract price. Owner shall purchase and maintain the Builder's Risk Insurance Policy including assuming responsibility for all deductibles throughout the life of the project and will comply with State Procurement Regulations for Owner Purchases. Kokolakis Contracting, Inc. shall be listed as an additional insured on the Builder's Risk Policy and a copy of the policy will be made available on request. If Owner elects not to procure Builder's Risk Insurance for the project, then the Owner will act as the insurer for the protection of both the Owner and Kokolakis Contracting, Inc. and its subcontractors and suppliers.
  2. Due to the time sensitive nature of this project, this project will not be subject to the Sales Tax Savings Program.
  3. All Permit and Impact Fee costs of any kind are not included as they are to be paid directly by Owner.
  4. All warranties commence on the date of project substantial completion or beneficial use.
  5. The costs contained within the Proposal, unless specifically noted otherwise, are based upon manufacturer's standard listings of colors, finishes, features, etc.
  6. The costs for temporary power and water use are not included as they will be furnished by the Owner free of charge to the contractor.
  7. The costs for Asbestos Surveys, Hazardous Material Surveys or Lead Testing are not included. Lead testing and removal requirements are listed on <http://www.epa.gov/lead/>.
  8. The demolition, abatement, removal or disposal of any contaminated, hazardous materials including but not limited to asbestos, lead, toxic saturated materials as well as any other unforeseen subsurface conditions such as sink holes, radon gas, unsuitable soils and abandoned utilities are not included. Hazardous materials surveys or engineering are excluded as well.
  9. Payment and Performance Bonds are excluded.
  10. Liquidated Damages are excluded.
  11. Work hours in accordance with City of Clearwater ordinances and as negotiated with Owner.
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- 12. Unit rates and percentages listed within the contract are agreed to as Lump Sums and are therefore not auditable.
- 13. Period of performance on site is approximately 30 days.

**Scope Clarifications**

- 1. Owner will directly handle all pre-construction surveys and as-built Surveys.
- 2. Owner shall be responsible for the Geo-technical borings and reports.
- 3. The existing dock (100lf) and piles (3ea) shall be demolished and removed from site.
- 4. Piles shall be 24” diameter steel (4ea) with a production length of 50 feet. Driving depth shall be determined after the geotechnical information is received and Engineer review.
- 5. Piles shall be epoxy coated without plastic sleeves.
- 6. New Wave Attenuators shall be designed and fabricated in accordance with Engineer’s specifications.
- 7. Excludes repair of existing dock and any new rails on the existing dock.
- 8. Excludes pile load testing and post-installation survey.
- 9. Excludes hazardous waste removal.
- 10. Includes pile and dock installation scope per attached Speeler Quote dated 6/15/18.
- 11. Includes wave attenuator scope per Marinetek pricing dated 6/7/18.

**Allowance (included in GMP)**

|                               |           |
|-------------------------------|-----------|
| 1. Dock Lighting and Markers  | \$3,500   |
| 2. Plumbing and Hose Bibs     | \$2,500   |
| 3. Pile and Dock Installation | \$250,000 |

End of Section

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**Project:** Clearwater Wave Attenuator Replacement  
**Location:** Clearwater Harbor Marina  
**Est. Date:** Friday, June 15, 2018

GMP



| Div.                      | Description  | Total            |
|---------------------------|--|------------------|
| Division 1                | General Requirements (Supervision, Management, Pre-Con)    | \$30,675         |
| Division 2                | Existing Conditions - (Demo and Install Piles/Attenuators) | \$250,000        |
| Division 3                | Concrete   | \$0              |
| Division 4                | Masonry  | \$0              |
| Division 5                | Metals   | \$0              |
| Division 6                | Wood, Plastics, and Composites                             | \$0              |
| Division 7                | Thermal and Moisture Protection                            | \$0              |
| Division 8                | Openings   | \$0              |
| Division 9                | Finishes   | \$0              |
| Division 10               | Specialties  | \$0              |
| Division 11               | Equipment  | \$0              |
| Division 13               | Special Construction (Wave Attenuator Material)            | \$232,693        |
| Division 15               | Plumbing ( Hose Bibs)                                      | \$2,500          |
| Division 16               | Electrical (Lighting & Markers)                            | \$3,500          |
| <b>Total Cost of Work</b> |  | <b>\$519,368</b> |
|                           | Owner Contingency  | \$50,000         |
|                           | Builders Risk  | By Owner         |
|                           | Insurance  | \$5,694          |
|                           | CM Fee   | \$46,005         |
| <b>TOTAL</b>              |  | <b>\$621,067</b> |

