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**RESOLUTION NO. 2010-21**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO VILLAGE HALL; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A FIRST ADDENDUM TO THE OCTOBER 5, 2009 DESIGN BUILD CONTRACT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the purpose of this first addendum to the Agreement is to supplement and revise the terms of the underlying Agreement dated October 5, 2009, which is attached as Exhibit 1; and,

**WHEREAS**, due to the financial restrictions in the market and due to economic issues relating to Master Builders of South Florida, Inc.'s bonding agent, Master Builders is currently unable to obtain adequate performance and payment bonds without providing at least one third of the contract price as liquid collateral; and,

**WHEREAS**, pursuant to Article 14.1, the parties may agree to assign certain portions of the contract, upon written consent, and,

**WHEREAS**, Master Builders desires to assign general construction services to CB Constructors, Inc., doing business as: Current Builders, which entity shall be part of the Master Builders Design Build Team, and which corporation shall provide bonding capacity as required under section 255, Florida Statutes; and,

**WHEREAS**, Master Builders and Current Builders, as part of the Design Build Team shall remain legally responsible for all obligations under the October 5, 2009 Agreement, unless otherwise indicated herein; and,

**WHEREAS**, the parties to this first addendum agree to supplement and revise certain Articles and join Current Builders in the Design-Build Team; and,

**WHEREAS**, Current Builders has the requisite skill, resources and expertise to assume responsibility for successfully completing the Construction Services contemplated by the Agreement; and,

**WHEREAS**, Current Builders as part of the Design-Build Team agrees to assume primary responsibility for the Construction Services contemplated by the Agreement and this First Addendum;

**WHEREAS**, the Mayor and Village Council desire to approve the attached First Addendum and authorize the manager to execute same.

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

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4           **Section 1.**     The above whereas clauses are incorporated by reference.

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6           **Section 2.**     The attached exhibit 1 containing the First Addendum to the Design-Build  
7 Contract dated October 5, 2009, for the design and construction of Village Hall is incorporated by  
8 reference into this resolution.

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10          **Section 3.**     The Village Manager is authorized to execute the First Addendum to join CB  
11 Constructors, Inc., d/b/a "Current Builders" as part of the Design-Build team.

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13          **Section 4.**     This resolution shall take effect immediately upon approval.

14           PASSED and ADOPTED this 10th day of February, 2010.

15  
16   Attest:   
17           Meighan Rader  
18           Village Clerk

  
Eugene P. Flinn, Jr.  
Mayor

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21  
22   APPROVED AS TO FORM:

23     
24   \_\_\_\_\_  
25   Eye A. Boutsis,  
26   Village Attorney

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28  
29   FINAL VOTE AT ADOPTION:

30  
31   Council Member Ed Feller                    YES  
32  
33   Council Member Howard Tendrich           YES  
34  
35   Council Member Shelley Stanczyk           YES  
36  
37   Vice-Mayor Brian W. Pariser                YES  
38  
39   Mayor Eugene P. Flinn, Jr.                 YES  
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**FIRST ADDENDUM TO DESIGN-BUILD  
CONSTRUCTION AGREEMENT**

**THIS FIRST ADDENDUM** is dated and approved this 10<sup>th</sup> day of February, 2010 to the October 5th, 2009 Design Build Construction Agreement (“Agreement”) between the Village of Palmetto Bay (“Village”) and Master Builders of South Florida, to add CB Constructors, a Florida Corporation to the design and construction team, 2551 Blount Road, Pompano Beach, Florida 33069, to perform services for the Village as the Contractor responsible for all Construction Services.

**WHEREAS**, the purpose of this first addendum to the Agreement is to supplement and revise the terms of the underlying Agreement dated October 5, 2009, which is attached as Exhibit 1; and,

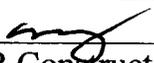
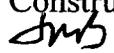
**WHEREAS**, due to the financial restrictions in the market and due to bankruptcy of Master Builders of South Florida, Inc.’s bonding agent, Master Builders is currently unable to obtain adequate performance and payment bonds without providing at least one third of the contract price as liquid collateral;

**WHEREAS**, pursuant to Article 14.1, the parties may agree to assign certain portions of the contract, upon written consent,

**WHEREAS**, Master Builders desires to assign general construction services to CB Constructors, which entity shall be part of the Master Builders Design Build Team, and which corporation shall provide bonding capacity for the Construction Services, as required under section 255, Florida Statutes; and,

**WHEREAS**, Master Builders CB Constructors shall remain legally responsible for all obligations under the October 5, 2009 Agreement, unless otherwise indicated herein.

