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RESOLUTION NO. 09-78

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, APPROVING A CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY AND MASTER BUILDERS OF SOUTH FLORIDA TO PROVIDE DESIGN-BUILD SERVICES FOR THE FUTURE VILLAGE HALL FACILITY PURSUANT TO RFP/Q NO. 2009-02; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A CONTRACT WITH THE FIRM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council previously approved the acquisition of the property located at 9705 East Hibiscus Street for the purposes of developing a Village Hall; and,

WHEREAS, following the acquisition of the site, the Village of Palmetto Bay issued a Request for Proposals/ Qualifications, RFP/Q No. 2009-02, seeking design-build services for the project; and,

WHEREAS, following the RFP/Q process, the Village Council selected the design-build team of JMWA Architects and Master Builders of South Florida to design a build a new facility; and,

WHEREAS, a contract has been negotiated with Master Builders of South Florida, as the Design-Build team, to proceed with the design and construction of a LEED certified building; and,

WHEREAS, the Village and the Design-Build team desire to enter into a contractual agreement which details the contractual obligations between the parties.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Village Council hereby approves the contract between the Village of Palmetto Bay and Master Builders of South Florida in substantial form and content to the attached Exhibit "A" to provide design-build services for the future Village Hall facility for a maximum amount of \$4,097,000.00.

Section 2. The Village Manager is hereby authorized to execute the contract with Master Builders of South Florida, Inc.

Section 3. This resolution shall take effect immediately upon adoption.

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PASSED and ADOPTED this 24th day of September, 2009.

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Attest:



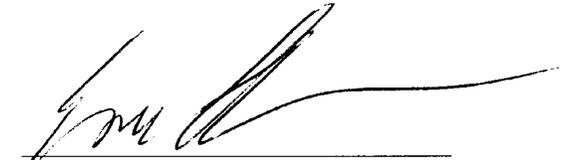
Meighan Rader
Village Clerk

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Eugene P. Flinn, Jr.
Mayor

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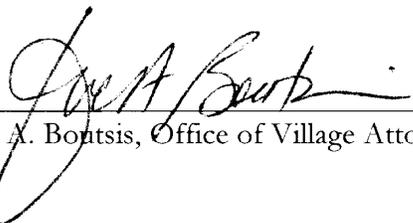
APPROVED AS TO FORM:

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Eve A. Bontsis, Office of Village Attorney

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FINAL VOTE AT ADOPTION:

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Council Member Ed Feller YES

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Council Member Howard Tendrich YES

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Council Member Shelley Stanczyk YES

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Vice-Mayor Brian W. Pariser YES

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Mayor Eugene P. Flinn, Jr. YES

**DESIGN-BUILD AGREEMENT
AND
GENERAL CONDITIONS BETWEEN
OWNER AND DESIGN-BUILDER**

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**ARTICLE 1
AGREEMENT**

This agreement is made this _____ day of _____ in the year 2009, by and between the:

OWNER

VILLAGE OF PALMETTO BAY
8950 SW 152nd Street
Palmetto Bay, FL 33157

and the

DESIGN-BUILDER

MASTER BUILDERS OF SOUTH FLORIDA
1400 East Oakland Park, Suite 210
Oakland Park, FL 33334

Notice to the parties shall be given at the above addresses.

For the services in connection with the following:

The design development and design, shall include but not be limited to the production of technical documents, demolition, construction, and construction administration services for a complete and properly functioning building of approximately 25,000 square feet (final square footage to be determined during design development) to function as the Palmetto Bay Village Hall. Such building shall accommodate the Village's administrative offices, including a well-defined lobby area, Council offices, Council Chambers and other ancillary spaces as determined by the Village, incorporating green and sustainable design elements, and architectural and design features typically associated with civic centers. Scope shall also include a design feature intended to conceal the existing pump station on the southwest side of the site.

The Design-Builder shall also provide all required consultant services for the proper execution of the scope defined herein. Consultant services shall include but shall not be limited to architectural and engineering services, including civil, mechanical, electrical, plumbing, structural, LEED certification, interior architectural design, and any other service as necessary. All labor, materials, permitting and equipment shall be furnished to construct the proposed improvements. Additionally, all services identified in Section D of RFP/Q No. 2009-02, attached hereto as Exhibit 1, shall be included herein by reference.

The facilities to be designed by the Design-Build team shall be suitable for the purposes for which they are intended, and comply with all applicable codes and laws. It is a requirement that Construction documents for all facilities shall be completed on a timely basis and within the approved construction budget.

PROJECT LOCATION:

VILLAGE OF PALMETTO BAY MUNICIPAL CENTER (New Facility)
9705 East Hibiscus Street
Palmetto Bay, FL

ARTICLE 2
DEFINITIONS

- 2.1 Wherever used in this agreement or in the other documents related to this project, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:
1. **ARCHITECT:** Person and/or entity, which is part of the Design-Builder's team responsible for the design and preparation of buildable documents. Wherever the word "Architect" appears in the Contract Documents, it shall be deemed to include Architect's consultants, including architects, engineers, landscape architects and others engaged by Architect. All communications, directives, instructions, interpretations and actions required of Architect shall be issued or taken only by or through the individual identified as Architect in the Agreement or Architect's authorized representative
 2. **AGREEMENT:** The written agreement between the Owner and the Design-Builder covering all the work to be performed including but not limited to the Contract Documents and specifications that are attached to the agreement or made a part thereof.
 3. **CHANGE ORDER:** A document which is signed by the Owner and Design-Builder and which authorizes an addition, deletion or revision in the Work within the general scope of this agreement, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the agreement.
 4. **CONTRACT DOCUMENTS:** The Contract Documents consisting of drawings, approved floor plan sketches and elevations, plans, specifications, construction documents, surveys and studies, approved change orders, modifications, written revisions and amendments, exhibits and appendices, the Village's Program, notice of award, notice to proceed, certificate(s) of insurance, payment and performance bonds, certificate of substantial completion, final release of lien form, schedule of values, project schedule, finish guidelines and notes, and any other written document related to the Project, which was issued on or after the effective date of the Contract and which require the acceptance and approval of the Owner and Design-Builder
 5. **CONSTRUCTION SUPERINTENDENT:** The Design-Builder's representative who is responsible for continuous field supervision, coordination, and completion of the Work. The Construction Superintendent is responsible for management of the Project Site and tasks including, but not limited to, organization and coordination of the Work of trade craft employees, keeping cost records on Work performed and materials, controlling of costs in materials and wages; exercising control over rate of construction progress to assure complete construction Project within scheduled time; inspecting Construction Work to enforce conformity to the Contract Documents and supervising trades, subcontractors, clerical staff, and other personnel employed in the construction.
 6. **CONSTRUCTION PHASE SERVICES:** The services to be performed through the Design-Builder during the construction phase of the Project, including without

limitation, the Construction Work and such other services as required by this Agreement or reasonably inferred herein.

7. **CONSULTANT:** Outside professional that has entered into a separate agreement with the Village other than the Design-Builder or Owner, retained by the Owner as Owner's Representative to provide third party review, project oversight, inspection and pay application approval services to the Owner for the project.
8. **DAY:** The term day shall mean calendar day unless otherwise specifically defined.
9. **DEFECTIVE WORK:** any portion of the Work not in conformance with the Contract Documents. Defective work is also further defined as Work that is unsatisfactory, faulty or deficient, not meeting the requirements of any code inspection, reference standard, third party approval, damaged work or work that is not approved by the Owner's representative.
10. **DESIGN-BUILDER:** Master Builders of South Florida, Inc., its principals, employees and agents, with whom the Owner has entered into the agreement and the entity responsible for providing the work and scope described herein.
11. **DRAWINGS:** The drawings, which show the character and scope of the Work to be performed and which, are referred to in the Contract Documents.
12. **EFFECTIVE DATE OF THE AGREEMENT:** The date indicated in the agreement on which it becomes effective, but if no such date is indicated it means the date on which the agreement is signed and delivered by the last of the two parties to sign and deliver.
13. **FIELD ORDER:** A written order issued by the Owner's representative which orders minor changes in the work but which does not involve a change in the Contract price or the Contract time.
14. **FINAL COMPLETION:** occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner, a Certificate of Occupancy has been issued and the final payment becomes due and payable under the terms of this contract.
15. **MATERIAL SUPPLIER:** a party or entity retained by the Design-Builder to provide material and equipment for the Work.
16. **NOTICE TO PROCEED:** A written notice given by the Owner to the Design-Builder fixing the date on which the Contract Time will commence to run and on which the Design Builder shall start to perform contractor's obligations under the Contract Documents.
17. **OTHERS:** Refers to other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

