

RESOLUTION NO. 06-62

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3 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
4 VILLAGE OF PALMETTO BAY, FLORIDA, APPROVING THE
5 CONTRACT WITH RECREATIONAL DESIGN & CONSTRUCTION, INC.
6 TO DESIGN-BUILD SERVICES FOR THE PALMETTO BAY COMMONS
7 AND PERRINE WAYSIDE PARK IMPROVEMENTS; AUTHORIZING
8 THE VILLAGE MANAGER TO EXECUTE A CONTRACT WITH SAID
9 FIRM FOR THE AMOUNT OF \$9,133,987; AND PROVIDING AN
10 EFFECTIVE DATE.

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12 WHEREAS, the Village of Palmetto Bay recently completed its Parks Master Plan
13 which provides a roadmap for the development of all Village parks, including the Palmetto
14 Bay Commons and Perrine Wayside Park; and,

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16 WHEREAS, the Village previously hired the firm of Bermello-Ajamil & Partners, Inc.
17 to design the park facility in accordance with the Parks Master Plan; and,

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19 WHEREAS, the Village is ready to move forward with the improvements planned for
20 Palmetto Bay Commons and Perrine Wayside Park; and,

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22 WHEREAS, the Village is exercising its piggybacking option, piggybacking of the
23 contract between the City of Doral and Recreational Design & Construction, Inc.; and,

24
25 WHEREAS, the Village desires to enter into a contract with the referenced firm to
26 provide design-build services to the Village, as further detailed in the contract document.

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

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31 Section 1. The contract with Recreational Design and Construction, Inc. is hereby
32 approved in substantial form and content to the contract included herein as Attachment 1.

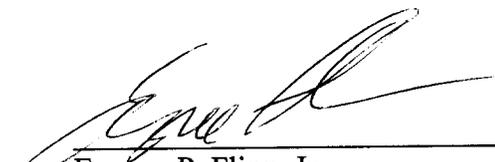
33
34 Section 2. The Village Manager is authorized to execute the contract document
35 with said firm in the amount of \$9,133,987 to provide the services previously described.
36 Nonetheless, execution of the proposed contract is contingent upon approval of the
37 amendments to the administrative rules of the Building Better Communities General
38 Obligation Bond to allow municipalities to follow their own procurement process in selecting
39 contractors.

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41 Section 3. This resolution shall take effect immediately upon approval.

42 PASSED and ADOPTED this 5th day of June, 2006.

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Attest: 
Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve Boutsis,
Office of the Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

**DESIGN-BUILD CONSTRUCTION AGREEMENT BETWEEN
THE VILLAGE OF PALMETTO BAY AND
RECREATIONAL DESIGN & CONSTRUCTION, INC.**

THIS AGREEMENT is made and entered into the ____ day of April, 2006 between the Village of Palmetto Bay (village), located at 8950 SW 152nd Street, Palmetto Bay, Florida 33157 and Recreational Design & Construction, Inc. (contractor), located at 3990 N. Powerline Road, Fort Lauderdale, Florida 33309.

WITNESSETH:

WHEREAS, on May 16, 2005 the City of Doral issued an RFQ for the Design/Build of the improvements to the existing Doral Meadows Park Phase I. The scope of work included the construction of two baseball fields and a connecting roadway for Phase I of their project; and,

WHEREAS, at the June 30, 2005 Doral city council meeting, the council awarded the Design/Build bid to Recreational Design & Construction, Inc. (RDC), and their partner Bermello-Ajamil & Partners, Inc. (B&A); and,

WHEREAS, the Village of Palmetto Bay issued an RFQ for a construction manager at risk for the construction of improvements at Perrine Wayside Park and Palmetto Bay Commons; and,

WHEREAS, the village issued a continuing architectural services RFQ, which contract was awarded to B&A; and,

WHEREAS, B&A has designed the architectural drawings for Perrine Wayside and Palmetto Bay Commons; and,

WHEREAS, under the design build system of the City of Doral, Doral was able to complete construction of park improvements in four months; and,

WHEREAS, as B&A and RDC were able to work successfully to complete park projects on a short timetable; and,

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WHEREAS, the Village Manager and village staff find it in the best interest of the village, to stop the construction manager at risk process and to piggyback off of the City of Doral's design build contract with B&A and RDC; and,

WHEREAS, Doral's selection of B&A and RDC was competitively procured; and,

WHEREAS, the village terminated negotiations under the construction manager at risk RFQ; and,

WHEREAS, the Mayor and Village Council desire to enter into a design build piggyback contract with B&A and RDC.

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

ARTICLE 1 - DEFINITIONS

1.1 WHEREAS CLAUSES. The above whereas clauses are incorporated and made a part of this agreement.

1.2 DEFINITIONS. Wherever used in this agreement or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.3 AGREEMENT. The written agreement between village and contractor covering the Work to be performed including other Contract Documents that are attached to the agreement or made a part thereof.

1.4 CHANGE ORDER. A document which is signed by contractor and village's contract administrator and 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.

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1.5 VILLAGE. The Village of Palmetto Bay and the Village Council of the Village of Palmetto Bay, Florida, with whom contractor has entered into the agreement and for whom the Work is to be provided.

1.6 VILLAGE'S CONTRACT ADMINISTRATOR. Village's Director of Parks and Recreation, or her designee.

1.7 CONTRACT DOCUMENTS. The Contract Documents consist of the Drawings, Plans and Specifications, Non-Collusive Affidavit, Public Entity Crimes Form, Contract, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of the Contract.

1.8 DEFECTIVE. An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

1.9 DESIGN CRITERIA PACKAGE. Concise, performance-oriented drawings or specifications of the public construction project. The design criteria package shall specify such performance-based criteria for the public construction project, including, but not limited to, the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provision for utilities, storm water retention and disposal, and parking requirements, as may be applicable to the project.

1.10 DRAWINGS. The drawings, which show the character and scope of the Work to be performed and which, are referred to in the Contract Documents.

1.11 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.

1.12 ENGINEER. The person or entity retained by the village to provide engineering services to the village.

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1.13 FIELD ORDER. A written order issued by engineer which orders minor changes in the work but which does not involve a change in the Contract price or the Contract time.

1.14 NOTICE OF AWARD. The written notice by village's contract administrator to the apparent successful offeror stating that upon compliance by the apparent successful offeror with the conditions precedent enumerated therein, within the time specified village's contract administrator will sign and deliver the agreement.

1.15 NOTICE TO PROCEED. A written notice given by village's contract administrator to contractor fixing the date on which the Contract Time will commence to run and on which contractor shall start to perform contractor's obligations under the Contract Documents.

1.16 SPECIFICATIONS. Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.17 SUBCONTRACTOR. An individual, firm or corporation having a direct Contract with contractor or with any other Subcontractor for the performance of a part of the Work at the site.

1.18 SUPPLIER. A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.19 WORK. Work is the result of performing services, specifically, including but not limited to, professional design services and construction, 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.