# CLEARWATER HARBOR MARINA FLOATING CONCRETE WAVE ATTENUATING DOCKS CLEARWATER, FL



Subject : PROPOSAL FOR NEW CONCRETE FLOATING WAVE ATTENUATING DOCKS  
Project No : 0517  
Date : June 7, 2018 – Revision 2 (valid for 60 days)

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## MARINETEK NORTH AMERICA INC

222 14th Avenue S  
St-Petersburg, Florida 33701  
**WEB** [www.marinetek.net](http://www.marinetek.net)

**TEL.** (877) 909-3625  
**FAX** (561) 832-8768  
**EMAIL** [info@marinetek.us](mailto:info@marinetek.us)

**MARINETEK**  
*More than Surface*

**1. REFERENCE**

Referring to specifications and drawings provided by Erickson Consulting Engineers.

**2. SPECIFICATION – FLOATING CONCRETE WAVE ATTENUATING DOCKS****2.1. FLOATING CONCRETE WAVE ATTENUATING DOCKS, MODEL 4300K**

|           |   |  |
|-----------|---|--|
| Structure | : | Steel reinforced concrete 6000 psi                                   |
| Freeboard | : | 24" nominal (+/- 2")   |
| Draft     | : | 48" nominal (+/- 2") including keels                                 |
| Width     | : | 13' concrete width – 14' nominal including fender on both sides      |
| Fenders   | : | Composite, 4" x 6"   |
| Anchoring | : | Internal Pile Guides, 24" stainless steel (316L) with HDPE wear-pads |
| Cleats    | : | Cast aluminum, 5-ton   |
| Utilities | : | Precast PVC sleeves with pull boxes                                  |

**3. DETAILED SCOPE OF WORK**

This proposal includes complete design, production and delivery of all the components required for the new concrete floating wave attenuator system in accordance with Marinetek's standard pontoon systems. Completed dock sections will be shipped by flat-bed truck to project launch site. Unloading, launching and installation not included.

**4. LIST OF MATERIAL**

|                   |   |   |
|-------------------|---|---|
| Main dock         | : | 14' wide x 100' long (2-50' units)      |
| Pile Guides       | : | 4 units, internal, stainless steel      |
| Cleats            | : | 9 units, 16"                            |
| Transition Plate: |   | 6' wide x 4' long, arched with HDPE pad |

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**5. PRICE DESCRIPTION**

- Design and supply of material
- MARINETEK Standard Warranty – 2 years
- FOB Clearwater, FL
- Taxes or other fees not included, if any
- Unloading, launching and pile work not included
- Assembly and connections by Marinetek included

|  |                     |
|--|---------------------|
| Floating Concrete Breakwater System with transition plate          | \$ 196,000.00       |
| Aluminum railing with opening gate around dock perimeter (\$95/LF) | \$ <u>21,470.00</u> |
| SUB-TOTAL  | \$ 217,470.00       |
| 7% Sales Tax   | \$ <u>15,222.90</u> |
| TOTAL  | \$ 232,692.90       |

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**MARINETEK**  
*More than Surface*



# SPEELER & ASSOCIATES, INC.

8770 Somerset Drive • Largo, FL 33773 • (727) 531-9483 • Fax (727) 524-8759

## QUOTATION/AGREEMENT

Quotation/Agreement made this 15 June 2018

**Between the Contractor/Owner:**

**Kokolakis Contracting**  
Roderick Voigt

**And the Subcontractor:**

Speeler & Associates, Inc.  
8770 Somerset Drive  
Largo, FL 33773

**For the Project Known as:**

**Clearwater harbor**  
**Wave Attenuator**

This Quotation/Agreement, for the pile foundation as defined in the attached "Attachment A, Scope of Work" for the project known above, agrees to the following.