18. **PROJECT:** As identified in Article 1, is the building, facility and/or other improvements for which the Design-Builder is to perform the Work under this Agreement. The Project includes the demolition of the existing facility located at 9705 East Hibiscus Street, Palmetto Bay, and the design and construction of a new building to serve as the Village of Palmetto Bay's Municipal Center. The subject site consists of a single parcel, encompassing 107,113 square feet or 2.459 acres in size. The new building shall be a hardened facility capable of withstanding category 5 force winds approximately 25,000 square feet in size designed to accommodate new Council Chambers, Police department, council and administrative offices, service departments, a defined lobby area and other required ancillary spaces in accordance with the project specifications provided and incorporated into this Agreement .
19. **PROJECT SCHEDULE:** Schedule prepared by the Design-Builder and approved by the Owner, which is maintained and regularly updated by the Design-Builder for the Project. The Project Schedule includes all aspects of the Project, including but not limited to design and pre-construction services, construction, construction engineering and observation services, testing, project closeout, and warranty.
20. **REQUEST FOR INFORMATION (RFI):** A request from the Design-Builder seeking an interpretation or clarification by the Owner relative to the Project and/or the Contract Documents.
21. **SPECIFICATIONS:** The portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, warranties, testing methods and requirements, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
22. **SUBCONTRACTOR:** A party or entity retained by the Design-Builder as an independent contractor to provide the on site labor, materials, equipment and/or services necessary to complete specific portion of the work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Owner or any separate contractor's subcontractors.
23. **SUB-SUBCONTRACTOR:** A party or entity who has an agreement with a Subcontractor to perform any portion of the subcontractor's work.
24. **SUBSTANTIAL COMPLETION:** Occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project or a designated portion, for the use for which it is intended, in accordance with Paragraph 10.4. The issuance of a Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builders control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner, the Consultant, and Design-Builder. The certificate shall state the respective responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, and damage to the work, and insurance. The certificate shall also list the items to be completed and

corrected, and establish the timeframe for their completion and correction, if any, for the date of Final Completion.

25. **SUPPLIER:** A manufacturer, fabricator, supplier, distributor, material man or vendor.
26. **VILLAGE:** The Village of Palmetto Bay and the Village Council of the Village of Palmetto Bay, Florida, with whom the Design -Builder has entered into the agreement and for whom the Work is provided for.
27. **VILLAGE'S PROGRAM:** a description of the Village's objectives as described in RFP/Q No. 2009-02, entitled "Design-Build Services for Future Municipal Center", budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic design documents which shall include drawings, outline specifications and other conceptual documents illustrating the projects basic elements, scale and their relationship to the Worksite.
28. **WORK:** Work is the result of performing services, specifically, including but not limited to, professional design services, construction and construction administration services, furnishing labor, soil borings, equipment and materials incorporated, used or incorporated in the design and construction of the entire project as required by the Contract Documents.
29. **WORK CHANGE DIRECTIVE:** A written directive to Design Builder issued on or after the effective date of the agreement and signed by Owner's contract administrator and recommended by engineer ordering an addition, deletion or revision in the work. A work change directive shall not change the Contract price or time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.
30. **WORKSITE:** the geographical area at the location mentioned in Article 1 where the Work is to be performed.
31. **WRITTEN AMENDMENT:** A written amendment of the Contract Documents, signed by the Owner and the Design-Builder on or after the Effective Date of the agreement and normally dealing with the non-engineering, non-architectural, or non-technical aspects rather than strictly Work related aspects of the Contract Documents.

**ARTICLE 3
GENERAL PROVISIONS**

- 3.1 TEAM RELATIONSHIP: The Owner and the Design-Builder agree to proceed with the project on the basis of trust, good faith and fair dealing. The Design-Builder agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the Work.
- 3.1.1 ARCHITECT/ENGINEER: Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or has as permitted by the law of the state where Project is located. The standard of care for architectural and engineering services performed under this agreement shall be the care and skill ordinarily used by members of the architectural and engineering professionals practicing under similar conditions at the same time and locality. The person or entity providing architectural and engineering services shall be referred to as the Architect/ Engineer. If the Architect/ Engineer are an independent design professional, the architectural and engineering services shall be procured and payments shall be made pursuant to separate agreement between Design-Builder and the Architect/Engineer and is the responsibility of the Design-Builder.
- a. The Architect for the project shall be:
JMWA Architects.
 - b. The Structural Engineer for the project shall be:
ONMJ Structural Engineers.
 - c. The Civil Engineer for the project shall be:
Camero and Associates.
 - d. The Mechanical, Electrical and Plumbing Engineer shall be:
TLC Engineering For Architecture.
 - e. The LEED certifier for the project shall be:
TLC Engineering For Architecture.
- 3.2 EXTENT OF AGREEMENT: This agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Owner and the Design-Builder agree to look solely to each with respect to the performance of the Agreement, the Agreement and each and every provision is for the exclusive benefit of the Owner and the Design-Builder and not for the benefit of any third party beneficiary, except to the extent expressly provided in the Agreement.
- 3.3 INTENT: It is the intent of the Construction Documents and Specifications to describe a functionally complete project consisting of total design performed by design professional(s) and construction to be completed in accordance with the construction documents. Any work, materials or equipment that may be reasonably inferred from the construction documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in

accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of contract award, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents) shall be effective to change the duties and responsibilities of the Owner, the Design-Builder or any other consultants, agents or employees from those set forth in the contract documents.

- 3.4 REQUEST FOR INFORMATION (RFI): RFI's shall be issued by the Design-Builder to the Owner in writing and shall be reviewed by the Owner and the Consultant, as determined by the Owner. The RFI shall be clearly marked RFI and shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and shall indicate the reason for which the response is needed. The RFI must set forth the Design-Builder's interpretation or understanding of the document(s) in question, along with the reason for such understanding or recommendation for proposed change. All RFI's will require the review and approval of the Owner and the Consultant. A response to an RFI shall be provided by the Owner and/or Consultant within a reasonable time frame but shall not exceed five (5) days, unless the information sought requires supplemental items, which are beyond the control of the Owner and/or Consultant. In the event a response cannot be provided within the specified timeframe, the Owner shall provide notification to the Design-Builder which notice shall indicate the anticipated timeframe for the Owner's response.

ARTICLE 4 DESIGN-BUILDER'S RESPONSIBILITIES

- 4.1 DESIGN-BUILDERS REPRESENTATIVE: The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative shall be James M. Beeson.
- 4.2 RESPONSIBILITY: the Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program. The Design-Builder shall exercise reasonable skill and judgment in the performance of the Work.
- 4.2.1 DESIGN SERVICES: Pursuant to a mutually agreeable schedule, the Design-Builder shall submit for the Owner's written approval, as applicable, Design Development Documents and/or Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by the Owner.
- 4.2.2 DESIGN DEVELOPMENT DOCUMENTS: Design-Builder shall develop further define the Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, , mechanical and electrical systems and required connections of all utilities up to the property line . When the

Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by the Owner shall result in a Change Order pursuant to Article 9 adjusting the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion.

4.2.2 CONSTRUCTION DOCUMENTS: shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws or regulations enacted at the time of the permitting. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Construction Documents approved by the Owner and not due to code mandated modification shall result in a Change Order pursuant to Article 8 adjusting the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion. Construction shall be in accordance with approved Construction Documents. Three set of these documents, one half size set and an electronic copy shall be furnished to the Owner prior to commencement of construction. If during the performance of the work, the Design-Builder finds a conflict, error or discrepancy in the contract documents, the Design-Builder shall report this to the Owner in writing at once and before proceeding with the work affected and shall obtain written interpretation or clarification from the Architect and approval from the Owner and the engineer before proceeding with the work. The contract documents may only be amended to provide for additions, deletions and revisions in the work or to modify the terms and conditions thereof in one of the following ways:

1. Change order fully executed
2. Formal written amendment
3. Work change directive.

4.2.3 ARCHITECTURAL SERVICES: In accordance with the Scope of Services identified on RFP/Q No. 2009-02 (Section D), the Architect, through the Design-Builder, shall provide basic architectural services, including required structural, mechanical, electrical engineering services, as well as limited civil engineering services, which shall be further defined below. The Architect shall:

1. Confer with representatives of the Owner to establish the Project, scope requirements and relationships of functions consisting of a detailed listing of all functions and spaces together with the square footage of each assignable space, gross square footage, and a description of the relationships between and among the principal programmatic elements.
2. Work with the Owner in reviewing and developing the design and construction documents, taking into account the quality of the materials and equipment, to ensure the most efficient design and minimum lifecycle cost. Design-Builder shall

provide information, estimates, schemes, and make recommendations regarding construction materials, equipment, methods, systems, phasing, and costs, and shall participate in all design decisions.

3. Determine if the proposed design requires variances, special exceptions and present the Schematic Design studies to the Village council, for its respective approval.
4. Confer with appropriate utility companies to determine location and level of service of their utilities or to identify any other critical issues that may impact the design, budget and construction, and the project schedule.
5. Incorporate changes to the Schematic Design directed by the Owner and as are necessary to satisfy the Owner's review comments.
6. Make all required changes or additions and resolve all questions on the documents.
7. Upon final approval by the Owner, the Design-Builder shall furnish three copies of all Drawings and Specifications, along with a reproducible set and an electronic copy to the Owner without additional charge.
8. Make all required changes or additions and resolve all questions on the documents.
9. Make all revisions necessary to the Contract Documents after approval, when such revisions are necessary to correct errors, inconsistencies or omissions discovered by Design-Builder or the Owner.

