RESOLUTION NO. 2013-39

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS AND RECREATION; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACT FOR CONSTRUCTION SERVICES UNDER BID-2013-PR-001 TO BURKE CONSTRUCTION GROUP, INC. FOR THE THALATTA ESTATE RENOVATION PROJECT AT A COST OF $448,800; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in an effort to effectuate usability of Thalatta Estate's main house and fulfillment of remaining compliance mandates regarding the previously received Florida Forever/State of Florida grant, Invitation to Bid No. PR-2013-001 issued in accordance with the Village's procurement policies; and,

WHEREAS, an evaluation committee, following interviews with three of the five proposers and extensive deliberations, recommended Burke Construction Group, Inc., as the most responsive and qualified proposer meriting negotiations with the Village Manager and subsequent award of contract; and,

WHEREAS, the subject negotiations, as authorized by Resolution 2013-33, resulted in agreement of a governing contract at a cost of $448,800; and,

WHEREAS, capital dollars in the amount of $450,000 have been identified and approved in the FY 2012-2013 Annual Budget and Thalatta Estate Trust Fund; and,

WHEREAS, the Mayor and Council are recommended by the Village Manager to approve the contract with Burke Construction Group, Inc., for construction services as specified in Bid No. PR-2013-001 - Thalatta Estate Renovations; at a cost of $448,800 and pursuant to the terms and conditions provided in the agreed upon proposed contract.

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

Section 1. The Village Council hereby approves the contract for construction services for the Thalatta Estate Renovation program to Burke Construction Group, Inc., at a cost of $448,800, as provided in the contract attached hereto as exhibit 1.

Section 2. The Village Manager is hereby authorized to enter into agreement with Burke Construction Group, Inc.; pursuant to the agreed upon terms and conditions and at a cost of $448,800, for completion of specified construction services at Thalatta Estate.

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

PASSED AND ADOPTED this 6th day of May, 2013.

Attest: _____
Meighan J. Alexander
Village Clerk

_____
Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____
Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	YES
Council Member Tim Schaffer	YES
Council Member Joan Lindsay	YES
Vice-Mayor John DuBois	NO
Mayor Shelley Stanczyk	YES

CONSTRUCTION AGREEMENT BETWEEN
THE VILLAGE OF PALMETTO BAY AND

THIS AGREEMENT is executed and entered into on this _____ day of _____, 2013, between the Village of Palmetto Bay, Florida, a Florida municipal corporation, (hereinafter referred to as the "Village") and Burke Construction Group Inc., a Florida Corporation, licensed and authorized to do business in the State of Florida, (hereinafter referred to as the "Contractor"), whose place of business is 10145 NW 19th Street, Doral, Florida 33172.

WHEREAS, pursuant to a competitive bid and selection process consistent with section 287.055, Florida Statutes, the Village requested qualifications from qualified contractors and selected the Contractor to provide professional construction services at Thalatta Estate Park by the Bay under Village of Palmetto Bay Bid No. 2013-PR-001; and,

WHEREAS, the purpose of this Agreement is to procure specified renovations to Thalatta Estate for the Village of Palmetto Bay Park as further explained and detailed under Section 4 – Scope of Services and Compensation and Section 9 – Specifications; and,

WHEREAS, the project work includes pre-construction and construction services necessary to renovate and expand the Main House including without limitation: partial demolition and site work; concrete; masonry; structural steel; foundations; wood work; finishes; installation of mechanical; plumbing; electrical and security; information technology and communications; irrigation system; and landscaping.

WHEREAS, the Contractor is willing and able to perform such professional services for the Village within the basic terms and conditions set forth in this agreement ("Agreement"); and

NOW, THEREFORE, in consideration of the sum of $10.00, the mutual terms, conditions, promises, and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

GENERAL TERMS AND CONDITIONS

SECTION 1. WHEREAS CLAUSES. The above whereas clauses are incorporated and made part of this agreement.

SECTION 2.DEFINITIONS. Wherever used in this Agreement the following terms have the meanings indicated:

Addenda - Written or graphic instruments issued prior to the opening of Bids which modify, interpret, make additions, deletions, clarifications or revisions to the Contract Documents, including as to Drawings and Specifications.

Agreement (Or Contract Document) - The written contract between the Village and the Contractor covering the Work to be performed; when other documents are attached to the Agreement they become part of the contract, and specifically includes all the attachments to this Contract Documents. Cross reference with Contract Document definition below.