1.20 WORK CHANGE DIRECTIVE. A written directive to contractor issued on or after the effective date of the agreement and signed by village'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

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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.

1.21 WRITTEN AMENDMENT. A written amendment of the Contract Documents, signed by village's contract administrator and contractor 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 2 - CONTRACT DOCUMENTS

2.1 ENUMERATION OF CONTRACT DOCUMENTS.

2.1.1 The Contract Documents which comprise the entire agreement between village and contractor are attached to this agreement made a part hereof and consist of the following:

- (1) This agreement (pages 1 to 40, inclusive).
- (2) Exhibit A – Design-Build Performance Bond
- (3) Exhibit B – Payment Bond
- (4) Exhibit C – Certificate of Insurance
- (5) Exhibit D – Application and Certificate for Payment
- (6) Exhibit E – Certificate of Substantial Completion
- (7) Exhibit F – Form of Final Release of Lien
- (8) Exhibit G – Schedule of Values – **See Section 1**
- (9) Exhibit H – Technical Proposal and Preliminary Drawings – **See Section 2**
- (10) Exhibit 1, Project Schedule

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2.2 ENTIRE AGREEMENT. The Contract Documents comprise the entire agreement between village and contractor concerning the Work. The Contract Documents are complimentary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Florida.

2.3 INTENT. It is the intent of the Contract Documents to describe a functionally complete project consisting of total design performed by design professional and construction to be completed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract 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 village, contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents.

2.4 CONFLICT, ERROR OR DISCREPANCY. If, during the performance of the Work, contractor finds a conflict, error or discrepancy in the Contract Documents, contractor shall so report to village's contract administrator and engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from village's contract administrator through the engineer.

2.5 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 2.5.1 A Change Order;
- 2.5.2 A formal written amendment; or
- 2.5.3 Work change directive.

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2.6 SUPPLEMENTS, MINOR VARIATIONS OR DEVIATIONS. In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the work may be authorized in one or more of the following ways:

2.6.1 Engineer's approval of a shop drawing or sample;

2.6.2 Engineer's written interpretation or clarification; or

2.6.3 A field order.

2.7 REPRESENTATION OF CONTRACTOR. Execution of the Contract by the contractor is a representation that contractor has visited the site and become familiar with the local conditions under which the work is to be performed.

2.8 BEFORE COMMENCING OPERATIONS. Before undertaking each part of the Work, contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon. contractor shall promptly report in writing to village's contract administrator and engineer any conflict, error or discrepancy which contractor may discover and shall obtain a written interpretation or clarification from engineer before proceeding with any Work affected thereby.

ARTICLE 3 - SCOPE OF WORK

3.1 SCOPE OF WORK. Contractor shall provide all necessary design services and all labor, materials, and equipment necessary to construct improvements to Perrine Wayside Park and Palmetto Bay Commons as dictated in Exhibit H.

ARTICLE 4 - CONTRACT TIME

4.1 TIME IS OF THE ESSENCE OF THIS CONTRACT. The work to be performed under this Contract shall be commenced upon the date of Contract Commencement specified in the Notice to Proceed. The contractor agrees and acknowledges that within 72 calendar days of the effective date of this design/build contract that it shall submit to the village's building department all necessary architectural engineering and other plans required for review. Furthermore, contractor acknowledges that it shall be solely

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responsible for initiating the design related work required under this contract on a timely basis. The failure to submit the required plans to the village within 72 calendar days of the effective date of this contract shall constitute a default under this agreement which shall afford the village the opportunity to terminate this agreement and/or impose liquidated damages against the contractor which shall be paid to the village by means of offsetting the liquidated damages against progress payments required to be paid by the village to the contractor in accordance with the terms of this agreement.

The contractor agrees and acknowledges that the project shall be completed 69 days after issuance of all permits or _____. (whichever happens later). The failure to complete the project on or before this date may result in the village imposing liquidated damages against contractor for damages for delay as a result of the contractor failure to complete all services required under this contract.

ARTICLE 5 - CONTRACT SUM

5.1 CONTRACT SUM. Village shall pay contractor in current funds as full compensation for the performance of all the work as described in Section 3.1 and the exhibits referenced therein subject to additions and deductions by Change Order, as provided in this agreement, the Contract sum of \$ _____.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 DESIGN RESPONSIBILITIES.

6.1.1 Contractor shall determine the general scope, extent and character of the Work. Contractor shall prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications a written description of the work and other documents to fix and describe the size, quality and characters of the work, its architectural, structural, mechanical and electrical systems and the materials and other elements of the work. Contractor shall submit the preliminary design documents to village for review and authorization to proceed with the final design preparation. Upon written authorization from village's contract administrator to proceed with the final design, contractor shall prepare final drawings, plans, schedules, specifications, technical criteria, written descriptions, design data, construction documents and diagrams setting forth in detail the requirements for construction of the work and submit the same to village's contract administrator for approval prior to commencing construction of the Work. All final design

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documents, plans, reports, studies and other data prepared by contractor shall bear the endorsement of a person in the full employ of contractor and duly registered in the appropriate professional category.

6.1.2 After village's contract administrator's acceptance of the final design documents, the original set of contractor's drawings, tracings, plans and maps shall be provided to village along with two (2) record sets of full size prints. Contractor shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by contractor. With the tracings and the record set of prints, contractor shall submit a final set of design computations. The computations shall be bound in an 8 1/2" by 11" format and shall be endorsed (seal/signature as appropriate) by contractor. Upon approval of the final design documents, village's contract administrator shall issue a written authorization to commence construction.

6.1.3 All tracings, plans, drawings, diagrams, specifications, maps, reports and other design documents prepared or obtained under this agreement shall be considered works made for hire and shall become the property of village without restriction or limitation on their use. Liability for any use of work product documents in any form by the village on any project other than specified in this agreement is at the sole risk of the village and village shall hold the Design Builder and its designers, engineers or anyone employed by the Design-Builder harmless by the village's reuse of these documents.

6.1.4 All services shall be performed by contractor to the satisfaction of village's contract administrator who, upon making a determination of acceptance or satisfaction shall utilize generally accepted engineering standards as well as the design criteria package, and village's published and approved engineering standards. engineer shall decide all questions, and disputes of any nature whatsoever that may arise by reason of the execution of this agreement and the prosecution and fulfillment of the services hereunder.

6.1.5 Design shall be performed in accordance with the design criteria package by qualified architects, engineers and other professionals duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida to practice architectural and/or engineering and who are selected and paid by the contractor.

6.2 LIABILITY FOR USE OF WORK FOR INTENDED PURPOSE. As an inducement for village to enter into this agreement, contractor has represented an expertise in

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professional design services and the construction of public construction projects by qualified and licensed general construction contractors. In reliance upon those representations, village hired contractor to provide professional design services and complete construction services. Contractor shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, strict liability or breach of other legal duty as such may be found by a court of competent jurisdiction.