4.2.4 SITE INVESTIGATION AND REPRESENTATION: Design-Builder shall acknowledge that it has satisfied itself as to the nature and location of the Work, the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on Owner provided reports, the type of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters which can in any way affect the Construction Work or the cost thereof under the Contract Documents. The Design-Builder shall further acknowledge that it has satisfied itself based upon its inspection of the Project Site as to the character, quality, and quantity of surface and subsurface materials to be encountered from inspecting the site. Any failure by the Design-Builder to acquaint itself with all the provided information and information obtained by visiting the Project Site, will not relieve Design-Builder from responsibility for properly estimating the difficulty or cost under the Contract Documents.

4.2.5 SUPPLEMENTARY DRAWINGS: When, in the opinion of the Owner, it becomes necessary to explain the Work to be done more fully, or to illustrate the

Work further, or to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by Architect. The supplementary drawings shall be binding upon Design-Builder with the same force as the Contract Documents. Where such supplementary drawings require either less or more than the original quantities of work, appropriate adjustments shall be made by Change Order.

The Owner's Project Manager shall have the right to approve and issue Supplemental Instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Agreement price or this Agreement time for performing the Work. Additionally, the Owner's Project Manager shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents.

4.3 CONSTRUCTION SERVICES: Design-Builder shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Subcontractors with each other and with the activities and responsibilities of the Owner to complete the Work in accordance with the Contract Documents. The Design-Builder shall provide all necessary construction supervision, inspection, construction equipment construction labor, materials, tools, subcontracted items, and all required permits. Design-Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures, including those employed by Subcontractors in the performance of the Work.

4.3.1 Design-Builder shall provide Design-Builder's knowledge, ideas, experience and abilities relating to the planning of the construction of the Project; furnish efficient business administration and superintendence; and use its best efforts to arrange for an adequate supply of workmen and materials, equipment, tools and other services and things to complete the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests and objectives of the Owner and the Contract Documents. Design-Builder agrees to advise and make recommendations to Owner as specified in the Agreement. For the duration of the construction phase, the Design-Builder shall:

1. coordinate all aspects of the Work with all governmental authorities and utility companies.
2. inspect the Work on an ongoing basis and shall maintain an ongoing log of non-conforming Work that has been installed. The log shall record any items that have been noted as non-conforming by Governmental Authorities, Owner, or the Architect. Such log shall be available to the Owner during regular business hours and shall be included in Design-Builder's monthly Progress Report.

3. maintain a spreadsheet based concrete placement log and shall regularly and diligently enter all concrete placement yardage for all pours broken down by footings, slab on grade, columns, beams, shear walls and elevated slabs in a format acceptable to the Owner and such log shall be available to the Owner and the Consultant during regular business hours.
4. maintain a log of (i) recordable OSHA incidents and (ii) recordable lost time accidents, a format that is acceptable to the Owner and the Consultant. Such log shall be available to the Owner and the Consultant during regular business hours.
5. maintain a log of all Submittals in a format that is acceptable to the Owner and the Consultant. Such log shall be available to the Owner and the Consultant during regular business hours.
6. establish and enforce a recycling program including all waste and construction materials.
7. adjust staffing levels or to replace any staff personnel if so requested by the Owner's Project Manager, should the Owner's Project Manager make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.
8. obtain performance and payment bonds, then such bonds shall name the Design-Builder and the Owner as co-obligees, shall cover all warranties and guarantees of the Subcontractor, and shall comply with all bond requirements under this Agreement.
9. submit to the Owner, within thirty (30) days of the effective date of the Agreement, a form of the Progress Report for use on the Project for the Owner's review, comment and acceptance. Upon the Owner's acceptance of the format, the Progress Report shall:
 - a. establish the standard for detail required for the remainder of the Work and shall be updated monthly;
 - b. Progress Report shall be indexed, bound and tabulated in a manner acceptable to the Owner; and
 - c. Progress Report shall be delivered with each monthly Application for Payment. Delivery of the Progress Report shall be a condition precedent to payment of that Application for Payment.
10. carry on the Work and adhere to the Project Schedule during all disputes or disagreements with Owner, including, without limitation, disputes or disagreements concerning a request for a Change Order, a request for a change in the Design-Build Fee, the Agreement Time, or Construction Work Time for Completion:

- a. work shall not be delayed or postponed pending resolution of any disputes or disagreements.
- b. all disputes shall be resolved in accordance with the provisions of the Contract Documents.

4.3.2 The Design-Builder further agrees that after being notified in writing by the Owner's Project Manager of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Design-Builder will commence and prosecute with due diligence all Work necessary to fulfill the terms of the Agreement and to complete the Work within a reasonable period of time, as determined by the Owner's Project Manager, and in the event of failure to so comply, the Design-Builder does hereby authorize the Owner to proceed to have such Work done at the Design-Builder's expense and that the Design-Builder will pay the cost thereof upon demand. The Owner shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Design-Builder's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel, property, or licensees, the Owner may undertake, at the Design-Builder's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Design-Builder not being in accordance with the requirements of the Agreement.

4.3.3 If, within one (1) year after the date of final completion of the Project or within such longer period of time as may be prescribed by law, or by the Contract Documents, or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Design-Builder shall correct it promptly after receipt of a written notice from the Owner. The Owner shall give such notice promptly after discovery of the condition. All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

4.3.4 In no event shall the failure of the Owner to bring to the attention of the Design-Builder such faults act as a waiver, or release the Design-Builder from responsibility or liability for such fault, defect or non-conforming Work.

4.4 SUBMITTALS: Design-Builder by approving and provided any submittals, represents that they have verified the accuracy of the submittals, and they have verified all of the submittal information and documentation with the requirements of the Contract Documents. At time of submission the Design-Builder shall advise the Owner's Project Manager in writing of any deviations from the Contract Documents. Failure of the Design-Builder to advise the Owner's Project Manager or Architect of any deviations shall make the Design-Builder solely responsible for any costs incurred to correct, add or modify any portion of the Work to comply with the Contract Documents.

4.4.1 SHOP DRAWINGS: Design-Builder shall submit Shop Drawings as required by the Contract Documents. The purpose of the Shop Drawings is to show, in detail,

the suitability, efficiency, technique of manufacture, installation requirements, and details of the item(s) and evidence of its compliance or noncompliance with the Contract Documents.

1. Within fourteen (14) days after Owner's notice to proceed, Design-Builder shall submit to the Owner a complete list of items for which Shop Drawings are to be submitted and shall identify the critical items. Such list shall be reviewed and approved by the Owner and the Consultant. Approval of this list, however, shall in no way relieve the Design-Builder from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.
2. After the approval of the list of items required above, Design Builder shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.
3. Design-Builder shall thoroughly review and check the Shop Drawings and each and every copy shall show its approval thereon. Design-Builder shall submit three (3) sets of shop drawings.
4. If the Shop Drawings show or indicate departures from the Contract Documents' requirements, Design-Builder shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Design-Builder from its responsibility to comply with the Contract Documents.
5. Owner's Project Manager shall review and approve Shop Drawings within fourteen (14) calendar days from the date received, unless said Shop Drawings are rejected for material reasons. The Owner's approval of Shop Drawings will be general and shall not relieve Design-Builder of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents and not indicated on the Shop Drawings. No work called for by Shop Drawings shall be performed until the said Shop Drawings have been approved. Approval shall not relieve Design-Builder from responsibility for errors or omissions of any sort on the Shop Drawings.
6. No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Design-Builder's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.
7. If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

8. The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Document references, drawing number(s), specification section number(s) and the shop drawing numbers of related work. Shop drawings must be complete in every detail, including location of the work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other work, cutting, fitting, drilling and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown. Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Owner is entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Design-Builder. Calculations, when required, shall be submitted in a neat clear and easy format to follow.
9. Design-Builder shall keep one set of Shop Drawings marked with the Owner's approval at the job site at all times.
10. The Design-Builder warrants the adequacy for the purpose intended of any shop drawings or portion of a shop drawing that alters, modifies or adds to the requirements of the Contract Documents.
11. Nothing in the Owner's Project Manager's review of Shop Drawings, submittals and Samples shall be construed as authorizing additional work or increased cost to the Owner.
12. During the progress of the Construction Work, the Design-Builder shall submit copies of all reports, permits and inspections required by governing authorities, or necessary for the Project. The Design-Builder shall also prepare a two week look-ahead schedule which must be submitted to the Consultant and the Owner's Project Manager on a weekly basis. All permitting cost and submittals is the responsibility of the Design-Builder.
13. Design-Builder shall also provide copies of all plans approved and permitted by the required governing authorities.
14. Each shop drawing submittal shall contain a title block containing the information listed on items a through i below. Failure to submit any of the required information will result in the rejection of the Shop Drawings and the Design-Builder will be found to be noncompliant with the Contract Documents. Any risks of any delays that occur as a result of such rejection shall be borne by the Design-Builder:
 - a) Number and title of drawing, including Agreement title and Number;
 - b) Date of drawing and revisions;
 - c) Name of Design-Builder and Subcontractor (if any) submitting drawings;

- d) Name of Project;
- e) Specification Section title and number;
- f) Design-Builder 's Stamp of approval, signed by the Design-Builder or his checker;
- g) Space above the title block for Consultant's action stamp;
- h) Submittal or re-submittal number (whether first, second, third, etc.);
- i) Date of submittal.