Application for Payment - The form furnished by the Architect which is to be used by the Contractor to request progress or final payment and which includes such supporting documentation as is required by the Contract Documents.

Bid - The offer(s) or proposal of the Bidder/Contractor submitted in response to this Invitation for Bid, on the prescribed form setting for the prices for the Work to be performed.

Bonds - Bid, Performance, and Payment Bonds and other instruments which protect against loss due to inability or refusal of the Contractor to perform its Contract.

Change Order - A document recommended by the Architect, which is signed by the Contractor and the Village and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the

_____ Village
_____ Contractor

Contract Time, issued on or after the Effective Date of the Agreement as provided within this agreement under the relevant section.

Consultant - The Architect or Engineer of Record.

Contract Documents (Agreement) - The Notice Inviting Bids, Instructions to Bidders, Bid Forms (including the Bid, Bid Schedule(s), Information Required of Bidder, Bid Bond, and all required certificates and affidavits), Agreement, Performance Bond, Payment Bond, General Conditions, Technical Specifications [012812[1]], Construction Documents, Drawings, and all addenda, and change orders executed pursuant to the provisions of the Contract Documents.

Contract Price - The original amount established in the bid submittal and award by the Village, as may be amended by Change Order.

Contract Time - The original time between commencement and completion, including any milestone dates thereof, established in the contract, as may be amended by Change Order.

Contractor: The person, firm or corporation with whom the Village has executed the Agreement.

Day/Calendar Day - A calendar day of 24 hours measured from midnight to the next midnight.

Defective Work - Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the Architect's recommendation of final payment.

Delivery - Unless actual date of delivery is specified (or if specified delivery cannot be met), show the number of calendar days required to make delivery after receipt of purchase order, in space provided. Delivery time may become a basis for making an award. Delivery shall be within the normal working hours of the user, Monday through Friday, excluding holidays.

Anti-Discrimination - The Contractor certifies that he/she is in compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

Drawings - The drawings, plans, maps, profiles, diagrams, and other graphic representations which show the character, location, nature, extent, and scope of the Work and which have been prepared by the Architect and are referred to in the Contract Documents. Shop Drawings are not Drawings as so defined.

Effective Date of the Agreement - The date indicated in the Agreement on which it was executed, 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.

Architect - The Architect or Engineer which prepared the Contract Documents, and which acts as the Village's agent ins administration of the Contract.

Field Order - A written order which orders minor changes in the work but which does not involve a change in the Contract Price or Contract Time.

Force Majeure - An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, riot, civil disturbance, or act of terrorism.

_____ Village

_____Contractor

Furnish or Supply – To supply and deliver, unload, inspect for damage.

Install – To unpack, assemble, erect, apply, place, finish, cure, protect, clean and ready for use.

Laws and Regulations; Laws or Regulations - Laws, rules, regulations, ordinances, codes, and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

Notice of Intent to Award - The written notice by the Village to the apparent successful Bidder (Contractor) stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein within the time specified, the Village will execute and deliver the Agreement to him.

Notice to Proceed - The written notice issued by the Village to the Contractor authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Contract Time.

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion of the Work.

Products – Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components required for reuse.

Project - All matters and things whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Successful Bidder in accordance with the Contract.

Provide – To furnish or supply, plus install.

Resident Project Representative - The authorized representative of the Architect who is assigned to the site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor and submitted by the Contractor to illustrate some portion of Work and all illustrations, brochures, standard schedules, performance charts, instructions, and diagrams to illustrate material or equipment for some portion of the Work.

Specifications - (Same definition as for Technical Specifications hereinafter).

Subcontractor - An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion - Refers to the date certified by the Architect to when all conditions and requirements of permits and regulatory agencies have been satisfied, and when the Work has progressed to the point where, in the opinion of the Architect, as evidenced by the Certificate of Substantial Completion/Notice of Completion as applicable, it is sufficiently complete, in accordance with the Contract Documents, so that the Work is available for beneficial occupancy and can be utilized for the purposes for which it is intended; or if there be no such certificate issued when final payment is due in accordance with Section 15, et seq. A Temporary Certificate of Occupancy or Certificate of Occupancy must be issued for Substantial Completion to be achieved, however, the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion. The terms "substantially complete" and "substantially completed" can be used interchangeably as applied to any Work refer to as "substantial completion" thereof. At Substantial Completion, a Final Punch List will be prepared and provided to the Contractor. The Final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by the Contractor as a waiver by the Village of the Contractor's obligation to complete all the Work in complete

_____ Village

_____Contractor

compliance with the Contract Documents. If the Project is behind schedule, the Village may direct the Contractor to expedite the Work at no additional cost to the Village by whatever means the Contractor may use, including, without limitation, increasing manpower or working overtime to bring the Work back within the currently submitted and approved Progress Schedule.