6.3 SHOP DRAWINGS AND SAMPLES.

6.3.1 Within 14 calendar days after issuance of building permit, contractor shall submit to engineer for review and approval five (5) copies of all Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable engineer to review the information as required.

6.3.2 Contractor shall also submit to engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents and shall be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.3.3 Before submission of each Shop Drawing or sample contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.3.4 At the time of each submission, contractor shall give engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to engineer for review and approval of each such variation. Failure to point out such departures shall not relieve contractor from his responsibility to comply with the Contract Documents.

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6.3.5 Approval of the Shop Drawings by village's contract administrator shall be general and shall not relieve contractor of responsibility for the accuracy of such drawings nor for the proper fittings and construction of the work, nor for the furnishing of material or work required by the agreement and not indicated on the drawings. No work called for by any Shop Drawing shall be done until the drawings have been approved by village's contract administrator.

6.4 SUPERVISION AND SUPERINTENDENCE. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying contractor's best skill, attention and expertise. Contractor 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 accurately with the Contract Documents.

6.5 RESIDENT SUPERINTENDENT. Contractor 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 village unless the superintendent proves to be unsatisfactory to contractor and ceases to be in his employ. The superintendent will be contractor's representative at the site and shall have authority to act on behalf of contractor. All communications given to the superintendent shall be as binding as if given to contractor.

6.6 LABOR.

6.6.1 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.

6.6.2 Contractor shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Contract Documents. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents.

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6.7 MATERIALS.

6.7.1 Unless otherwise specified herein, contractor shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

6.7.2 Contractor warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Contract Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents.

6.8 CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS.

6.8.1 Contractor shall be fully responsible to village 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 contractor. Nothing in the Contract Documents shall create any Contractual relationship between village and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of village to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

6.8.2 All Work performed for contractor by a Subcontractor will be pursuant to an appropriate agreement between contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of village.

6.8.3 Contractor shall provide a list of sub-contractors to the village's Contract Administrator within 10 days of receiving permits for construction.

6.9 PATENT FEES AND ROYALTIES. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the

_____ village

_____ contractor

incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

6.10 PERMITS. Contractor shall obtain all permits and licenses paid or reimbursed by the village. Village shall reimburse the contractor or waive village inspection fees for all governmental charges and inspection fees necessary to complete the work. The contractor shall pay all fees relative to re-inspections, as they may be required from time to time.

6.11 LAWS AND REGULATIONS. Contractor shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. Village shall not be responsible for monitoring contractor's compliance with any laws and regulations. Contractor shall promptly notify village's contract administrator if the Contract Documents are observed by contractor to be at variance therewith.

6.12 RISK OF LOSS; TITLE. The risk of loss, injury or destruction shall be on contractor until acceptance of the work by village. Title to the Work shall pass to village upon acceptance of the Work by village's contract administrator.

6.13 TAXES. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by contractor in accordance with the laws and regulations of the State of Florida and its political subdivisions. Contractor is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

6.14 USE OF PREMISES.

6.14.1 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, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against village by any such owner or occupant because of the performance of the Work, contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of contractor's use of the premises.

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6.14.2 During the progress of the Work, contractor shall keep the premises free from accumulations 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 all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by village. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

6.14.3 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.15 ACCESS TO WORK. Contractor shall provide village, village's consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the work at reasonable times for their observation, inspection and testing. Contractor shall provide them proper and safe conditions for such access and advise them of contractor's site safety procedures and programs so that they may comply therewith.

6.16 SAFETY AND PROTECTION.

6.16.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the work site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto.

6.16.2 Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

6.17 INDEMNIFICATION.

6.17.1 General Indemnification. **The parties agree that one percent of the total compensation paid to contractor for the work of the Contract shall constitute specific consideration to contractor for the indemnification to be provided under the Contract.** To the fullest extent permitted by laws and regulations, contractor shall

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indemnify, defend, save and hold harmless the village, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, including but not limited to fees and charges of engineers, architects, attorneys, consultants and other professionals and court and arbitration costs claims attributable to the performance of the contractor and to the extent caused by the contractor. Such indemnification shall specifically include but not be limited to claims, damages, losses, liabilities and expenses arising out of or from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, (c) other such damages, liabilities, or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this project including the warranty period; (d) the use of any improper materials; (e) any construction defect including both patent and latent defects; (f) any act, omission or default of contractor, his subcontractors, agents, servants, or employees; (g) the violation of any federal, state, county or village laws, by-laws, ordinances or regulations by contractor, his subcontractors, agents, servants or employees; (h) the breach or alleged breach by contractor of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

6.17.2 Patent and Copyright Indemnification. Contractor agrees to indemnify, defend, save and hold harmless the village, its officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against village, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against village, its officers, agents and employees for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

6.17.3 Pursuant to the requirements of section 752.06, Florida Statutes, as amended, the indemnification from liability for damages caused in whole or in part by any act, omission or default by village as contained in Paragraph 6.17.1 above, shall be limited to the monetary amount of comprehensive general liability insurance with contractor is required to obtain under the Contract. All other indemnification required hereunder shall not be limited to the amount of required comprehensive general liability insurance or any required excess insurance.

6.17.4 Contractor is liable for all claims, losses, liens, settlements or judgments attributable to the contractor's indemnification obligations set forth herewith, including

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reasonable attorney's fees and costs incurred by the village in defending claims for which contractor was the responsible party.

6.18 SURVIVAL OF OBLIGATIONS. All representations, indemnification's, warranties and guarantees made in, required by, or given in accordance with this agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the work and termination or completion of the agreement.

6.19 CORRECTION OR REMOVAL OF DEFECTIVE WORK. If required by village, contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by village's contract administrator, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby. Subject to the contractors right to dispute the directive and request an opinion from the Engineer pursuant to article 8. In such an event no action shall be required by the contractor until such time as the engineer has made a determination.

ARTICLE 7 – VILLAGE'S RESPONSIBILITIES

7.1 Village shall furnish data required of village under the Contract Documents promptly.

7.2 Village shall secure and pay for necessary permits, fees, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7.3 If the work is defective, or contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, village's contract administrator may order contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of village's contract administrator to stop the Work shall not give rise to any duty on the part of village to exercise this right for the benefit of contractor or any other party. Subject to the contractors right to dispute the directive and request an opinion from the Engineer pursuant to article 8. In such an event no

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action shall be required by the contractor until such time as the engineer has made a determination.

ARTICLE 8 - ENGINEER'S RESPONSIBILITIES

8.1 Engineer will be village's representative during the construction period and until final payment is due.

8.2 VISITS TO SITE. Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. engineer's efforts will be directed toward providing for village a greater degree of confidence that the completed work will conform to the Contract Documents. On the basis of such visits and on-site inspections, engineer shall keep village informed of the progress of the work and shall endeavor to guard village against defects and deficiencies in the work.