**CONTRACT AMOUNT: \$ 250,000.00**

**CONTRACT DOCUMENTS:**

In addition to this Quotation/Agreement, the following documents are incorporated by attachment and or reference:

Drawings prepared by:

Geotechnical investigation by:

By signing this Quotation/Agreement, I have read and fully understand the work as outlined, and authorize Speeler & Associates, Inc. to proceed with the work. I have read the terms and conditions and understand them. I agree to make payment as outlined in the payment section.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

Speeler & Associates, Inc.  
*Jeffery J. Nasse*  
President



## ATTACHMENT "A" - Scope of Work

Est.  
Days

### THIS BID INCLUDES:

- 1 Bond
- 2 One Mobilization and access by others for all of our equipment. 1
- 3 Supply \_\_4\_\_ EA \_\_24" .50 wall 50' \_\_\_\_\_long steel piles in accordance with the Contractor/Owner provided drawings. Pile lengths are based on the elevation of the ground at the time that the soil analysis was done.
- 4 Install the piles by driving to required bearing or ultimate refusal. (Whichever is reached first)
- 5 Predrill piles to aid in vibration in neighboring properties.
- 6 Cut off piles to +/- 1' of existing grade. Cut-offs will be stacked at an approved location adjacent to work area.
- 7 This is a lump sum contract. Any Piling added or deleted will be negotiated between parties and necessitate a change order.
- 8 Working 8 hours per day 5 days a week. Speeler may choose to work additional hours per week; however, if increased hours per week are required by others in order to expedite schedule additional rates will apply.
- 9 This quotation expires in 30 days unless a written contract has been received by Speeler & Associates, Inc.
- 10 Removal of existing floating dock and piles and disposal of material. Unloading and floating into place new wave attenuator dock supplied by Marinetek to allow for installation of piles.

### THIS BID EXCLUDES:

- 1 Permits.
- 2 N/A
- 3 Excavation, dewatering, elevations, engineering, monitoring will be performed by others.
- 4 Any technician or third party laboratory will be provided by others.
- 5 Surveying, this includes the setting and maintaining of piling centerline stakes for each pile.
- 6 Cutting of piles to final grade or removal of cut offs.
- 7 PDA or Static load testing.
- 8 Construction of grade beams or caps.
- 9 Excavation or removal of obstructions within the limits of the pile installation.
- 10 Upon completion of pile driving, Speeler is not liable for any safety measures.
- 11 Locate, repair or relocation of utilities.
- 12 Any erosion control measures. All erosion control for storm water runoff, gravel tire cleaning pads at ingress/egress to be provided by others.
- 13 Final clean-up and grade restoration.

INITIALS \_\_\_\_\_

## TERMS AND CONDITIONS

### GENERAL:

The Term "Contractor/Owner" refers to the person, company, or individual to which this quotation/agreement is addressed. The Term "Subcontractor" refers to Speeler & Associates, Inc. The terms and conditions of this quotation/agreement will be made part of any future issued contracts in its entirety. Any resulting contract will not include any other documents or agreements not specifically provided to us and referenced herein. Should there be any conflicts between this quotation/agreement and the contract, the terms and conditions of this quotation/agreement shall govern.

### THE WORK:

The term "the Work" means the furnishing of all labor, material, equipment, supervision and incidentals necessary to complete the attached "Scope of Work" in accordance with the known conditions at the time of bid and Contractor/Owner provided documents and as more specifically defined in the attached "Scope of Work".

### SITE INVESTIGATION:

**Subject to site inspection.**

### ASSUMPTIONS

The Subcontractor will be provided clear access to the work site for equipment and vehicles without the use of supporting materials and ramps provided by Subcontractor.

The Subcontractor will be provided protection from utility lines either above or below ground, including but not limited to: electric, water, gas, telephone and sewer. Removal if necessary will be the responsibility of the Contractor/Owner.

Overhead and underground electrical sources of power that might tend to endanger lives or equipment will be cut off and or removed prior to scheduled pile driving operations. Our equipment requires the OSHA minimum clearance from all power lines.