Supplier - A manufacturer, fabricator, supplier, distributor, material man, or vendor.

Technical Specifications - Those portions of the Contract Documents consisting of this Agreement and written technical descriptions of products and execution of the Work as supplied in the bid documents by Bermello Ajamil and Partners, Inc.

Underground Utilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: water, sewage and drainage removal, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic, or other control systems.

Village: Village of Palmetto Bay, 9705 East Hibiscus Street, Palmetto Bay, Florida 33157.

Weather Delays - Work stoppage caused by abnormal inclement weather, where abnormal duration and frequency of rain as compared with the Weather Bureau data and supported by project logs, has caused the contractor to suspend critical path activities during the exceptional adverse weather event for more than fifty percent (50%) of the work period of the day exceptionally adverse weather. Weather delay claim can be made for work day only. No time extension will be allowed for weekend rains.

Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration normal seasonal weather conditions number of precipitation-days per months (as defined by the National Weather Service 30 year average) along with muddy site days directly related to the precipitation days indicated.

Work: Any and all obligations, duties and responsibilities necessary to the successful completion of the assigned to or undertaken by Contractor under the Contract Documents, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

SECTION 3. PRELIMINARY MATTERS

3.1 Delivery Of Bonds/Insurance Certificates. When the Contractor delivers the signed Agreements to the Village, the Contractor shall also deliver to the Village such Bonds and Insurance Policies and Certificates as the Contractor may be required to furnish in accordance with the Contract Documents.

3.2 Copies Of Documents. The Village shall furnish to the Contractor the required number of copies of the Contract Documents specified herein.

3.3 Commencement Of Contract Time; Notice To Proceed. The Contract Time will start to run on the commencement date stated in the Notice to Proceed.

3.4 Starting The Project. The Contractor shall begin to perform the Work within 10 days after the commencement date stated in the Notice to Proceed, but no Work shall be done at the site prior to said commencement date.

_____ Village

_____ Contractor

SECTION 4.SCOPE OF SERVICES AND COMPENSATION

4.1 Prices Shall Be Fixed And Firm For Awarded Contract. The prices quoted by the Contractor on the attached executed Bid Form, attached as Exhibit 4 to this agreement shall remain fixed and firm during the term of this contract; provided however, that the bidder may offer incentive discounts from this fixed price to the Village at any time during the contractual term. The work includes, but may not be limited to, the furnishing of all labor, materials, tools, equipment, machinery and services necessary to complete renovations in accordance with specifications described herein and as requested by the Village, specifically engineered for Thalatta Estate, located at 17301 Old Cutler Road, Palmetto Bay, Florida 33157; and further detailed under Section 3.09, Section 3.10 and Section 3.11 of the invitation for bid. The scope and compensation are outlined in the attached bid response/project manual under Village of Palmetto Bay Bid No.: 2013-PR-001, for services at Thalatta Estate Park by the Bay location, which are attached as Exhibit 6.

4. 2Contract Documents: Intent Amending, Reuse

a. The Contract Documents comprise the entire agreement between the Village and the Contractor concerning the Work. The Contract Documents are complementary; 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 place of the Project.

b. It is the intent of the Contract Documents to describe the Work, functionally complete, to be constructed 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 shall 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 opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Village, the Contractor, or the Architect or any of their Consultants, agents, or employees from those set forth in the Contract Documents.

c. If, during the performance of the Work, the Contractor finds a conflict, error, or discrepancy in the Contract Documents, the Contractor shall so report to the Architect in writing at once and before proceeding with the Work affected thereby, shall obtain a written interpretation, clarification, or correction from the Architect.

d. Order Of Precedence Of Contract Documents. In resolving conflicts resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Change orders
2. Addenda
3. Agreement - Contract
4. Contractor's Bid (Bid Form Executed) - Exhibit 1.
5. Technical Specifications Exhibit 2
6. Drawings - Exhibit 3
7. Report of Subsurface Exploration and Foundation Elevations - Exhibit 4
8. Notice Inviting Bids - Exhibit 5
9. Instructions to Bidders - Exhibit 6
10..Representations and Certifications and other Statements of bidders - Exhibit 7.