8.3 TECHNICAL CLARIFICATIONS AND INTERPRETATIONS.

8.3.1 Engineer will issue, with reasonable promptness, such written clarifications or interpretations of the technical requirements of the Contract Documents as engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should contractor fail to request interpretation of questionable items in the Contract Documents neither village nor engineer will thereafter entertain any excuse for failure to execute the work in a satisfactory manner.

8.3.2 Engineer will interpret and decide matters concerning performance under the requirements of the Contract Documents upon written request of either village's contract administrator or contractor. engineer will make initial decisions on all claims, disputes or other matters in question between village's contract administrator and contractor. Written notice of each such claim, dispute or other matter will be delivered by claimant to engineer and the other party but in no event later than three (3) days after the occurrence of the event giving rise thereto and written supporting data will be submitted to the engineer and other party within five (5) calendar days after such occurrence. All written decisions of the engineer on any claim, dispute or other matter will be final and binding upon village and contractor unless a written notice of intention to appeal from engineer's written decision is delivered within five (5) days after the date of such decisions and a formal proceeding is

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instituted by the appealing party in a forum of competent jurisdiction within 30 days of the date of such decision. The rendering of a decision by engineer with respect to any such claim, dispute, or matter (except any which have been waived by the making or acceptance of final payment) is a condition precedent to any exercise by village or contractor of such rights or remedies existing under the Contract Documents or by law.

8.4 AUTHORIZED VARIATIONS IN WORK. Engineer may authorize minor variations in the work from the technical requirements of the Contract Documents, which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on village, and also on contractor who shall perform the work involved promptly.

8.5 REJECTING DEFECTIVE WORK. Engineer will have the authority to disapprove or reject work which engineer believes to be defective, and will also have authority to require special inspections or testing of the work whether or not the work is fabricated, installed or completed.

ARTICLE 9 - BONDS AND INSURANCE

9.1 PAYMENT AND PERFORMANCE BONDS.

9.1.1 Within 15 calendar days of issuance of permits and prior to commencing work, the contractor shall execute and furnish to village 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 village with evidence satisfactory to village, 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

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A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858.

9.1.2 Two (2) separate bonds are required and the village 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 contractor performs the contract in the time and manner prescribed in the contract. The payment bond shall be conditioned that the contractor promptly make payments to all persons who supply the contractor with labor, materials and supplies used directly or indirectly by the contractor 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 village to the extent of any and all payments in connection with the carrying out of said Contract which the village may be required to make under the law.

9.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, it shall be the duty of the contractor to record the aforesaid payment and performance bonds in the public records of Miami-Dade County, with the contractor to pay all recording costs.

9.2 BONDS, REDUCTION AFTER FINAL PAYMENT. 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 contractor 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 village.

9.3 DUTY TO SUBSTITUTE SURETY. If the surety on any Bond furnished by contractor 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, contractor shall within seven (7) days thereafter substitute another bond and surety, both of which must be acceptable to village.

9.4 INSURANCE.

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9.4.1 PRIOR TO THE EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL 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 CONTRACTOR UNDER THE CONTRACT. 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 required by Article 9 and its subparts of this agreement. Contractor shall not commence work under this agreement until after contractor has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by village. Contractor 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, contractor 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. Contractor shall not continue to perform the services required by this agreement unless all required insurance remains in full force and effect.

9.4.2 Insurance Companies selected must be acceptable to the village. 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 village by certified mail.

9.4.3 The contractor 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 \$10,000.00 per claim. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this agreement.

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(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. Contractor 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 contractor 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

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;

_____ village

_____ contractor

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.

(e) 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.

9.4.4 Contractor 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 village with evidence of continuation of such insurance at final payment and one (1) year thereafter.

9.4.5 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.

9.4.6 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against village 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.

9.4.7 The contractor shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against village for payment or assessments in any form on any policy of insurance.

9.4.8 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 village is named as an additional named insured shall not apply to village. village shall provide written notice of occurrence within 15 working days of village's actual notice of such an event.

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9.4.9 The contractor 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.

9.4.10 All required insurance policies shall preclude any underwriter's rights of recovery of subrogation against village 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.

9.4.11 The contractor agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of village.

9.4.12 Contractor shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and contractor shall provide verification thereof to village upon request of village.

9.4.13 Violation of the terms of this paragraph and its subparts shall constitute a breach of the Contract and village, at its sole discretion, may cancel the Contract and all rights, title and interest of the contractor shall thereupon cease and terminate.

9.5 VILLAGE'S LIABILITY AND INSURANCE. Village shall not be responsible for purchasing and maintaining any insurance to protect the interests of contractor, subcontractors or others on the Work. village specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of sections 768.28 and 95.11, Florida Statutes.

ARTICLE 10 - WARRANTIES; TESTS AND INSPECTIONS;
CORRECTION OF DEFECTIVE WORK

10.1 WARRANTY OF TITLE. The contractor warrants to the village that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

10.2 WARRANTY OF SPECIFICATIONS. The contractor warrants that all equipment, materials and workmanship furnished, whether furnished by the contractor or its

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contractor

sub-contractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted and that all services will be performed in a workmanlike manner.

10.3 WARRANTY OF MERCHANTABILITY. Contractor warrants that any and all equipment to be supplied pursuant to the agreement is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

10.4 CORRECTION PERIOD. Contractor warrants all material and workmanship for a minimum of one (1) year from date of acceptance by the village. If within one (1) year after the date of final completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, whether observed before or after acceptance by village, contractor shall promptly, without cost to village and in accordance with village's written instructions, either correct such defective work, or, if it has been rejected by village, remove it from the site and replace it with work that is not defective and satisfactorily correct and remove and replace any damage to other work or the work of others resulting therefrom. If contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, village may have the defective workmanship corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by contractor.

10.4.1 Where defective Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

10.4.2 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Paragraph 10.4.1 relates only to the specific obligation of the contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be

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commenced to establish contractor's liability with respect to the contractor's obligation other than specifically to correct the work.

10.5 Contractor warrants to the village that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Contract.

10.6 Contractor warrants to the village that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

10.7 Contractor warrants to the village that the consummation of the work provided for in the Contract Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the contractor is a party.

10.8 Contractor warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Contract.

10.9 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by contractor. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by village.

10.10 TESTS AND INSPECTIONS.

10.10.1 Contractor shall give village timely notice of readiness of the work for all required inspections, tests or approvals. Contractor shall assume full responsibility, pay all costs in connection therewith and furnish village the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.

10.10.2 Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Contract Documents, nor to delay the agreement by failure to inspect the materials and work with reasonable promptness.

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10.10.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the contractor to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the contractor will constitute a breach of this agreement.

ARTICLE 11 - CONTRACT TIME

11.1 CHANGE OF CONTRACT TIME.

11.1.1 All time limits stated in the contract documents are of the essence of the agreement. No claim for damages or any claim other than for an extension of time shall be made or asserted against the village by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from village for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of village or its agents. Otherwise, contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. Additionally, contractor is entitled to an equitable adjustment for delays caused by force majeure in light of the recent hurricane season and unusual weather conditions.