**WHEREAS**, the parties to this first addendum agree to supplement and revise certain Articles and join CB Constructors in the Design-Build Team.

  
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CB Constructors  
  
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Master Builders

**WHEREAS**, CB Constructors has the requisite skill, resources and expertise to assume responsibility for successfully completing the Construction Services contemplated by the Agreement; and,

**WHEREAS**, CB Constructors as part of the Design-Build Team agrees to assume primary responsibility for the Construction Services contemplated by the Agreement and this First Addendum and the Parties agree that CB Constructors' responsibilities are for the Construction of the Project;

**NOW THEREFORE**, in consideration of the sum of \$10.00, the mutual promises and covenants contained in this first addendum, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows:

**1. WHEREAS CLAUSES:** The above whereas clauses are incorporated and made a part of this First Addendum to the underlying October 5, 2009 Agreement, which Agreement is attached as Exhibit 1.

**2. ENTIRE AGREEMENT:** This First Addendum to the October 5th, 2009 Agreement when signed by all of the parties constitutes the full and complete understanding by and between the parties and integrates by its terms and all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this first addendum will govern over the provisions of any incorporated documents. Listed below are the sections of the Agreement which are being revised, and/or supplemented by this First Addendum:

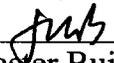
**3. PRIVACY AND SCOPE OF WORK.** CB Constructors, and Master Builders agree and affirm that by virtue of this First Addendum, CB Constructors shall have privity of contract with the Village for the Scope of Work identified herein. Current herein represents that it has reviewed the drawings prepared for this project as identified in the attached Exhibit "4" and that they are constructable and structurally sound. The Parties agree that while CB shall not have any responsibility with respect to the design of the Project, the City shall not be required to pay any additional costs to CB for any additional work required to pass final inspection due to any design related deficiencies. The Scope of Work includes CB Constructors delivering to the Village a valid Certificate of Occupancy for the structure. After Commencement of Construction, CB

  
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Master Builders

Constructors shall diligently pursue the construction of the Project in accordance with the Project schedule. Construction will be deemed complete when the premises is issued a certificate of occupancy.

**4. OBLIGATIONS UNDER THE AGREEMENT.** CB Constructors, by becoming a signatory to the Agreement agrees to provide all construction services contemplated for the Construction of Village Hall, the municipal center (New Facility) which shall include and not be limited to the following provisions of the October 5, 2010 Agreement:

- (a) Article 2, Definitions – entire Article.
- (b) Article 3, General Provisions - entire Article.
- (c) Article 4, Design-Builder’s Responsibilities – Master Builder’s shall be primarily responsible for the provisions of Article 4, provided, however, CB Constructors shall be required to comply with the provisions of section 4.2.2, Construction Documents, as it relates to the performance of work, and the discovery of any conflict, error or discrepancy in the contract documents, and the terms relating to amending the contract documents.
- (d) CB Constructors shall comply with section 4.2.4 “Site Investigation and Representation”;
- (e) CB Constructors shall comply with Section 4.3 “Construction.Services”; section 4.4, relating to “Submittals;” section 4.5, relating to Training; section 4.6, relating to “Supervision and Superintendence; section 4.7 relating to “Resident Superintendent; section 4.8 relating to “Permits”; section 4.9 relating to “Additional Services;” section 4.10 relating to “Risk of Loss;” section 4.11, relating to “Use of Premises;” section 4.12, relating to “LEED Certification;” construction services; section 4.13, relating to “Schedule of the Work;” and section 4.14 relating to “Safety of Persons and Property.”
- (f) CB Constructors shall comply with the entirety of Article 5 relating to “Subcontracts.”

  
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Master Builders

(g) The Village's obligations under Article 6, "Owner's Responsibilities" shall apply equally to CB Constructors as Master Builders.

(h) CB Constructors shall comply with Article 7, relating to the "Contract Time."

(i) CB Constructors shall comply with Article 8, relating to the "Contract Price," except that for purposes of Current's responsibility the Contract Price shall be \$3,250,000.00 for Construction Services pursuant to the schedule of values attached as Exhibit 1.

(j) CB Constructors shall comply with Article 9, relating to "Changes in the Work."

(k) CB Constructors shall comply with Article 10, relating to "Payment," provided however, that payment for Construction Services shall be made directly to CB Constructors, and that in no event shall City withhold payment for Construction Services on behalf of Master Builder's failure to perform any of its portion of the agreement not related to Construction Services.