All other overhead obstructions which may interfere with operations will be removed by others.

Our price is based on the soils in the area of the pile installations are free of rocks, broken piling, boulders, roots, logs, pipes, drains, old slabs or footers, old pools, septic tanks and other substratum that would hamper our ability to set the piling to the design depth. If any unforeseen conditions in the soils are discovered, it will be the responsibility of the Contractor/Owner. Encounter of these objects may cause the pile to drift from plan location; if this occurs the pile will be completed and paid for. If additional piles are required because of this condition, this will necessitate a change order. Removal of objects will be the responsibility of the Contractor/Owner.

Additionally, both parties agree that due to the unknown nature and size of the obstructions, changes in design and construction methodology may result in changes in pricing and schedule.

### SCHEDULE:

The Work shall start as allowed by Contractor/Owner provided permits and as mutually agreed by the parties and progress at a pace as mutually agreed by the parties.

The Subcontractor will not accept penalties or charges for liquidated, actual, or consequential damages due to late completion without prior agreement that provides an equivalent bonus for early completion.

### PAYMENT TERMS:

The Contractor/Owner shall pay the Subcontractor the full invoiced amount within 15 calendar days of receipt of the Subcontractor's invoice by the Contractor/Owner. Should any Contractor/Owner's payment to the Subcontractor be delayed beyond the 15-calendar day period, the Contractor/Owner shall increase the payment to the Subcontractor by an amount equal to 18% per annum. Should any Contractor/Owners payment to the Subcontractor be delayed by 30 calendar days or more, the Subcontractor at its sole discretion may stop all work and the Contractor/Owner shall then pay for the Subcontractors cost for labor and equipment plus the Subcontractors overhead and profit during the stop-work period in addition to the unpaid balance of invoices until all invoices are paid.

### LIENS:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOU'RE CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID THE CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LEIN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS OR OTHER SERVICES THAT YOU'RE CONTRACTOR OR SUBCONTRACTOR MAY HAVE FIALED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LEIN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER" FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

### FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND

PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND A FILING CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS: 1940 NORTH MONROE ST SUITE 42 TALLAHASSEE, FL 32388-2202 PHONE: 850-487-1395

The Subcontractor will adhere to Florida statutes as it relates to Construction Lien Laws which include "Notice of Intent to File Lien". The Subcontractor will deliver the completed project to the Contractor/Owner free of liens as long as the Contractor/Owner pays the Subcontractor in accordance with this agreement.

### DELAYS:

Should delays to progress be caused by the Contractor/Owner or any entity other than the Subcontractor under the employ or direction by the Contractor/Owner and or any government entity, the Subcontractor shall be paid for all costs incurred plus overhead and profit

of 25% for each calendar day of the delay including the period when the Subcontractor restarts the project and continuing until the Subcontractor reaches the full production rate experienced prior to the delay. Additionally, the Subcontractor shall receive an extension of time equal to the period of delay and restart until reaching full production.

Should delays occur due to unforeseen or differing condition, the Subcontractor shall notify the Contractor/Owner promptly via email, written letter or fax?

**CHANGES IN THE WORK:**

Should the Contractor/Owner require changes in the Scope of Work, the Contractor/Owner shall provide written instructions and details to the Subcontractor so the Subcontractor may provide the Contractor/Owner with Change Order pricing for Contractor/Owner approval. Unless agreed in writing by both parties, the Changed Work shall not proceed until a Change Order is executed by both parties.

**INSURANCE:**

The Subcontractor shall provide insurance continuously for the construction period.

The Subcontractor shall provide and maintain its standard insurance coverage for the duration of the Work.

The Contractor/Owner shall provide "Builders Risk" insurance naming the Subcontractor as "Additionally Insured" for the duration of the work and in the event of a claim by the Subcontractor against the Contractor/Owner provided "Builders Risk" policy; the Subcontractor shall be limited to paying the deductible for the Subcontractors share of the claim.