11.2.2 **NO RECOVERY FOR EARLY COMPLETION.** If the contractor submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the village shall not be liable to the contractor for any costs incurred because of delay or hindrance should the contractor be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the village to the contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this agreement.

11.3 **LIQUIDATED DAMAGES.** Upon failure of contractor to complete the Work within the time specified for completion, (plus approved extensions if any) contractor shall pay to village the sum of one thousand and 00/100 dollars (\$1000.00) for each calendar day that the completion of the Work is delayed beyond the time specified in the Contract for

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completion, as fixed and agreed liquidated damages and not as a penalty. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by village as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of contractor to complete the Contract on time. Regardless of whether or not a single Contract is involved, the above-stated liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. village shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to contractor, the amount of such liquidated damages and if the amount retained by village is insufficient to pay in full such liquidated damages, the contractor shall pay in full such liquidated damages.

ARTICLE 12 - CHANGES IN THE WORK

12.1 Village, without invalidating this agreement, may order additions, deletions or revisions to the Work. Such additions, deletions or revisions shall be authorized by a Written Amendment, Change Order or Work Directive Change.

12.2 Change Orders which decrease the cost of the work to village or increase the cost of the work by an amount not in excess of twenty thousand and xx/100 dollars (\$20,000.00) must be authorized and approved by the Village Manager or his authorized designee prior to their issuance. All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior Change Orders for this project, increase the cost of the work to village by an amount which exceeds twenty thousand and xx/100 dollars (\$20,000.00), or five percent of the original contract price, or which extend the time for completion, must be formally authorized and approved by the Village Council prior to their issuance and before work may begin. No claim against village for extra work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.

12.3 The Contract Price and Contract Time shall be changed only by Change Order or Written Amendment.

12.4 Proposed Change Orders shall be prepared by the engineer on forms provided by village. When submitted for approval, they shall carry the signature of the appropriate village official, the engineer and the contractor.

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12.5 If village and contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract times that should be allowed as a result of a Work Change Directive, a claim may be made therefor.

12.6 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract times with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented.

12.7 If notice of any change affecting the general scope of the work or the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice will be contractor's responsibility and the amount of each applicable bond shall be adjusted accordingly.

12.8 Any claim for adjustment in the Contract Price or time shall be based upon written notice delivered by the party making the claim to the other parties and to engineer not later than 10 calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the contract time will be valid if not submitted in accordance with this Paragraph.

12.9 The cost or credit to village from a change in the work shall be determined by mutual agreement.

ARTICLE 13 - CHANGE IN CONTRACT PRICE

13.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by contractor shall be at his expense without change in the Contract Price.

13.2 The Contract Price may only be changed by a Change Order or by a written amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered to village's contract administrator promptly (but in no event later than 10 days) after the occurrence of the event giving rise to the amount of the claim with supporting data shall be delivered within 20 days and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event.

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No resolution of a claim for adjustment in the Contract Price shall be effective until approved by village in writing. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Paragraph.

13.3 The value of any Work covered by a change order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

13.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

13.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees) which shall not exceed twenty five percent. If the negotiated lump sum change order exceeds the percentages set forth for "cost of Work" it must be accompanied by a detailed explanation justifying the increase.

13.3.3 On the basis of the cost of the work (determined as provided in Paragraphs 13.4 and 13.5) plus a contractor's fee for overhead and profit (determined as provided in Paragraph 13.6).

13.4 COST OF THE WORK. The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by village or village's contract administrator depending on the amount, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Paragraph 13.5:

13.4.1 Payroll costs for employees in the direct employ of contractor in the performance of the Work under schedules of job classifications agreed upon by village's contract administrator and contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall not be included in the above unless authorized in writing by village's contract administrator.

_____ village

_____ contractor

13.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith. All cash discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to village, and contractor shall make provisions so that they may be obtained.

13.4.3 Supplemental costs including the following:

13.4.3.1 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work.

13.4.3.2 Rentals of all construction equipment and machinery and the parts thereof whether rented from contractor or others in accordance with rental agreements approved by village's contract administrator with the advice of engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. the rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

13.4.3.3 Sales, consumer, use or similar taxes related to the Work, and for which contractor is liable, imposed by laws and regulations.

13.4.3.4 Royalty payments and fees for permits and licenses.

13.4.3.5 The cost of utilities, fuel and sanitary facilities at the site.

13.4.3.6 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

13.4.3.7 Cost of premiums for additional bonds and insurance required because of changes in the Work.

13.5 NOT INCLUDED IN THE COST OF THE WORK. The term cost of the Work shall not include any of the following:

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contractor

13.5.1 Payroll costs and other compensation of contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by contractor whether at the site or in contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.4.1 - all of which are to be considered administrative costs covered by contractor's fee.

13.5.2 Expenses of contractor's principal and branch offices other than contractor's office at the site.

13.5.3 Any part of contractor's capital expenses, including interest on contractor's capital employed for the Work and charges against contractor for delinquent payments.

13.5.4 Cost of premiums for all bonds and for all insurance whether or not contractor is required by the Contract Documents to purchase and maintain the same.

13.5.5 Costs due to the negligence of contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

13.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.4.

13.6 CONTRACTOR'S FEE. Contractor's fee allowed to contractor for overhead and profit shall be determined as follows:

13.6.1 A mutually acceptable negotiated fee:

13.6.1.1 For costs incurred under Paragraphs 13.4.1 and 13.4.2, contractor's fee shall not exceed 24 percent.

13.6.1.2 When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any,

_____ village

_____ contractor

however, profit will not be paid on any Work not performed.

**ARTICLE 14 - PAYMENTS TO CONTRACTOR AND
COMPLETION OF WORK**

14.1 PROGRESS PAYMENTS.

14.1.1 Contractor may requisition payments for work completed during the project at intervals of not more than twice a month. The contractor's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with a certification by the contractor that the contractor has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the contractor for all work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the contractor's previous applications for payment, and any other supporting documentation as may be required by the engineer or Contract Documents. Each requisition shall be submitted in triplicate to the engineer for approval. The village shall make payment to the contractor within 30 calendar days after approval by the engineer of the contractor's requisition for payment.

14.1.2 Ten percent all monies earned by the contractor shall be retained by the village until the work is totally completed as specified, and accepted by the village except that after fifty percent of the work has been completed, the village may reduce the retainage to five percent of all monies earned.

14.2 FINAL INSPECTION. Upon written notice from contractor that the entire Work or an agreed portion thereof is complete, village's contract administrator 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. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

14.3 FINAL APPLICATION FOR PAYMENT. After contractor has completed all such corrections to the satisfaction of engineer 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 engineer has indicated that the work is acceptable, contractor may make application for final payment. The final application for payment shall be accompanied by (1) complete and

_____ village

_____ contractor

legally effective releases or waivers of all liens arising out of or filed in connection with the work; or (2) contractor'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, contractor 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 contractor shall not be made until said drawings have been reviewed and approved by engineer. Prior to approval, if necessary, the drawings may be returned to contractor for changes or modifications if in the opinion of engineer they do not represent correct or accurate "As-built" drawings.

