



RE: Construction & Engineering Agreement - Avila South Condominium

From Kevin Peters <kevin@petersandpeterspa.com>

Date Tue 6/9/2026 4:19 PM

To AVILA SOUTH CONDOMINIUM ASSOCIATION <avilasouthcondo@outlook.com>; Valerie Peters <valerie@petersandpeterspa.com>

Cc Octavia De Los Santos <octavia@petersandpeterspa.com>

 4 attachments (9 MB)

Avila - Construction Agreement Proposal - KP Review.pdf; Construction - Summary of Comments.pdf; Avila - Engineering Agreement Proposal - KP REVIEW.pdf; Engineering - Summary of Comments.pdf;

Good afternoon:

I have reviewed the Engineering and Construction Agreements and have made several proposed changes to the attached (since it is a PDF, I had to make the changes as comments / text additions, etc.). I have included a summary of comments, as sometimes clients are unable to view the comments on the PDF.

There are a few issues / proposed language that I could not add to the PDF / comments, so they are listed below:

1. My biggest concern is the dual role of the engineer and contractor. Both agreements identify REE Consulting / Batista Engineering & Construction as the consultant and also as the contractor. This means that the “special inspector” quantity verifier, payment application and change order approver and certifying engineer are basically “grading their own homework”. I understand that this is type of “design-build” arrangement may be common in the broader construction industry, but in a condo recertification context it raises obvious conflict of interest concerns about the independence of inspections, quantity verification, and change-order approvals. While I can see the potential benefits to this arrangement, I think the potential downside is quite obvious and may lead to questions or claims by owners – particularly if there is a high special assessment linked to this work. Below are a few questions / concerns that may arise:
 - a. Was the construction project bid out as required by Fla. Statutes for the Construction work? The risk in the dual role is that the engineer-contractor defines the scope, quantities, and specs and favor his bid over the others – especially if the engineer is involved in scoring / ranking the bids received.
 - b. Who will review the contractor pay applications to ensure that the amount matches the quantities / work performed, and that the work is satisfactory, etc.? The engineer that is also the contractor?
 - c. Who will verify that a contractor’s change order request is necessary / best interest of the Association? The engineer that is also the contractor?
 - d. Who will serve as the initial decision / dispute resolution maker if there is a dispute between the Association and the Contractor regarding the work? The engineer that is also the contractor?

e. Although most conflict of interest issues arise when a board member has a financial stake in a company being used by the Association (please don't tell me that is the case here), using the same firm for engineering and construction could be perceived by owners as a conflict of interest. This may cause some owners to challenge any special assessments or validity of the contract, etc.

2. The most glaring omission was that neither document, in the parts I was provided, outlines Contractor's insurance coverage (other than the engineer's \$1,000,000 dollar E&O) or any indemnity language. For a project of this size / value, the Association should insist on commercial general liability, auto, worker's comp, etc. I recommend contacting the Association's insurance agent to provide guidance on what types of coverage / minimums are customary for this type of project, and to ensure that the agreements contain sufficient coverage as may be required by the Association's own policy (some policies require associations to ensure that vendors have a certain amount of coverage, or they could deny the Association coverage). I would request that the following language be added to the Contractor's agreement:

"Contractor shall maintain at its own expense commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, commercial automobile liability with limits of not less than \$1,000,000 combined single limit, workers' compensation as required by law, and umbrella/excess liability of not less than \$2,000,000. Owner and its directors, officers, and agents shall be named as additional insureds on a primary and non-contributory basis under Contractor's liability policies. Contractor shall provide certificates of insurance and endorsements prior to commencement of the Work and upon renewal."

"To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner and its directors, officers, agents, and employees from and against claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of or resulting from the performance of the Work to the extent caused by the negligent acts or omissions of Contractor or anyone for whose acts Contractor may be liable. This indemnity shall be limited as required by section 725.06, Florida Statutes, and shall not apply to damages or losses caused the negligence of Owner or its separate design professionals."

3. I did not see a project completion estimate / construction schedule. Has that been discussed?

If the Association went through the steps of obtaining bids and disclosed the potential conflict – that is ok – but I warn against the appearance that the Association pre-selected the contractor and that it just went through the steps of the bidding requirements. If the board is comfortable with the arrangement, I would strongly advise that you insist on the proposed revisions contained in this email and the attached PDF proposals.

Thanks,

Kevin

Kevin G. Peters, Esq.

Peters & Peters, Attorneys at Law, P.A.
10400 Griffin Road, Suite 108
Cooper City, Florida 33328
Tel. (954) 433-6788

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From: AVILA SOUTH CONDOMINIUM ASSOCIATION <avilasouthcondo@outlook.com>
Sent: Monday, June 1, 2026 3:00 PM
To: Kevin Peters <kevin@petersandpeterspa.com>; Valerie Peters <valerie@petersandpeterspa.com>
Cc: Octavia De Los Santos <octavia@petersandpeterspa.com>
Subject: Construction & Engineering Agreement - Avila South Condominium

Greetings Kevin,

Please review the attached and advise.

We requested an estimate based on the work done so far. This is a rough calculation projected going around the building. We sincerely hope that it will not be as severe as the areas they found on the east end of the property.

The work currently being done with minor restorations, will transitioning into the 50-year certification.

Thanks,

Nelida- Board of Directors

Avila South Condominium Association, Inc.
200–210 172nd St, Sunny Isles Beach, FL 33160
305-945-9772 | avilasouthcondo@outlook.com | www.avilasouth.com
Office Hours: Tues-Thurs, 10am-12pm

From: Kristian Cano <kristianc@askgbatista.com>
Sent: Tuesday, May 26, 2026 4:21 PM
To: AVILA SOUTH CONDOMINIUM ASSOCIATION <avilasouthcondo@outlook.com>
Cc: Rafael Cotarelo <rafaelc@askgbatista.com>; John Nuñez <johnn@gbanda.com>
Subject: Construction & Engineering Agreement - Avila South Condominium

Good afternoon,
Please see attached the engineering and construction agreements, as per your request.
Please let us know if you have any questions or need any additional information.
Best regards,

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Kristian Cano

PROJECT ENGINEER

KristianC@askgbatista.com

 (954) 434-2053 Ext.105

 <https://askgbatista.com>

 3806 Davie Blvd., Ft. Lauderdale, FL 33312