15. Owner shall not be liable for any materials, fabrication of products or Construction Work commenced that requires submittals until the Consultant has returned approved submittals to the Design-Builder.

16. Design-Builder shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the Architect's stamp of approval. Distribution shall include, but not be limited to; job site file, record documents file, subcontractors, suppliers, and other affected contractors or entities that require the information.

17. The Design-Builder shall also provide copies of all plans approved and permitted by the required governing authorities. The Design-Builder shall not be relieved of responsibility for errors or omissions in any and all submittals by the Project Manager's and/or Architect's acceptance thereof.

4.4.2 PRODUCT DATA: Design-Builder shall submit four copies of product data. Each copy must be marked to identify applicable products, models, options and other data. Design-Builder shall supplement manufacturer's standard data to provide information unique to the Construction Work.

1. Design-Builder shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

2. Design-Builder shall submit a draft of all product data, warranty information and operating and maintenance manuals at 50% completion of construction.

4.4.3 SAMPLES: Design-Builder shall submit samples to illustrate the functional characteristics of the product(s). Submittals shall be coordinated for different categories of interfacing Work. Design-Builder shall include identification on each sample and provide full information. Samples must be approved by both the Consultant and the Owner. Sufficient lead time must be given to ensure that approvals do not delay the construction schedule.

4.5 TRAINING: The Design-Builder shall provide training of all appropriate personnel employed by the Owner or the Owner's agents in the installation, maintenance, calibrations,

and routine care of all equipment and systems provided and installed as part of the Construction Work.

1. Separate training sessions shall be conducted for equipment/system operation and maintenance except when combining of these two (2) subjects is specifically allowed by the Owner.
2. The Design-Builder shall provide qualified, prepared instructors for all training plus all necessary material and equipment (training aids, audio visual equipment, seating, tables, etc.).
3. The Design-Builder shall provide factory-level maintenance training in system problem identification and resolution. This training should be aimed at providing the Owner with means to perform all corrective, scheduled and preventative maintenance.
4. All training shall be conducted on-site or, if conducted at a remote location, travel and expenses for Owner's personnel shall be reimbursed to the Owner by the Design Builder.
5. Training shall be conducted prior to final completion of the Project. For each training session, the Design-Builder shall submit a training plan for review. The plans shall include proposed dates/times/durations of training sessions, suggested class size/attendees, proposed locations, session objectives and an outline of the training topics to be presented. Training plans for all training sessions shall be submitted not later than the date set forth in the Project Schedule. The Owner shall have the right to modify proposed training dates in conjunction with the Design-Builder to coordinate the schedule with availability of personnel and ongoing operations.

4.6 SUPERVISION AND SUPERINTENDENCE: Design-Builder shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying contractor's best skill, attention and expertise. Design-Builder shall be solely responsible for and have control over the means, methods, techniques, sequences, and procedures of construction. Contractor shall be responsible to see that the finished work complies with this contract, the contract documents and the approved schedule.

4.7 RESIDENT SUPERINTENDENT: Design-Builder shall keep on the work at all times during its progress a competent resident superintendent and any necessary assistants who shall not be replaced without written notice to the Owner unless the superintendent proves to be unsatisfactory to the contractor and ceases to be in his employ. The superintendent will be the contractor's representative at the site and shall have authority to act on behalf of the contractor, except concerning decisions which bear an impact on the project quality, budget, and/or schedule. Such decisions shall be authorized by the Owner and Design-Builder. All communication provided to the superintendent shall be as binding as if given to the contractor.

Construction services shall be performed by qualified construction contractors licensed to do business in the State of Florida and suppliers selected and paid by the contractor. Design-Builder shall at all times maintain good discipline and order on the site. Design-Builder shall be fully responsible to the Owner for all acts and omissions of the contractor's employees, subcontractors, suppliers, and other persons directly or indirectly employed by his subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the work under a direct or indirect contract with the contractor. Nothing in the contract documents shall create any contractual relationship between Owner and any subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any money due to any subcontractor, supplier or other person or organization except as may be required by law and regulations. Design-Builder shall supply a list of subcontractors, suppliers to the Owner within ten days of the acceptance of the notice to proceed for the Owner approval.

4.8 PERMITS: Design-Builder shall obtain and pay all permits, tests and licenses required for the full implementation and construction of the project.

4.9 ADDITIONAL SERVICES: The Design-Builder shall provide or procure the following additional services upon the request of the Owner. A written agreement between the Owner and Design-Builder shall define the extent of such additional services. Such additional Services shall be considered a Change in the Work, unless they are specifically included in Article 4:

1. Consultations, negotiations, and documentation supporting the procurement of Project financing.
2. Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.
3. Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.
4. Making revisions to design documents after they have been approved by Owner when revisions are due to causes beyond the control of the Design-Builder. Causes beyond control of the Design-Builder do not include acts or omissions on the part of subcontractors, sub-subcontractors or the Architect/ Engineer.
5. The premium portion of overtime work ordered by the Owner including productivity, impact costs, other than that required by the Design-Builder to maintain the Schedule of Work or to comply with bonus clauses for early completion.
6. Services for tenant or rental spaces not a part of this Agreement.
7. Services requested by the Owner or required by the Work which are not specified in the contract documents and which are not normally part of generally accepted design and construction practice.

8. Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.
 9. Document reproduction exceeding the limits provided for in this agreement.
- 4.10 RISK OF LOSS/ TITLE: The risk of loss, injury or destruction shall be on contractor until final acceptance of work by Owner. Final acceptance of work shall pass to the Owner upon acceptance by the Owner or at the issuance of a certificate of occupancy.
- 4.11 USE OF PREMISES: Contractor shall confine equipment, the storage of materials and equipment and the operations of workers to the project site and areas identified in and permitted by the contract documents and shall not unreasonably encumber the premises with equipment or other materials. Contractor shall assume full responsibility for any damage to any such land or area resulting from the performance of the work.
- 4.11.1 During the progress of the work contractor shall keep the premises free from accumulation of waste materials, rubbish and other debris resulting from the work. At the completion of the work contractor shall remove all waste materials, rubbish and debris from and about the premises as well as tools, appliances, equipment and machinery and any surplus materials. The contractor shall leave the site clean and in the same shape before construction commenced and ready for occupancy by the Owner.
- 4.11.2 Contractor shall provide Owner, Owner consultants, representatives, and personnel, independent testing laboratories and governmental agencies with jurisdictional interest's access to the work at reasonable times for their observations inspection and testing. Contractor shall provide them proper and safe conditions for such access and advise them of contractor's site safety procedures so that they may comply therewith.
- 4.12 LEED CERTIFICATION: The Project shall be designed to achieve LEED-Silver rating, as defined in the LEED(r) Green Building Rating System(tm) for New Construction and Major Renovations, Version 3.0, July 2009. Design-Builder shall be responsible for the application and all other requirements for LEED certification, and determining methods of achieving LEED credits unless specifically so indicated. The Design-Builder shall familiarize himself with the relevant requirements and provide the necessary information and instruction to all subcontractors and installers.
- 4.12.1 Owner requires that Design-Builder conduct a sustainable goal setting meeting no later than the end of the schematic design phase. Owner reserves the right to make adjustments to the incentives to allow the project more flexibility in achieving higher levels of performance throughout design and construction phases. The adjustments shall not necessarily be considered "change orders" unless they increase the cost of the Project.

4.12.2 A bonus of exactly \$60,000 shall be paid to the Design-Builder if a Gold LEED rating is attained. An amount of \$40,000 shall be paid from the bonus the Design-Builder receives notification from the United States Green Building Council, confirming that the project design is eligible for the Gold LEED rating, based on design submittal. Upon receipt of the written notification by the USGBC, that the design submittal has been substantially approved, the Owner shall release the final \$20,000 withheld amount to the Design-Builder.

4.13 SCHEDULE OF THE WORK: The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the dates for the start and completion of the construction, including the dates when information and approvals are required from the Owner. The Schedule shall be revised as required by the conditions of the Work in accordance with the provisions set forth in Section 7.3 of this Agreement.

4.14 SAFETY OF PERSONS AND PROPERTY:

4.14.1. Safety Precautions and Programs: The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Paragraph establish the responsibility for safety between the Owner and the Design-Builder, they do not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

4.14.2 Avoidance of Injuries: the Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

1. its employees and other persons at the Worksite; materials, supplies and equipment stored at the Worksite for use in performance of the Work; and
2. the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

4.14.3 Design-Builder's Safety Representative: the Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

1. The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by law or regulation. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

2. Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder, Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3. If the Owner deems any part of the Work or Worksite unsafe and/or not meeting applicable building codes, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures within ten (10) days, the Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. The Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

4.14.4 HAZARDOUS MATERIAL: any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Design-Builder shall remove all known or suspected Hazardous Materials discovered at the Project site, rendered or determined to be harmless which shall be certified by an independent testing laboratory and approved by the appropriate government agency.

1. If after the commencement of the Work, known or suspected Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.
2. The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.
3. The Design-Builder shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Design-Builder, and shall be performed in a manner minimizing any adverse effect upon the Work. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

4. Provided the Design-Builder, its Subcontractors and Sub-contractors, and the agents, officers, directors and employees of each of them, have not, acting under their own authority, knowingly entered upon any portion of the Work containing Hazardous Material, and to the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.
5. Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.
6. During the Design-Builder's performance of the work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this Paragraph for materials and substances brought to the site by the Design-Builder if such materials or substances are required by Contract Documents.
7. The terms of this Paragraph shall survive the completion of the work under this Agreement and/or any termination of this agreement.