14.4 FINAL PAYMENT AND ACCEPTANCE.

14.4.1 If, on the basis of engineer's observation of the Work during construction and final inspection, and engineer's review of the final Application for Payment and accompanying documentation, engineer is satisfied that the Work has been completed and contractor's other obligations under the Contract Documents have been fulfilled, engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing engineer's recommendation of payment and present the Application to village for payment. Thereupon engineer will give written notice to village and contractor that the Work is acceptable. Otherwise, engineer will return the Application to contractor, indicating in writing the reasons for refusing to recommend final payment, in which case contractor 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 engineer's recommendation and notice of acceptability, the amount recommended by engineer will become due and will be paid by village to contractor.

14.4.2 If, through no fault of contractor, final completion of the Work is significantly delayed and if engineer so confirms, village shall, upon receipt of contractor's final Application for Payment and recommendation of engineer, and without terminating the

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contractor

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 contractor to engineer 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.

14.5 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the village to the contractor when the work has been completed, the Contract fully performed, and a final certificate for payment has been issued by the engineer. The making of final payment shall constitute a waiver of claims by village except those arising from:

- (1) Liens, claims, security interests or encumbrances arising out of this agreement and unsettled.
- (2) Faulty or defective work and latent defects discovered after acceptance.
- (3) Failure of the work to comply with the requirements of the contract documents.
- (4) Terms of special warranties required by the contract documents.
- (5) Any of contractor's continuing obligations under this agreement.

The acceptance of final payment by contractor or the 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.

14.6 VILLAGE'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:

14.6.1 Defective work not remedied.

village

contractor

14.6.2 Damage to another contractor not remedied.

14.6.3 Liability for liquidated damages has been incurred by the contractor.

14.6.4 Reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum.

14.6.5 Reasonable evidence that the work will not be completed within the Contract time.

14.6.6 Failure to carry out the work in accordance with the Contract Documents. When the above grounds are removed or resolved or the contractor provides a surety bond or a 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.

ARTICLE 15 - TERMINATION OF THE CONTRACT

15.1 VILLAGE'S RIGHT TO TERMINATE. Upon the occurrence of any one or more of the following events:

15.1.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

15.1.2 If a petition is filed against contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

15.1.3 If contractor makes a general assignment for the benefit of creditors.

15.1.4 If a trustee, receiver, custodian or agent of contractor is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of contractor's creditors.

village

contractor

15.1.5 If contractor admits in writing an inability to pay its debts generally as they become due.

15.1.6 If contractor persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or failure to adhere to the progress schedule as same may be revised from time to time).

15.1.7 If contractor disregards laws or regulations of any public body having jurisdiction.

15.1.8 If contractor otherwise violates in any substantial way any provisions of the Contract Documents and after seven days written notice and the opportunity to cure and subject to the conditions of the performance bond. Village may, after giving contractor and the surety seven (7) days written notice and to the extent permitted by laws and regulations, terminate the services of contractor, and exclude contractor from the site. In such case contractor shall not be entitled to receive any further payment until the Work is finished.

15.2 TERMINATION FOR CONVENIENCE OF VILLAGE. Upon seven (7) days written notice to contractor, village may, without cause and without prejudice to any other right or remedy, terminate the agreement for village's convenience whenever village determines that such termination is in the best interests of village. Where the agreement is terminated for the convenience of village, the notice of termination to contractor must state that the Contract is being terminated for the convenience village under the termination clause, the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, contractor shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and Subcontracts. Contractor shall not be paid on account of loss of future anticipated profits or revenue or other economic loss arising out of or resulting from such termination, but shall be entitled to payment for work performed through date of termination, reasonable profit, overhead, and demobilization costs.

15.3 TERMINATION BY CONTRACTOR. If engineer fails to recommend payment for a period of 30 days through no fault of contractor or if village fails to make payment thereon for a period of 30 days, contractor may, upon seven additional days written notice and opportunity to cure to village and engineer, terminate the Contract and recover

village

contractor

from the Contract payment for work executed through date of termination and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable profit, overhead, and demobilization costs.

ARTICLE 16 - NOTICE, COMPUTATION OF TIME

16.1 GIVING NOTICE. All notices required by any of the Contract Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

contractor : Recreational Design & Construction, Inc.
 3990 N. Powerline Road
 Fort Lauderdale, FL 33309
 Steven L. Siems, Chief Executive Officer

Village: Village of Palmetto Bay
 8950 SW 152nd Street
 Palmetto Bay, Florida 33157
 Charles D. Scurr, Village Manager

16.2 COMPUTATION OF TIME. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.

ARTICLE 17 - MISCELLANEOUS

17.1 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon contractor and all of the rights and remedies available to village thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as

_____ village

_____ contractor

effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the agreement.

17.2 Contractor shall not assign or transfer the Contract or its rights, title or interests therein without village's prior written approval. The obligations undertaken by contractor pursuant to the Contract shall not be delegated or assigned to any other person or firm unless village shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by contractor and the village may, at its discretion, cancel the Contract and all rights, title and interest of contractor shall thereupon cease and terminate.

17.2.1 **COOPERATIVE PURCHASE AGREEMENT.** Design-Builder agrees that its acceptance of the terms and conditions of this agreement also constitutes a proposal to all state agencies and political subdivisions of the State of Florida under the same conditions, for the same prices and for the same effective period as this agreement, should **DESIGN-BUILDER deem it in the best interest of its business to do so.**

This agreement in no way restricts or interferes with any state agency or political subdivision of the State of Florida, or Florida municipality, to re-bid or re-propose any or all items for its own purposes. Design-Builder agrees that county shall be the priority party over any other parties utilizing this agreement or any portion thereof for work performed by Design-Builder, and that Design-Builder shall perform its work for county first.

17.3 Contractor and its employees, volunteers and agents shall be and remain an independent contractors and not agents or employees of village with respect to all of the acts and services performed by and under the terms of this agreement. This agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

17.4 Village reserves the right to review the records of contractor relating in anyway to the work to be performed pursuant to this agreement at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by village. Contractor shall allow village to inspect, examine and review the records of contractor at any and all times during normal business hours during the term of the Contract.

village

contractor

17.5 The remedies expressly provided in this agreement to village shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of village now or hereafter existing at law or in equity.