_____ Village

_____Contractor

e. With reference to the Drawings the order of precedence is as follows:

1. Figures govern over scaled dimensions
2. Detail drawings govern over general drawings
3. Addenda/change order drawings govern over Contract Drawings
4. Contract Drawings govern over standard drawings

f. 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 by a Change Order as provided herein.

g. Reuse Of Documents. Neither the Contractor, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a contract with the Village shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the Work, and they shall not reuse any of them on the extensions of the Project or any other project without written consent.

4.3 The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown in Exhibits 4 and 6 and shall do everything required by this contract and any other contract documents. The Contractor is familiar with the site and the proposed scope of work.

4.4 The Village shall pay the Contractor for the faithful performance of the contract, in lawful money of the United States, and subject to addition and deductions as provided in the contract documents, as follows:

4.5 Based upon the price shown in the Proposal heretofore submitted to the Village by the Contractor, a copy of said Proposal being part of these contract documents, the aggregate amount of this contract is the lump sum of $448,800.

4.6 The price provided in the bid response should include all deductions for trade discounts and the bid response should include firm net pricing, per each category. The bid response is required to include both unit price and extended total price, when requested. Prices must be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices must be F.O.B. destination, freight prepaid Palmetto Bay, Florida with delivery to the location specified at the time of order. Discounts for prompt payment: Award, if made, will be in accordance with terms and conditions stated herein.

4.7 Taxes. The Village of Palmetto Bay is exempt from all Federal Excise and State taxes. The applicable tax exemption number shall be reflected on any Purchase Order. The Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by the Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

4.8 Equipment. All equipment shall be maintained in an efficient and safe operating condition while performing work under the contract. Equipment shall have all proper safety devices required by law, properly maintained and in use at all times. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Village may direct the contractor to remove such equipment and/or the operator until the deficiency is corrected to the satisfaction of the Village of Palmetto Bay. The contractor shall be solely responsible and liable for injury to persons, and/or property damage caused by operation of the equipment. Equipment may be inspected and evaluated by the Village of Palmetto Bay at any time.

4.9 Storage And Mobilization Facility.If necessary, the Contractor must provide an on-site storage container for temporary storage of equipment, supplies and materials as a part of the installation process. No on-site storage area will be provided by the Village.

_____ Village

_____Contractor

4.10 Special Contract Requirements. The Contractor's President or Chief Operating Officer must be available to attend meetings with the Village upon request. In the event of a force majeure, or other incident, the Contractor, must initiate appropriate measures to ensure protection of any work-in-progress prior to final inspections and turn over to the Village. All of the Contractor's employees must wear a uniform that identifies the company name at all times. No fuels, oils, solvents, or similar materials are to be disposed of in any catch basins. The contractor must closely adhere to local, state, and Federal Environmental Protection Agency requirements, and is responsible for all non-compliance penalties.

4.11 The Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village's authorized representative and contract officer, Ron E. Williams, Village Manager, specifically authorizes the extra or additional work, in a written task order before the commencement of the work as provided for under this agreement. The contract officer with the authority to issue changes is the Village Manager.

4.12 Proration. Should services not be fully rendered or the contract terminated for any reason, payment to Contractor will be prorated based upon actual services rendered.

4.13 Contractor shall procure all necessary permits to complete the services contemplated in Exhibits 4 and 6, and shall ensure that all services comply with state and local laws [Florida Building Code, County Code, and Village Code, as applicable]. Contractor shall be responsible for submitting, revising and obtaining final permit approval for all services provided.

a. Unless otherwise provided in the Conditions of this Agreement or Summary of Work, the Contractor shall obtain all construction permits and licenses from the agencies having jurisdiction, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under this Contract shall not be made the basis for claims for additional compensation. The Village shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Village shall pay at cost and directly all governmental permit charges necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. The Village shall pay at cost all charges of utility owners for connections to the Work. If Contractor fails the regulatory inspections, Contractor shall pay for the re-inspection fees necessary for the prosecution of the Work.