**ARTICLE 5
SUBCONTRACTS**

- 5.1 Subcontracts shall refer to all Work that is not directly performed by the Design-Builder with its own forces and which shall be performed by Subcontractors, as more specifically defined in Article 2 of this Agreement.
 - 5.1.1 RETAINING SUBCONTRACTORS: The Design-Builder shall not retain any subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to increase the Contract Price for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

- 5.1.2 MANAGEMENT OF SUBCONTRACTORS: The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.
- 5.1.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS: The Design-Builder shall provide for assignment of subcontract agreements in the event that the Owner terminates this Agreement for cause as provided in Paragraph 11.2. Following such termination, the Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.
- 5.1.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS: The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Sub-contractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors and Material Suppliers portions of the Work.

**ARTICLE 6
OWNER'S RESPONSIBILITIES**

- 6.1 INFORMATION AND SERVICES PROVIDED BY OWNER: the Owner shall provide full information in a timely manner regarding requirements for the project, including the Owner's program and other relevant information. The Owner shall provide:
1. all available information describing the physical characteristics of the site, including surveys, legal descriptions, existing conditions;
 2. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments.
- 6.1.1 The Owner shall provide reasonable evidence satisfactory to the Design-Builder, prior to commencing the Work that sufficient funds are available and committed for the entire cost of the project, including an allowance for changes in the Work as may be approved in the course of the work. Unless such reasonable evidence is provided, the Design-Builder shall not be required to commence or continue to Work. The Design-Builder may stop Work after seven (7) days written notice to the Owner if such evidence is not presented within a reasonable time. The failure of the Design-Builder to insist upon the providing of this evidence at any one time shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Design-Builder's right to request or insist that such evidence be provided at a later date.
- 6.1.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Article 6.

6.2 RESPONSIBILITIES DURING DESIGN: the Owner shall review and approve further development of the drawings and specifications as set forth in Article 3 and as provided in RFP/Q No. 2009-02.

6.3 RESPONSIBILITIES DURING CONSTRUCTION: the Owner shall review the Schedule of Work as set forth in Paragraph 4.13, timely approve milestones dates set forth and timely respond to its obligations.

6.3.1 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the work, the Owner shall give prompt written notice to the Design-Builder.

6.3.2 The Owner shall have no contractual obligations to subcontractors, suppliers, or the Architect/Engineer.

6.4 OWNER'S PROJECT MANAGER: the Owner's Project Manager is Edward Silva, R.A.
The Project Manager:

1. shall be fully acquainted with the project;
2. agrees to furnish the information services required of the Owner pursuant to Paragraph 6.1 so as not to delay the Design-Builder's Work; and
3. shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall Notify the Design-Builder in writing in advance.

6.4.1 AUTHORITY OF THE OWNER'S PROJECT MANAGER: the Village Manager hereby authorizes the Owner's Project Manager, without limitation, to determine or answer, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and/or as to the interpretation of the Work to be performed the Contract Documents.

1. The Design-Builder shall be bound by all determinations or orders of the Owner's Project Manager and shall promptly respond to requests of the Owner's Project Manager including the withdrawal or modification of any previous order, and regardless of whether the Design-Builder agrees with the Owner's Project Manager's determination or requests. Where requests are made orally, the Owner's Project Manager will follow up in writing, as soon thereafter as is practicable.
2. The Owner's Project Manager shall have authority to act on behalf of the Owner to the extent provided by the Agreement, unless otherwise modified in writing by the Owner. All instructions to the Design-Builder shall be issued in writing. All instructions to the Design-Builder shall be issued through the Director or the Owner's Project Manager.

3. The Owner's Project Manager shall have access to the Project Site during normal work hours, unless access is required by the Owner due to health, safety or welfare of the Owner or the public. The Design-Builder shall provide safe facilities for such access so the Owner's Project Manager may perform its functions under the Agreement. The Owner's Project Manager will make periodic visits to the Work Site to become generally familiar with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents.
4. The Owner's Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Design-Builder's failure to carry out the Construction Work in accordance with the Contract Documents.
5. The Owner's Project Manager will have authority to reject Construction Work that does not conform to the Contract Documents requirements. Whenever, in his or her opinion, it is considered necessary or advisable to insure the proper implementation of the Contract Documents, the Owner's Project Manager will have authority to require special inspections or testing of the Construction Work, whether or not such Construction Work is fabricated, installed or completed. Neither the Owner's Project Manager's authority to act under this Article, nor any decision made by him/her in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner's Project Manager to the Design-Builder, any Subcontractor, Subconsultant, supplier or any of their agents, employees, or any other person performing any of the Construction Work.
6. All interpretations and recommendations of the Owner's Project Manager shall be consistent with the intent of the Contract Documents. Should the design-builder disagree with any directive from the Owner concerning any aspect of the Project, the consultant shall make the final determination of the course of action and/or corrective measures that shall be implemented.
7. The Owner's Project Manager will not be responsible for the acts or omissions of the Design-Builder, or anyone employed or contracted directly or indirectly by the Design-Builder including any Subcontractor, Subconsultant, or any of their agents or employees, or any other persons performing any of the Work.
8. Owner's Project Manager shall have the authority to reject or disapprove Work which Consultant finds to be defective. If required by Architect, Design-Builder shall promptly either correct all defective work or remove such defective Work and replace it with non-defective Work. Design-

Builder shall bear all direct and indirect costs of such removal or corrections including cost of testing laboratories and personnel.

6.5 WARRANTIES AND COMPLETION: the Design-Builder warrants that all materials and equipment furnished under this agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of substantial completion of the work or of a designated portion. The Design-Builder agrees to correct all construction performed under this agreement which proves to be defective in workmanship or materials within a period of twelve (12) months following the issuance of a Certificate of Occupancy, or for such longer periods of time as may be set forth with respect to specific warranties required by contract documents.

6.5.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claim. All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.

6.5.3 The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

6.5.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

6.5.5 With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start up operations and adjusting and balancing of systems and equipment for readiness. The Design-Builder shall provide all utility hook-ups which are necessary Project's operation.

6.6 CONFIDENTIALITY: The Design-Builder shall treat as confidential and not to disclose to third persons, except subcontractors, sub-subcontractors and the Architect/Engineer as is necessary for the performance of the work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement.

**ARTICLE 7
CONTRACT TIME**

- 7.1 DATE OF COMMENCEMENT: The Date of Commencement is the effective date as indicated in the Notice to Proceed and the Date of Commencement. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time by written agreement between both parties, subject, however, to other provisions of this Agreement.
- 7.1.1 COMMENCEMENT: Construction will commence no later than ten days after the issuance by the Owner of a written notice to proceed. The issuance of the notice to proceed shall not be issued until the Design-Builder has obtained all required insurances and bonds as provided in this Agreement.
- 7.1.2 FINANCIAL STABILITY: The Design-Builder shall provide reasonable evidence satisfactory to the Owner, prior to commencing the Work as proof of the financial stability of the Design-Builder as necessary for the completion of the Project. The Owner may stop Work after seven (7) days written notice to the Design-Builder if such evidence is not presented within a reasonable time. The failure of the Owner to insist upon the providing of this evidence at any one time shall not be a waiver of the Design-Builder's obligation to complete the Work pursuant to this Agreement, nor shall it be a waiver of the Owner's right to request or insist that such evidence be provided at a later date.
- 7.2 SUBSTANTIAL COMPLETION/FINAL COMPLETION:
- 7.2.1 Substantial Completion of the Work shall be achieved on or before October 10, 2010. Unless otherwise specified, the Work shall be finally complete on or before October 30th, 2010, subject to permit obtained by November 15, 2009 and adjustments as provided for in the Contract Documents, and agreed to by written acceptance by the Owner and the Design-Builder.
- 7.2.2 Time is of the essence of this Agreement and the Design-Builder shall promptly perform its duties under the Contract Documents and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents.
- 7.2.3. All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the Village.
- 7.2.4. In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with the Agreement, the Design-Builder understands that, except and only to the extent provided otherwise in the

Agreement, the occurrence of events of delay within the either Design-Builder's control, the Work shall not excuse the Design-Builder from its obligation to achieve full completion of the Work by October 30th 2010, and shall not entitle the Design-Builder to an adjustment of the Contract Price.

7.2.5 The Date of Final Completion of the Work shall be on or before October 30th 2010, , subject to adjustments as provided for in the Contract Documents, and agreed to by written acceptance by the Owner and the Design-Builder.

7.2.6 Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder.

7.3 DELAYS IN THE WORK: If causes beyond the Design-Builder's control delay the commencement or progress of the Work, then the Contract Price and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to : changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner preventing the Design-Builder from performing the Work pending dispute resolution or differing site conditions. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of the Design-Builder, Subcontractors, Sub-subcontractors, Material Suppliers or the Architect/Engineer.