17.6 The laws of the State of Florida shall govern the validity, construction and effect of this Contract. Any claim, objection or dispute arising out of this Contract shall be litigated in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

17.7 Should any part, term or provision of this agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

17.8 The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

17.9 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

**ARTICLE 18- NONDISCRIMINATION AND
EQUAL OPPORTUNITY EMPLOYMENT**

18.1 During the performance of this agreement, contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall agree to post in conspicuous places, available to employees and applicants for employment,

_____ village

_____ contractor

notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

18.2 Contractor shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

18.3 Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

18.4 Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

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

VILLAGE OF PALMETTO BAY,
a municipal corporation of the State of
Florida, a corporation organized and
existing under the laws of the State of Florida

**RECREATIONAL DESIGN &
CONSTRUCTION, INC.**

By: _____
Charles D. Scurr,
Village Manager

By: _____

Steven L. Siems,
Chief Executive Officer

Approved as to form:

By: _____
Eve A. Boutsis,
Office of Village Attorney

village

contractor

OPTIONS ESTIMATE UNIT PRICE SCHEDULE
PALMETTO BAY COMMONS PARK
 175 Street S.W 94 Avenue

DESCRIPTION	OPTION A	OPTION B	OPTION C	OPTION D	OPTION E
	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
General Conditions	\$360,524	\$350,524	\$350,024	\$345,375	\$215,840
Design Fees	\$369,798	\$359,798	\$352,798	\$345,990	\$209,198
Bond & Insurances	\$93,615	\$93,615	\$90,615	\$84,685	\$63,250
Demolition	\$152,250	\$152,250	\$152,250	\$152,250	\$152,250
Earthwork and Grading	\$404,152	\$404,152	\$404,152	\$355,552	\$325,631
Site Utilities- Water	\$38,448	\$38,448	\$38,448	\$38,448	\$38,448
Site Utilities- Sewer	\$86,950	\$86,950	\$86,950	\$86,950	\$86,950
Site Utilities- Drainage	\$359,540	\$359,540	\$359,540	\$359,540	\$252,920
Landscaping (Allowance)	\$100,000	\$100,000	\$75,000	\$75,000	\$50,000
Sodwork	\$103,903	\$103,903	\$103,903	\$103,903	\$182,585
Irrigation	\$209,600	\$209,600	\$209,600	\$209,600	\$191,780
Asphalt Paving	\$531,700	\$531,700	\$531,700	\$531,700	\$256,585
Brick Paver Drop Area	\$46,900	\$46,900	\$46,900	\$46,900	\$0
Concrete Sidewalks & Asphalt Walking Trails	\$205,750	\$205,750	\$205,750	\$205,750	\$296,750
Concrete Flatwork	\$405,450	\$405,450	\$405,450	\$405,450	\$165,100
Site Fencing and Gates	\$242,075	\$242,075	\$242,075	\$242,075	\$0
Softball Fields	\$1,307,270	\$1,307,270	\$1,307,270	\$879,456	\$448,756
Restroom/ Concession	\$756,200	\$591,600	\$591,600	\$591,600	\$591,600

(Option A-C: 4 @ 200' and 2 @ 250')
 (Option D: 2 @ 200' and 2 @250') (Option E: 2 @ 200')

(Option A: 2 Stories) (Option B-E: 1 Story)

Existing Restroom Upgrade		\$25,383	\$25,383	\$25,383	\$25,383	\$25,383
Pavilions / Shelters	(Option A-B: 2) (Option C-D: 1) (Option E: None)	\$92,139	\$92,139	\$46,070	\$46,070	\$0
Dugouts	(Option A-C: 12) (Option D: 8) (Option E: 4)	\$81,600	\$81,600	\$81,600	\$54,400	\$27,200
Batting Cages	(Option A-B: 2) (Option C-E: None)	\$62,804	\$62,804	\$0	\$0	\$0
Drinking Fountains	(Option A-C: 3) (Option D: 2) (Option E: None)	\$27,890	\$27,890	\$27,890	\$18,593	\$0
Signage		\$12,500	\$12,500	\$12,500	\$12,500	\$0
Flag Poles & Flags	(Option A-D: 3) (Option E: None)	\$18,879	\$18,879	\$18,879	\$18,879	\$0
Site Furnishings (Bike Rack, Benches, Picnic Tables, Trash Recp, BBQ Grills)		\$36,915	\$36,915	\$36,915	\$36,915	\$36,915
Bleachers	(Option A-C: 12) (Option D: 8) (Option E: None)	\$56,650	\$56,650	\$56,650	\$37,767	\$0
Scoreboards	(Option A-B: 4) (Option C-E: None)	\$101,272	\$101,272	\$0	\$0	\$0
Shade Covering @ Bleachers	(Option A-B: 4) (Option C-E: None)	\$244,693	\$244,693	\$0	\$0	\$0
Site Electric		\$495,650	\$495,650	\$495,650	\$469,650	\$358,345
Parking Lot Lighting		\$159,900	\$159,900	\$159,900	\$159,900	\$89,300
Ball Fields Lighting		\$728,565	\$728,565	\$728,565	\$387,474	\$387,474
Pathways and Playground Lighting	(Option A-D) (Option E: None)	\$219,856	\$219,856	\$219,856	\$219,856	\$0
P A & Communication Equipment	(Option A-D) (Option E: None)	\$14,600	\$14,600	\$14,600	\$14,600	\$0
TOTAL AMOUNT		\$8,153,421	\$7,968,821	\$7,478,483	\$6,562,211	\$4,452,260

5/19/2006

RECREATIONAL DESIGN & CONSTRUCTION, INC.
BIDDER'S COMPANY NAME

**OPTIONS ESTIMATE UNIT PRICE SCHEDULE
PERRINE WAY SIDE DOG PARK
160 STREET S.W & US1**

DESCRIPTION	OPTION A	OPTION B
	AMOUNT	AMOUNT
General Conditions	\$142,300	\$93,250
Design Fees	\$75,500	\$47,850
Bond & Insurances	\$14,850	\$9,450
Demolition & Clearing	\$115,711	\$23,520
Earthwork and Grading	\$39,400	\$42,500
Site Water (Option B: Prefab Restroom)	\$12,650	\$0
Site Sewer (Option B: Prefab Restroom)	\$28,645	\$0
Landscaping (Option B: Allowance)	\$10,000	\$2,000
Sodwork Restoration	\$4,950	\$3,900
Asphalt Paving & Roadway Restoration (Option A: All Parking) (Option B: One Parking Area)	\$75,389	\$72,683
Asphalt Pathways (Option B: 6' wide)	\$39,070	\$17,460
Concrete Sidewalks & Flatwork	\$29,850	\$28,985
Fence Work (Option B: 2 Dog Holding)	\$24,900	\$23,850
Drinking & Pet Fountains (Option A: 2) (Option B: 1)	\$21,950	\$10,242
Signage	\$2,766	\$1,835
Site Furnishings (Bike Racks, Benches, Picnic Tables, Trash Receptacle)	\$12,985	\$12,985
Gazebo & Boardwalks (Option B: 20' Pavillion Shelter)	\$168,650	\$35,678
Prefabricated Restroom Building (Option B: Prefab Restroom w-Utilities)	\$64,500	\$105,800
Site Electric Service (Option A: Full Electrical Service) (Option B: Allowance)	\$96,500	\$15,000
TOTAL AMOUNT	\$980,566	\$546,988



MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: June 6, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 7(D)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Memorandum

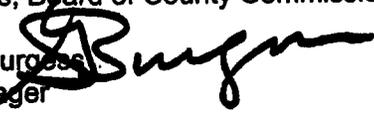


(Second Reading 06-06-06)

Date: March 7, 2006

Agenda Item No. 7(D)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Ordinance Establishing Procurement Procedures for Contracts Related to
Projects Funded In Whole or In Part by Building Better Communities General
Obligation Bond Program Funds

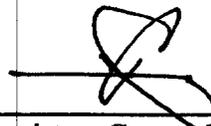
RECOMMENDATION

It is recommended that the of County Commissioners enact the attached ordinance establishing procurement procedures for contracts related to projects funded in whole or in part by Building Better Communities (BBC) General Obligation Bond Program funds. Pursuant to the provisions of the proposed ordinance, municipalities with projects funded in whole or in part by BBC General Obligation Bond Program funds, may use their own procurement procedures.