**INDEMNITY:**

**EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FOR ITS SOLE OR ITS PORTION OF ACTIONS, INACTIONS AND NEGLIGENCE AND IN NO CASE SHALL EITHER PARTY BE REQUIRED TO INDEMNIFY THE OTHER FOR ACTIONS, INACTIONS OR NEGLIGENCE IT IS NOT RESPONSIBLE. ADDITIONALLY, CONTRACTORS INDEMNITY, DEFENSE AND HOLD HARMLESS OBLIGATIONS ARE LIMITED TO THE CONTRACTORS STANDARD INSURANCE COVERAGE. FURTHERMORE, SINCE CONTRACTOR HAS NO CONTRACTURAL RELATIONSHIP WITH OTHER ENTITIES ON SITE, THE OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CONTRACTOR FOR ACTIONS, INACTIONS AND OR NEGLIGENCE OF OTHER ENTITIES ON SITE. SUBCONTRACTOR TO BE HELD HARMLESS FOR CLAIMS OF NOISE, VIBRATION DAMAGE, POLLUTION, OIL FALLOUT, ETC.**

**ASSIGNMENT:**

Neither party shall assign this agreement or monies due or to become due to another without prior consent from the other party.

Neither party, its successors and or assigns shall be relieved of its duty to perform under this Agreement without the written consent of the other party.

**CLEAN UP:**

Subcontractor agrees to regularly clean debris from its work area unless more specifically defined in the attached Scope of Work.

**QUALITY AND WARRANTY:**

The Subcontractor shall install the Contractor/Owner designed systems in a manner and to a standard normally adhered to in the local industry and per the standards defined in the Contractor/Owner provided Contract Documents. Unless specifically defined in this agreement, no additional level of quality is required.

Warranty shall be limited to one (1) year following the acceptance of use of the Work by the Contractor/Owner or other Owner related entity.

**SUBMITTALS:**

The Subcontractor will submit to the Contractor/Owners Engineer if requested, all materials permanently installed into the project for approval prior to installation. The Contractor/Owners Engineer shall either approve or disapprove each submittal within 5 working days of submission.

**PROTECTION OF THE WORK:**

The Subcontractor shall protect the Work until Subcontractors work is completed, final acceptance by the Contractor/Owner or use by the Contractor/Owner or use by an entity related to the Contractor/Owner.

**DEFAULT:**

Should The Subcontractor at any time:

1. Abandon the work (except for reasons of non-payment);
2. Fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the work with the skill, conformity promptness and diligence required hereunder;
3. When paid in accordance with this Agreement, fail to properly and promptly make payment for all materials and services provided in the performance of the Work;
4. Fail to remove any lien or lien claim against the project by any subcontractor, materialman, or laborer when Contractor/Owner has made payment in accordance with this agreement;
5. Otherwise is guilty of substantial breach of this Subcontract or the Contract Documents.

Then Contractor/Owner shall provide written notice of default to the Subcontractor, and the Subcontractor shall then within 48 hours of receipt of notice from Contractor/Owner provide the Contractor/Owner with a method of cure. Should the Subcontractor fail to adhere to the method of cure, the Contractor/Owner may exercise any of the following remedies:

1. Require the Subcontractor to utilize, at its own expense, overtime labor and or additional shifts as necessary to overcome delays;
2. After an additional seven (7) calendar days, terminate the Agreement with the Subcontractor and employ other contractor(s) to complete the scope of work and demand that the Subcontractor remove all labor, equipment, tools, appliances and devices from the site.
3. After an additional seven (7) calendar days, supplement the Subcontractor with other sources to perform a portion of the Subcontractors scope

Should Contractor/Owner at any time:

1. Abandon the project;
2. Fail to make payment(s) in accordance with this Agreement;

3. Fail to provide permits
4. Fail to comply with applicable laws and fail to remedy such nonperformance in a timely manner as to not delay the Subcontractors performance
5. Become insolvent or adjudged bankrupt, make a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or file a petition to take advantage of any debtor's act;
6. Delay in issuing Change Orders to the Subcontractor
7. Or otherwise is guilty of substantial breach of this Agreement or the Contract Documents.