7.3.2 To the extent a delay in the progress of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the Project but not specifically related to the Worksite, governmental agencies, or unavoidable accidents or circumstances, the Design-Builder shall only be entitled to its actual costs without fee and an extension of the Date of Substantial Completion and/or the Date of Final Completion.

7.3.3 In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 8 CONTRACT PRICE

8.1 The Contract Price is \$3,980,000, subject to adjustment in accordance with the provisions of Article 9. The Contract Price shall be inclusive of all permits, materials, supplies, labor, etc, required to complete the Project Scope as provided in this Agreement, as well as insurance and bond costs.

**ARTICLE 9
CHANGES IN THE WORK**

9.1 Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Work Change Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

9.1.1 CHANGE ORDERS: the Design Builder may request and/or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion. All such changes in the Work shall be approved in advance and authorized in writing by applicable Change Order, and shall be performed under the applicable conditions of the Contract Documents. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design Services.

The Owner and the Design-Builder shall negotiate in good faith an appropriate adjustment to Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion and shall conclude these negotiations as expeditiously as possible.

9.2 WORK CHANGE DIRECTIVES: The Owner may issue a written Work Change directive directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate, the compensation for Design Services.

9.2.2 The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Services, arising out of Work Change Directives. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the Work Change Directive. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment and shall be paid by Owner.

9.2.3 If the Owner and the Design-Builder agree upon the adjustments in the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Services, for a change in the Work directed by a Work Change Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Change Directives issued since the last Change Order.

9.3 MINOR CHANGES IN THE WORK:

- 9.3.1 Design Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.
- 9.3.2 Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

9.4 DETERMINATION OF COST:

- 9.4.1 An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
1. unit prices set forth in this Agreement or as subsequently agreed;
 2. a mutually accepted, itemized lump sum; or
 3. if an increase or decrease cannot be agreed to as set forth in Clause 9.4.1.1 or 9.4.1.2 and the Owner issues a written order for the Design Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable expense and savings of the performance of the Work resulting from the change. If there is a net increase in the Contract Price, a reasonable adjustment shall be made in the Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in overhead and profit. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.
- 9.4.2 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.
- 9.4.3 If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder eighty percent (80%) of its estimated cost to perform the

work. In such event, both parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

- 9.5 UNKNOWN CONDITIONS: If in the performance of the Work the Design-Builder finds latent, concealed or subsurface physical conditions which materially differ from the conditions the Design-Builder reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the Contract Price and/or the date of Substantial Completion shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed. Design-Builder shall provide Owner with written notice within the time period set forth in Paragraph 9.6.
- 9.6 CLAIMS FOR ADDITIONAL COST OR TIME: For any claim for an increase in the Contract Price and/or an extension in the Date of Substantial Completion and/or the Date of Final Completion, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) days after the occurrence giving rise to the claim or within twenty-one (21) days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Any change in Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion resulting from such claim shall be authorized by Change Order.
- 9.7 EMERGENCIES: In any emergency affecting the safety of persons and/or property, the Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or extension of the Date of Substantial Completion and/or the Date of Final Completion on account of emergency work shall be determined as provided in this Article.
- 9.8 CHANGES IN LAW: In the event any changes in laws or regulations affecting the performance of the Work are enacted after the date of this Agreement, the Contract Price and the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Services, shall be equitably adjusted by Change Order.

ARTICLE 10
PAYMENT

10.1 PROGRESS PAYMENTS: Prior to submitting the first application for payment, the Design-Builder shall provide a Schedule of Values satisfactory to the Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design Services.

10.1.1 The Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on the basis of actual cost. The Design-Builder can markup approved change orders verified cost by a maximum of 5% for overhead and a maximum of 5% profit. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

10.1.2 On or before the first day of each month after the Work has commenced, the Design-Builder shall submit to the Consultant an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by the Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Consultant to establish the Owner's title to such materials, or otherwise to protect the Owner's interest including transportation to the site.

10.1.3 Within twenty (20) days after receipt of each complete monthly application for payment, the Consultant shall give written notice to the Owner and the Design-Builder of the Consultant's acceptance or rejection, in whole or in part, of such application for payment. Upon the Consultant's approval of the pay application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner.

In the event that such application is rejected in whole or in part by the Consultant, the Consultant shall indicate the reasons for its rejection. If the Consultant and the Design-Builder cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

10.1.4 If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) days after receipt of the notice by the Owner, and after such seven (7) day period, stop the Work until payment of the amount owing has been received.

- 10.1.5 Payments due but unpaid pursuant to Subparagraph 10.1.3, less any amount retained pursuant to Paragraph 10.2 or 10.3, may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.
- 10.1.6 The Design-Builder warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."
- 10.1.7 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.
- 10.1.8 Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of the Design-Builder's estimated cost of completing any unfinished items as agreed to between the Owner and Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.
- 10.2 RETAINAGE: From each progress payment made prior to the time Substantial Completion of the Work has been reached, the Owner shall retain eight percent (8%), if required, of the amount otherwise due after deduction of any amounts as provided in Paragraph 10.3 of this Agreement. If the Owner chooses to use this retainage provision:
1. at the time the Work is fifty percent (50%) complete and thereafter, the Owner may choose to withhold no more retainage and pay the Design-Builder the full amount of what is due on account of subsequent progress payments;
 2. once each early finishing trade Subcontractor has completed its work and that work has been accepted by the Owner, the Owner may release final retention on such work;
 3. in lieu of retainage, the Design-Builder may furnish securities, acceptable to the Owner, to be held by the Owner. The interest on such securities shall accrue to the Design-Builder;
 4. the Owner may, in its sole discretion, reduce the amount to be retained at any time.
- 10.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT: The Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

1. the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;
2. loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner, or Others to whom the Owner may be liable;
3. the Design-Builder's failure to pay the Architect/Engineer, Subcontractors for labor, materials, equipment or supplies properly furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
4. Defective Work not corrected in a timely fashion;
5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion and/or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder; and
6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work.

When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for the amounts previously withheld.

10.4 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK:

10.4.1 Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) and/or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

10.5 FINAL PAYMENT:

10.5.1 FINAL INSPECTION: Upon written notice from contractor that the entire Work or an agreed portion thereof is complete, Village's Project Manager, along with the Consultant, will make a final inspection and will notify contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to remedy such deficiencies.

10.5.2 FINAL APPLICATION FOR PAYMENT: After Design-Builder has completed all such corrections to the satisfaction of the Owner, and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record documents and other documents required by the Contract Documents, and after the Consultant has indicated that the work is compliant with current building codes and has all final inspections approved by the Village building department and all governmental agencies which regulate or have jurisdiction over the work, have inspected, and approved the work, Design-Builder may make application for final payment. The final application for payment shall be accompanied by (1) complete and legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) Design-Builder's receipts in full covering all labor, materials and equipment for which a lien could be filed; or (3) a final affidavit stating that all laborers, materialmen, suppliers and subcontractors who worked for contractor under this Contract have been paid in full or if the fact be otherwise, identifying the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services or materials furnished. If any subcontractor or supplier fails to furnish a release or receipt in full, contractor may furnish a bond satisfactory to village to indemnify village against any lien.

In addition, Design-Builder shall also submit with the final application for payment, the completed set of "As-Built" drawings for review and approval. The "As-Built" drawings shall be prepared, sealed and certified by a professional registered land surveyor licensed by the State of Florida. Final payment to Design-Builder shall not be made until said drawings have been reviewed and approved by the Owner and/or Consultant. Prior to approval, if necessary, the drawings may be returned to contractor for changes or modifications if in the opinion of the Owner and/or Consultant they do not represent correct or accurate "As-built" drawings.

10.5.3 FINAL PAYMENT AND ACCEPTANCE:

1. If, on the basis of Consultant's observation of the Work during construction and final inspection, and Consultant's review of the final Application for Payment and accompanying documentation, Consultant is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, the Consultant will, within 10 days after receipt of the final Application for Payment, indicate in writing their recommendation of payment and present the Application to the Owner for payment. Thereupon Consultant will give written notice to village and Design-Builder that the Work is acceptable. Otherwise, Consultant will return the Application to Design-Builder, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to village's contract administrator of the Application and accompanying documentation, in appropriate form and substance, and with Consultant's recommendation and notice of acceptability, the amount recommended by Consultant will become due and will be paid by village to Design-Builder.

2. If, through no fault of Design-Builder, final completion of the Work is significantly delayed and if Consultant so confirms, village shall, upon receipt of Design-Builder's final Application for Payment and recommendation of Consultant, and without terminating the agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by village for Work not fully completed or corrected is less than the retainage stipulated in the agreement, and if bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Builder to Consultant with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
3. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the village to the Design-Builder when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the Consultant. The making of final payment shall constitute a waiver of claims by village except those arising from:
 - (a) Liens, claims, security interests or encumbrances arising out of this agreement and unsettled.
 - (b) Faulty or defective work and latent defects discovered after acceptance.
 - (c) Failure of the work to comply with the requirements of the contract documents.
 - (d) Terms of special warranties required by the contract documents.
 - (e) Any of contractor's continuing obligations under this agreement.
4. The acceptance of final payment by Design-Builder or subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

10.5.4 OWNER'S RIGHT TO WITHHOLD PAYMENT: The village may withhold in whole or in part, final payment or any progress payment to such extent as may be necessary to protect itself from loss on account of:

- (a) Defective work not remedied.
- (b) Damage to another contractor not remedied.
- (c) Liability for liquidated damages has been incurred by the Design-Builder.
- (d) Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

- (e) Reasonable evidence that the work will not be completed within the Contract time.
- (f) Failure to carry out the work in accordance with the Contract Documents. When the above grounds are removed or resolved or the Design-Builder provides a surety bond or consent of surety satisfactory to the village which will protect the village in the amount withheld, payment may be made in whole or in part.