Also, not-for-profit organizations with projects funded in whole or in part by BBC General Obligation Bond Program funds would also use their own procurement procedures. By exception, not-for-profit organizations shall be governed by County procurement policies in projects where the County owns the facility or the not-for-profit organization operates the facility on behalf of the County.

BACKGROUND

The BBC General Obligation Bond Program provides funding for specifically designated projects throughout incorporated and unincorporated Miami-Dade County. Recipients of these funds included both municipalities and not-for-profit organizations with diverse procurement practices and procedures. This ordinance is recommended to clarify that these funds shall be used only in accordance with those policies and procedures. By exception, not-for-profit organizations shall be governed by County procurement policies in projects where the County owns the facility or the not-for-profit organization operates the facility on behalf of the County.



Assistant County Manager

Memorandum



Date: June 6, 2006

To: Honorable Chairman Joe A. Martinez and
Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Fiscal Impact for Ordinance Creating Section 2-8.2.10 of the Code of Miami-Dade
County Re: Procurement Policy Regarding Contracts Related to Projects Funded in
Whole or in Part by the *Building Better Communities* General Obligation Bond
Program Funds

This ordinance creating Section 2-8.2.10 of the Code of Miami-Dade County regarding contracts related to projects funded in whole or in part by the *Building Better Communities* General Obligation Bond (GOB) Program will have the following fiscal impact on Miami-Dade County:

The proposed legislation will permit municipalities and not-for-profits to use their own procurement procedures to implement their *Building Better Communities* bond projects. The proposed ordinance does not exempt the municipalities from complying with the same Florida Statutes that the County has to comply with that govern the selection of architects and engineers (A&Es) and contractors. Like the County, municipalities will have to use a qualifications-based selection for A&Es as prescribed by Florida Statute 287.055. Similarly, municipalities must obtain competitive, sealed bids for construction contractors as governed by Florida Statutes 255.20. Bid waivers by municipalities are only permissible to the extent that such waivers are allowed under Florida law and city ordinance.

Under this exemption, Series A and future bond series expenditures for municipalities and private not-for-profit 501c3s are projected to be approximately \$549,690,000 or 18.7 percent of the total \$2.9 billion *Building Better Communities* Bond Program. The ordinance will save time due to the learning curve associated with utilizing unfamiliar County procurement procedures. Neither the Safe Neighborhood Parks Bond Program nor the Peoples' Transportation Plan municipal projects require entities to follow the County's procurement rules. Currently, the local economy is facing a two percent per month inflation on construction costs. The proposed ordinance allowing municipalities and not-for-profits implementing *Building Better Communities* projects to use their own procurement procedures will save these inflationary costs as well as allow the County to save the cost of training the municipalities and not-for-profits. The training costs approximate \$5,000 per class, assuming 20 to 30 per class. Due to the fifteen-year build-out of the bond program, several classes would be required over the next several years.

The County will make disbursements to the municipalities on a reimbursement basis and the Office of the Inspector General will continue to have access to inspect, audit and review any GOB-funded project.


Assistant County Manager

Approved _____ Mayor

Agenda Item No. 7(D)

Veto _____

06-06-06

Override _____

ORDINANCE NO. _____

ORDINANCE ESTABLISHING PROCUREMENT PROCEDURES FOR CONTRACTS RELATED TO PROJECTS FUNDED IN WHOLE OR IN PART BY BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM FUNDS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND EFFECTIVE DATE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated in this Ordinance by this reference,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. The Code of Miami-Dade County, Florida is amended by adding the following new section as Section 2-8.2.10:¹

>>Section 2-8.2.10 Procurement policy as to contracts related to projects funded in whole or in part by Building Better Communities General Obligation Bond Program Funds.

- (1) Notwithstanding and prevailing over any other provision of the Code of Miami-Dade County, Florida to the contrary, as to contracts related to municipal projects funded in whole or in part by Building Better Communities General Obligation Bond Program funds, municipalities shall use their own procurement procedures, including bid waivers where permitted by municipal ordinance.
- (2) Notwithstanding and prevailing over any other provision of the Code of Miami-Dade County,

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double-
arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Florida to the contrary, as to contracts related to projects funded in whole or in part by grants to not-for-profit organizations of Building Better Communities General Obligation Bond Program funds (provided such projects are not for facilities owned by the County or operated by the not-for-profit organization on behalf of the County), not-for-profit organizations shall use their own procurement procedures, including bid waivers.

- (3) All applicable provisions of the Miami-Dade County Code shall continue to apply to all contracts related to not-for-profit projects funded in whole or in part by Building Better Communities General Obligation Bond Program funds where the County owns the facility or the not-for-profit organization operates the facility on behalf of the County. By exception, a not-for-profit organization may for a specified project seek an exemption from the application of any of these requirements in advance of procuring the required goods or services. The Commission, upon the written recommendation of the County Manager, may by a two-thirds (2/3) vote of the members present, grant such an exemption when it finds it to be in the best interest of the County.<<

Section 2. Section 2-1076 of the Code of Miami-Dade County, Florida is hereby amended as follows:

Section 2-1076 Office of the Inspector General.

* * *

- (d) *Functions, authority and powers.*

(6) The Inspector General may, on a random basis, perform audits, inspections and reviews of all County Contracts. The cost of random audits, inspections and reviews shall, except as provided in (a)-~~[(a)]~~ >>(o)<< in this subsection (6) be incorporated into the contract price of all contracts and shall be one-quarter (1/4) of one (1) percent of the contract price (hereinafter "IG contract fee"). The IG contract fee shall not apply to the following contracts:

* * *

- (m) Federal, state and local government-funded grants;
[[and]]
- (n) Interlocal agreements [[-]]>>, and
- (o) Grant Agreements granting not-for-profit organizations Building Better Communities General Obligation Bond Program funds.<<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any Sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate work.

Section 5. This ordinance shall become effective 10 days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Geri Bonzon-Keenan

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