(l) CB Constructors shall comply with Article 11, relating to "Indemnity, Insurance, Bonds and Waiver of Subrogation, as more specifically delineated below:

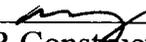
(i) except that CB Constructors' obligation for indemnity shall apply only to Construction Services, including but not limited to all subcontractor construction services; and provided however, CB Constructors affirms the commitment that the proposed structure is structurally sound and constructible as delineated in the Master Builder plans and as required by the Agreement. Any insured loss relating to Construction Services shall also be adjusted with and payable to CB Constructors which shall also be named as trustee.

(ii) At section 11.2 relating to Design-Builder's Liability Insurance, should no architectural or engineering services be rendered by CB Constructors, but rather by Master Builders, as part of the design team, CB Constructors shall solely be relieved of compliance requirements with subsection 11.2.1(3)(a) relating to "Professional Liability Insurance."

(iii) CB Constructors shall comply with section 11.9 "Payment and Performance Bonds for construction services, valued at \$3,250,000, in compliance



Village

  
CB Constructors  
Master Builders

with all the terms and conditions, including but not limited to recording requirements of Section 255.05, Florida Statutes.

(iv) Master Builders shall be relieved from obtaining a Payment and Performance bond as architectural services have been 95 percent completed at the time of execution of this first addendum, and as Section 255.05, Florida Statutes, does not require bonding of architectural services. However, Master Builders shall be required to provide proof of final payment for all architectural, engineering and subcontractor services issued to date, and obtain final releases from all trades used to date.

(m) CB Constructors shall comply with Article 12, "Suspension, Termination of the Agreement and Owner's Right to Perform Design-Builder's Responsibilities."

(n) CB Constructors shall comply with Article 13 "Dispute Resolution," except that CB Constructors shall not be included as a party for any disputes not related to Construction Services.

(o) CB Constructors shall comply with Article 14, "Miscellaneous Provisions."

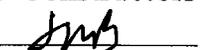
(p) CB Constructors shall comply with Article 15, "Existing Contract Documents." but only to the extent relevant to Construction Services

5. **Additional General Requirement.** Compliance with the above terms by CB Constructors does not relieve Master Builders of its commitments, obligations or responsibilities under the contract, except as provided under subsection (n)(iv), above. Any provision or item relating to Construction Services not specifically incorporated herein shall be deemed a part of this First Addendum.

6. **Additional Work.** Should the Village move forward with an additional scope of work beyond that contemplated herein, the Village shall provide CB Constructors and Master Builders the opportunity to bid for the work. Should another vendor obtain the work, CB Constructors and Master Builders shall allow access to the site for said contractors/vendors, provided the vendors/contractor comply with the Village's Insurance requirements, CB Constructors' safety plan, and reasonably comply with CB Constructors' construction schedule.



Village

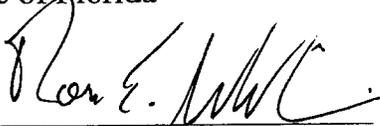
  
CB Constructors  
Master Builders

7. **Exhibit 4.** Exhibit 4 to the October 5<sup>th</sup>, 2009 Design-Build Contract shall be clarified as provided in the attached "Revised Exhibit 4."

**IN WITNESS WHEREOF**, the parties to this first addendum, acting through their duly authorized officers, have executed this first addendum to the Agreement as of the date first written above.

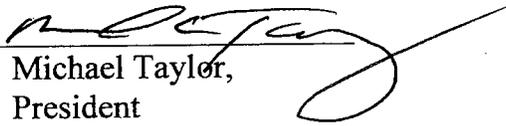
**VILLAGE OF PALMETTO BAY,**  
a municipal corporation of the  
State of Florida

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

  
Ron E. Williams,  
Village Manager

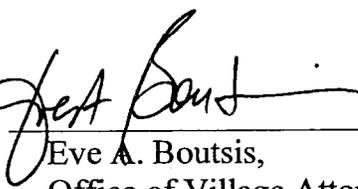
**CB CONSTRUCTORS,**  
CONTRACTOR – DESIGN-  
BUILD TEAM MEMBER

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

  
Michael Taylor,  
President

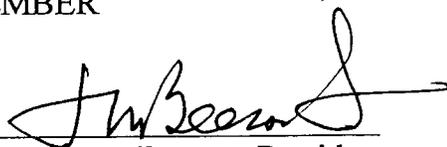
Approved as to form:

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

  
Eve A. Boutsis,  
Office of Village Attorney

**MASTER BUILDERS  
OF SOUTH FLORIDA,**  
DESIGN BUILD TEAM  
MEMBER

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

  
James Beeson, President