10.5.5 OWNERSHIP OF DOCUMENTS: Upon the making of payment pursuant to Paragraph 9.5, the Owner shall receive Ownership of the property rights of all documents, drawings, specifications, electronic data and information prepared, provided or procured by the Design-Builder, its Architect/Engineer, Subcontractors and consultants and distributed to the Owner for this Project. ("Design-Build Documents"):

1. If this Agreement is terminated pursuant to Paragraph 11.2, the Owner shall receive Ownership of the property rights of the Design-Build Documents upon payment for all Work performed in accordance with this Agreement, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.
2. If the Agreement is terminated pursuant to Paragraph 11.3, the Owner shall receive Ownership of the property rights of the Design-Build Documents, upon payment of all sums provided in Paragraph 11.3, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.
3. The Owner may use, reproduce and make derivative works from the Design-Build Documents for subsequent renovation and remodeling of the Work, but shall not use, reproduce and make derivative works from the Design-Build Documents for other Projects without the written authorization of the Design-Builder, who shall not unreasonably withhold consent.
4. The Owner's use of the Design-Build Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligation pursuant to Paragraph 3.6, and the Owner shall defend, indemnify and hold harmless the Design-Builder, its Architect/Engineer, Subcontractors and consultants, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from the Owner's use of the Design-Build Documents.
5. The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.

10.5.6 TAX EXEMPTION: The Design-Builder shall apply the Owner's tax exemption for all supplies and materials purchased for the Project. For the duration of the project, all realized savings pursuant to the sales tax exemption credits shall be assigned as the contingency line item in the project budget to cover unforeseen expenditures, such as: exterior items necessary for Category 5 classifications such as HVAC, wind and missile protection, generator protection, reinforcement of other exterior items and all other unforeseen expenses related to Category 5 classification and Emergency Operation Center can be included and funded from the contingency line item as described above and Interior Finishes not included in the Design Build Contract. Once the project has been completed, in accordance with Article 10.5.3 of this Agreement, the Design-Builder shall retain forty (40) percent of the remaining balance in the contingency line item. The Owner shall therefore be entitled to sixty (60) percent of the remaining balance in the contingency line item.

If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes; the Owner shall defend, indemnify and hold the Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

10.5.7 BONUS FOR EARLY COMPLETION: In the event Design-Builder completes the Project prior to October 30, 2010, the Design-Builder shall be entitled to receive a bonus payment for early completion calculated pursuant to the following formula:

1. Should Project completion be achieved between October 5, 2010– October 30, 2010 the Design-Builder shall be entitled to a bonus payment of \$1,200 for each day of early completion.
2. In the event that said Project is completed prior to October 5, 2010 or earlier, the bonus amount shall be increased to \$1,700 for each day of early completion.
3. In no event shall the total bonus paid to Design-Builder for early completion exceed \$57,000.

ARTICLE 11 INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION

11.1 INDEMNITY:

11.1.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees from all claims for bodily injury and property damage (other than to the Work itself and other property required to be insured under Paragraph 10.5 owned by or in the custody of the Owner), that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by

the Design-Builder, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to defend, indemnify or hold harmless the Owner, the Owner's officers, directors, members, consultants, agents and employees for any acts, omissions or negligence of the Owner, Owner's officers, directors, members, consultants, employees, agents or separate contractors.

- 11.1.2 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Paragraph 10.5, that may arise from the performance of work by Others, to the extent of the negligence attributed to such acts or omissions by Others.

11.2 DESIGN-BUILDER'S LIABILITY INSURANCE:

- 11.2.1 Prior to the execution of the Contract, the Design-Builder shall be required to submit certificate(s) of insurance evidencing the required coverages and specifically providing that the Village of Palmetto Bay is an additional named insured with respect to the required coverage and the operations of the Design-Builder under the Contract.
1. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this agreement and shall state that such insurance is as provided herein. Design-Builder shall not commence work until all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by Owner. Design-Builder shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this agreement, then in that event, Design-Builder shall furnish, at least 30 calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. Design-Builder shall not continue to perform the services required unless all required insurance remains in full force and effect.
 2. Insurance Companies selected must be acceptable to the Owner. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to Owner by certified mail.
 3. The Design-Builder shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability:

(a) Professional Liability Insurance (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this agreement in the amount of \$1,000,000.00 with a deductible (if applicable) not to exceed \$ 25,000 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this agreement.

(b) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Design-Builder shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(c) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Design-Builder in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage
Liability per occurrence

(d) Comprehensive General Liability with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage
Liability per occurrence

\$3,000,000.00 Liability Umbrella

(e) Coverage must be offered in a form no more restrictive than the latest edition of the Comprehensive General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office and shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

1. Premises and Operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract; and
6. Personal Injury coverage with employment contractual exclusions removed and deleted.

(f) Builder's Risk Insurance in an amount not less than THE REPLACEMENT COST for the vertical construction of the work. Coverage shall be "All Risk" coverage for 100 percent of the completed value with a deductible of not more than five thousand and 00/100 dollars (\$5,000.00) per claim.

4. Design-Builder shall maintain the Products/Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish Owner with evidence of continuation of such insurance at final payment and one (1) year thereafter.
5. The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.
6. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Owner with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.
7. The Design-Builder shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against Owner for payment or assessments in any form on any policy of insurance.
8. The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which Owner is named as an additional named insured shall not apply to Owner. Owner shall provide written notice of occurrence within 15 working days of Owner's actual notice of such an event.
9. The Design-Builder shall not commence performance of its obligations under this agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.
10. All required insurance policies shall preclude any underwriter's rights of recovery of subrogation against Owner with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance.
11. The Design-Builder agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of Owner.
12. Design-Builder shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and Design-Builder shall provide verification thereof to Owner upon request of Owner.

11.6 PROPERTY INSURANCE LOSS ADJUSTMENT:

11.6.1 Any insured loss shall be adjusted with the Owner and the Design-Builder and made payable to the Owner and Design-Builder as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

11.6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with a dispute resolution award pursuant to Article 12. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 12.

11.7 WAIVER OF SUBROGATION:

11.7.1 The Owner and Design-Builder waive all rights against each other, the Architect/Engineer, and any of their respective employees, agents, consultants, Subcontractors, Material Suppliers and Sub-subcontractors, for damages covered by the insurance provided pursuant to Paragraph 10.5 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Design-Builder as trustees. The Design Builder shall require similar waivers from the Architect/Engineer and all Subcontractors, and shall require each of them to include similar waivers in their sub-contracts and consulting agreements.

11.7.2 The Owner waives subrogation against the Design-Builder, Architect/Engineer, Subcontractors, Material Suppliers and Sub-subcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

11.7.3 The policies shall also be endorsed to state that the carrier waives any right of Subrogation against the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers, or Sub-subcontractors.

11.8 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES: The Owner and the Design-Builder agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss or reputation. The Design-Builder agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. This Paragraph shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of this Paragraph shall govern the termination of this Agreement and shall survive such termination.

11.9 PAYMENT AND PERFORMANCE BONDS:

1. Within 15 calendar days of issuance of permits and prior to commencing work, the Design-Builder shall execute and furnish to Owner a performance bond and a payment bond, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the Surety Company shall provide Owner with evidence satisfactory to Owner, that such excess risk has been protected in an acceptable manner. The Surety Company shall have at least the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858.
2. Two (2) separate bonds are required and the Owner must approve both. The penal sum stated in each bond shall be the amount equal to the total amount payable under the terms of the contract. The performance bond shall be conditioned that the Design Builder performs the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the Design-Builder promptly make payments to all persons who supply the Design-Builder with labor, materials and supplies used directly or indirectly by the Design-Builder in the prosecution of the work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save harmless the Owner to the extent of any and all payments in connection with the carrying out of said Contract which the Owner may be required to make under the law.
3. Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the Design-Builder to record the aforesaid payment and performance bonds in the public records of Miami-Dade County, with the Design-Builder to pay all recording costs.
4. Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to 25 percent of the Contract Price, or an additional bond shall be conditioned that Design-Builder shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the Owner.

5. If the surety on any Bond furnished by Design-Builder is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Design-Builder shall within seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to Owner.

ARTICLE 12

SUSPENSION, TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S RESPONSIBILITIES

12.1 SUSPENSION BY THE OWNER FOR CONVENIENCE:

- 12.1.1 The Owner may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.
- 12.1.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the Contract Price and/or the Date of Substantial Completion and/or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.2 OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE:

- 12.2.1 If the Design-Builder persistently fails to perform any of its obligations under this Agreement, the Owner may, after five (5) days' written notice, during which period the Design-Builder fails to perform such obligation, undertake to perform such obligations. The Contract Price shall be reduced by the cost to the Owner of performing such obligations.
- 12.2.2 Upon five (5) day's written notice to the Design-Builder and the Design-Builder's surety, if any, the Owner may terminate this Agreement for any of the following reasons:
1. if the Design-Builder persistently utilizes improper materials and/or inadequately skilled workers;
 2. if the Design-Builder does not make proper payment to laborers, material suppliers or contractors provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
 3. if the Design-Builder persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or

4. if the Design-Builder otherwise materially breaches this Agreement.