The Subcontractor shall provide written notice of default to Contractor/Owner and Owner shall within 48 hours of receipt of notice provide acceptable method of cure to the Subcontractor. Should Contractor/Owner fail to cure within seven (7) calendar days, the Subcontractor may exercise any of the following remedies:

1. Demand Contractor/Owner to employ a mutually agreed expert to assist in the prompt remedy;
2. Terminate the Agreement and recover all costs associated with Work performed and costs associated with work stoppage and collection of any unpaid monies
3. File liens in accordance with Florida Law;
4. Stop work until such time as Contractor/Owner has fully remedied and paid for all stop work costs as defined elsewhere in this agreement;

**TERMINATION BY CONTRACTOR/OWNER WITHOUT CAUSE BY SUBCONTRACTOR AND TERMINATION FOR CONVENIENCE:**

Should the Contractor/Owner elect to terminate this Agreement without cause by the Subcontractor or for convenience after this Agreement is executed by both parties, the Subcontractor shall be due monies for all completed and partially completed work performed to date, all administrative, all overhead and anticipated profit, all restocking charges if allowed by seller, and all costs to demobilize crews and equipment including costs until the Subcontractor can employ equipment, workers and supervisors elsewhere in a profitable manner.

**DISPUTES:**

Both parties shall endeavor to resolve all disputes without taking legal action. If disputes cannot be resolved without legal action and due to the specialized nature of construction, both parties hereby waive the right to trial by jury and if mutually agreed, both parties may enter into Arbitration employing a mutually agreed arbitrator conforming to the American Arbitrators Association and with experience in deep foundation construction arbitration. In the event a dispute between the Subcontractor and Contractor/Owner arises out of this Agreement, the Work or payment therefore, the prevailing party shall be entitled to recover reasonable costs including attorney's fees, paralegal fees, expert fees, and court costs incurred during litigation, trial and appeal.

**HAZARDOUS MATERIALS:**

Should the Subcontractor deliver Hazardous materials to the site in the performance of the Work, the Subcontractor shall maintain the materials in a manner that is safe for the employees of the site as well as the environment and in accordance with Municipal, County, State and federal laws governing such materials.

Should the Subcontractor discover hazardous materials while performing the Work, the Subcontractor upon knowledge of the existence shall promptly notify the Contractor/Owner of the discovery and stop all work. The Contractor/Owner shall indemnify, defend and hold the Subcontractor harmless against all costs and actions related to the discovery, investigation, clean-up, handling, etc. The Subcontractor shall not suffer costs related to such hazardous materials.

**MISCELLANEOUS:**

**During pile installation, the driving hammers can create vibrations, which may induce damaging stresses to nearby structures. For a typical pile installation hammer, the pile driving activity can generate harmful vibrations at distances up to 40 feet from the pile driving activities. The vibrations can induce detrimental settlements to adjacent homes. We recommend that structures within 40 feet be evaluated prior to driving and if necessary monitored during the process. If monitoring is not performed the Subcontractor will not be responsible for any damages to nearby structures.**

Contractor/Owner and the Subcontractor have both reviewed and negotiated this Agreement. Accordingly, ambiguities in interpretation shall not be resolved against the drafting party. If any term, provision, or portion of this agreement is held by a court of competent jurisdiction to be unreasonable, arbitrary, or against public policy for any reason, the court shall have the authority to modify the invalid portion of this agreement so as to render this Agreement enforceable.

Where the text requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

Both parties waive their rights and claims to consequential damages arising out of or related to this Agreement including without limitation, damages incurred by either party for principal offices expenses including personnel stationed there, for losses of financing, business and reputation and loss of profit except as otherwise defined else ware in this Agreement.

There shall be no incidental, intended or third-party beneficiaries to this Agreement, and the rights and obligations of the Parties as provided in this Agreement, including, without limitation, the right to enforce this Agreement, shall only inure to the Subcontractor and Contractor/Owner, their successors and authorized assigns.

This Agreement and those documents specifically attached or incorporated by reference herein comprise the entire Agreement and supersede all prior negotiations, agreements and understandings.

Contractor/Owner and the Subcontractor both agree that failure to require strict adherence to the terms of this Agreement shall in no way restrict or nullify the terms of this Agreement.

**INITIALS** \_\_\_\_\_