If the Design-Builder fails to cure or commence and continue to cure within the five (5) days, the Owner, without prejudice to any other right or remedy, may take possession of the Worksite and complete the Work utilizing any reasonable means. In this event, the Design-Builder shall not have a right to further payment until the Work is completed.

12.2.3 If the Design-Builder files a petition under the Bankruptcy Code, this agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.2.4 In the event the Owner exercises its rights under Subparagraphs 12.2.1 or 12.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

12.3 TERMINATION BY OWNER WITHOUT CAUSE: If the Owner terminates this Agreement other than as set forth in Paragraph 11.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design-Builder shall be paid an amount calculated as set forth below:

12.3.1 If the Owner terminates this Agreement prior to commencement of the construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values and a premium as set forth below:

a. \$50,000

12.3.2 If the Owner terminates this Agreement after commencement of the construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values, the Construction Services provided to date and a premium as set forth below:

a. Demonstrated costs, plus a minimum of \$50,000 or 10%, whichever amount is greater.

12.3.3 The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 12, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

12.4 TERMINATION BY THE DESIGN-BUILDER:

12.4.1 Upon five (5) days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

1. if the Work has been stopped for a sixty (60) day period;
 - a. under court order or order of other governmental authorities having jurisdiction; or
 - b. as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of the Design-Builder, materials are not available;
2. if the Work is suspended by the Owner for sixty (60) days; or
3. if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.3 of this Agreement.

12.4.2 If the Owner has for thirty (30) days failed to pay the Design-Builder pursuant to Subparagraph 10.1.3, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within five (5) days of giving written notice to the Owner, then upon five (5) days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

12.4.3 Upon termination by the Design-Builder in accordance with Subparagraph 12.4.1, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in Subparagraph 12.3.1 or 12.3.2., depending on when the termination occurs, and Subparagraph 12.3.3.

12.4.4 Notwithstanding, the RFP/Q 2009-02 which permits the Design-Builder to withdraw from the project, once construction documents have been completed, Design-Builder understands and agrees that it may not withdraw from the project once demolition of the existing structure has been commenced. Design-Builder may only terminate this Agreement pursuant to Paragraph 12.4 of this Agreement.

**ARTICLE 13
DISPUTE RESOLUTION**

- 13.1 WORK CONTINUANCE AND PAYMENT: Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during all dispute resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.
- 13.2 INITIAL DISPUTE RESOLUTION: If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to the dispute resolution procedures contained in this Agreement. The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party's representative to the other party's representative and the mediator.
- 13.3 RIGHTS AND REMEDIES: If the dispute cannot be settled by mediation within thirty (30) days, the either party may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity that are not expressly limited by this Agreement, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The parties' respective rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.
- 13.4 MULTIPARTY PROCEEDING: The parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution proceedings.
- 13.5 COST OF DISPUTE RESOLUTION: The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by the dispute resolution process set forth in Exhibit No. 1 shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.
- 13.6 LIEN RIGHTS: Nothing in this Article shall limit any rights or remedies not expressly waived by the Design-Builder that the Design-Builder may have under lien laws.
- 13.7 APPLICABLE LAW AND VENUE OF LITIGATION: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of

Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement, shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney's fees except in actions arising out of Design-Builder's duties to indemnify the Owner under this Agreement where Design-Builder shall pay the Owner's reasonable attorney's fees. The Owner shall not be responsible for prejudgment interest.

- 13.8 AGREEMENT LIMITING TIME IN WHICH TO BRING ACTION AGAINST THE OWNER: In the event the Design-Builder may be deemed to have a cause of action against the Owner, no action shall lie or be maintained by the Design-Builder against the Owner upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Owner or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Agreement, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract Documents, or if the Agreement is terminated or declared abandoned under the provisions of the Agreement unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the Owner.
- 13.9 LIQUIDATED DAMAGES: (1) Upon failure of Design-Builder to complete the Construction Work within the specified period of time, plus approved time extensions (if applicable), Design-Builder shall pay to Owner the sum of one thousand dollars (\$1,000.00) for each calendar day after the time specified in the contract and Amendments plus any approved time extensions (if applicable), for Final Completion.
- 13.10 UTILITY PROPERTIES AND SERVICE: The Design-Builder shall explore sufficiently ahead of the Work to allow time for any necessary adjustments.
1. The Design-Builder shall field verify all locations. Design-Builder shall coordinate with any affected companies, including utility companies and take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground, including have the Owner of the interfering structures place temporary supports.
 2. The Design-Builder must coordinate all utility locations through "Sunshine State One Call of Florida, Inc."
 3. Where the Design-Builder's operations could cause damage or inconvenience to telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Design-Builder shall make all arrangements necessary for the protection of these utilities and services or any other known utilities. Notify all utility companies that are affected by the construction operation at least 48 hours in advance. Under no circumstance expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

ARTICLE 14
MISCELLANEOUS PROVISIONS

- 14.1 ASSIGNMENT: Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either party attempts to make such an assignment, that party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other party.
- 14.2 GOVERNING LAW: This Agreement shall be governed by the law in effect at the location of the Project.
- 14.3 SEVERABILITY: The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 14.4 NO WAIVER OF PERFORMANCE: The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.
- 14.5 TITLES AND GROUPINGS: The title given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.
- 14.6 JOINT DRAFTING: The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.
- 14.7 LEEDS CERTIFICATION: Design-Builder shall apply Leadership in Energy and Environmental Design (LEED) principles to the entire project and satisfy the nationally accepted benchmarks for design, construction and operation to obtain Silver certification. Owner requires that Design-Builder conduct a sustainable goal setting meeting no later than

the end of the schematic design phase. Owner reserves the right to make adjustments to the incentives to allow projects more flexibility in achieving higher levels of performance throughout design and construction phases. The adjustments shall not necessarily be considered "change orders" unless they increase the cost of the Project.

14.8 OTHER PROVISIONS:

14.8.1 Construction Signage:

- 1) The Owner shall provide the Design-Builder the construction requirements, wording and layout for the signs prior to the submission of the Contract Price. The Design-Builder shall be required to furnish two (2) Owner specified signs at the Project Site.
- 2) The Design-Builder shall also post appropriate construction site warning signs at the Project Site. Such signs shall be posted to warn pedestrian and vehicle traffic. Design-Builder shall provide drawings for the signage, which shall be subject to approval by the Owner's Project Manager.

14.8.2 Post Occupancy Inspection

- 1) Ten (10) months after the date of Substantial Completion, Design-Builder shall, together with the Architect and the Owner, attend a final inspection of the Work to assure that it comports with all warranties and guarantees. Design-Builder shall promptly correct any deficiencies noted during such inspection.

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14.9 SURVIVAL: The parties acknowledge that any of the obligations in the Contract Documents will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Design-Builder and the Owner under the Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration thereof.

14.10 AMENDMENTS: No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Village, Director or designee.

14.11 THIRD PARTY BENEFICIARIES: Neither Design-Builder nor the Owner intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

14.12 INDEPENDENT CONTRACTOR:

14.12.1 The Design-Builder is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an

independent contractor, the Design-Builder covenants and agrees that the Design-Builder will conduct business in a manner consistent with that status, that the Design-Builder will not claim to be an officer or employee of the Owner for any right or privilege applicable to an officer or employee of the Owner, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage retirement membership, or credit.

14.12.2 The Design-Builder's staff shall not be employees of the Owner, and the Design-Builder alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract Documents shall impose any liability or duty on the Owner on account of the Design-Builder's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Design-Builder as a Subcontractor, expert, consultant, independent contractors, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind. The Design-Builder hereby agrees to indemnify and hold harmless the Owner against any such liabilities, even if they arise from actions directed or taken by the Owner.

**ARTICLE 15
EXISTING CONTRACT DOCUMENTS**

The Contract Documents in existence at the time of execution of this Agreement are as follows:

The following Exhibits are a part of this Agreement:

- EXHIBIT NO. 1 – RFP/Q No. 2009-02
- EXHIBIT NO. 2 – Final Architectural Floor Plan Elevations and Site Plan Sketches
- EXHIBIT NO. 3 – Property Survey
- EXHIBIT NO. 4 – General Specifications
- EXHIBIT NO. 5 – List of Proposed Interior Finishes
- EXHIBIT NO. 6 – Notice to Proceed Form

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, the specifications and plans prepared by the Design-Builder, or provision of this Agreement, then the provision that imposes the quality, quantity, duty or obligation most consistent with the intent of the Contract Documents, as reasonably determined by the Village, shall govern.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

OWNER: Village of Palmetto Bay

BY: _____
Ron E. Williams, Village Manager

ATTEST:

DESIGN-BUILDER Master Builders of South Florida

BY: _____
James Beeson, President