Contractor shall not commence any work without the appropriate permit. Copy of the respective permits shall be submitted to the Architect prior to commencement of work.

b. The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the Village or the Architect its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Village in the Contract Documents. The Contractor shall indemnify, defend and hold harmless the Village and the Architect and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

4.14 Contractor shall promptly advise the Village of any additional work or modifications in scope of work as provided in this agreement. If the additional work is required due to circumstances beyond Contractor's control (i.e. pre-existing conditions) then the Village shall evaluate pursuant to the provisions of this agreement. However, if the

_____ Village

_____ Contractor

additional work is due to Contractor's failure to contemplate Florida or local law requirements, Contractor shall be responsible for completing any such work without additional compensation.

4.15 The Contractor warrants that the product supplied to the Village shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely be the Contractor responsible for same.

4.16 Laws And Regulations. Contractor shall be familiar with and abide by all applicable OSHA standards and regulations, including those pertaining to Lead Based Paint, and all work must be performed using lead safe work practices. The Contractor shall observe and comply with all federal, state, and local laws, ordinances, codes, orders, and regulations which in any manner affect those engaged or employed on the Work, the materials used in the Work, or the conduct of the Work. If any discrepancy or inconsistency should be discovered in this Contract in relation to any such law, ordinance, code, order, or regulation, the Contractor shall report the same in writing to the Architect. The Contractor shall indemnify, defend, and hold harmless the Village, the Architect, and their officers, agents, and employees against all claims or liability arising from violation of any such law, ordinance, code, order, or regulation, whether by Contractor or by its employees or subcontractors. Any particular law or regulation specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the Contractor to comply with all other provisions of federal, state, and local laws and regulations. Where an individual State act on occupational safety and health standards has been approved by Federal authority, then the provisions of said State act shall control.

4.17 Where Contractors are required to enter or go onto Village of Palmetto Bay property to deliver materials or perform work or services as a result of the bid award and contract, the Contractor will assume the full duty, obligation and expense of obtaining all necessary licenses and insurance and assure all work complies with all applicable Miami-Dade County, Federal, Village of Palmetto Bay Building Code, and industry standards for the specified construction services. The Contractor shall be liable for any damages or loss to the Village occasioned by negligence of the Contractor (or agent) or any person the Contractor has designed in the completion of the contract as a result of his or her being awarded the bid contract. Contractor shall take care to avoid damage to Village's property, and the property of Village's tenants, vendors and patrons.

4.18 Hazardous materials. Contractor shall not store fuel (other than fuel in parked vehicles), or hazardous, solid waste or other toxic materials at the premises. Used in this agreement, the term "hazardous material" means any hazardous or toxic substance, material waste, which is or becomes regulated by any local governmental authority in the state of Florida or the United States. Contractor agrees to indemnify and hold the Village harmless from any and all claims, demands, liabilities, losses, damages or expenses arising as a result of Contractor's breach or failure to perform any of the terms that are contained in this Section. Contractor further covenants and agrees with the Village that it will maintain the premises in a good condition and that it will not commit, or suffer to be committed, any waste of or on the premises. Contractor shall not use the premises for any unlawful purpose and shall comply with all laws and permitting requirements applicable now, or in the future, to the permitted use. Contractor shall not permit any offensive, or dangerous activity, nor any nuisance or other conduct at the premises in violation of the public policy of the Village, county or state. Contractor has agreed to maintain the premises in compliance with the provisions of Section

4.19 Contractor shall ensure that for the length of the agreement that the sidewalk and curb are not materially deteriorated due to Contractor's use of the site (heavy equipment entering and exiting the premises). The Village shall periodically inspect the premises to advice of any maintenance issues that require attention during the leasehold. The Village representative shall communicate with Contractor within 24 hours of inspection, in order to advise Contractor of any necessary and/or immediate maintenance needs for the site. Of particular importance in maintaining the site is Contractor's minimal disturbance to the neighbors, and enhanced supervision of the site. If fill or other construction materials are placed on site, Contractor shall take all reasonable efforts to minimize the spread of dust through the neighborhood by, *inter alia,* placing a tarp over the fill materials. Fill materials includes but is not limited to sand, soil, and cement. Per the schedule there is a period time that no materials or supplies may be left outdoors or visible and that requirement must be strictly complied with.

_____ Village

_____Contractor

4.20 Interest. The Village shall make payment to Contractor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Florida Statutes Section 218.74.

4.21 Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

4.22 Right to Withhold. If work under this contract is not performed in accordance with the terms hereof, Village has the right to withhold any payment due to the Contractor, of any sums as Village may deem ample to protect it against loss, or to ensure payment of claims arising there from, and, at its option, Village may apply such sums in such manner as Village may deem proper to secure itself or to satisfy such claims. Village will provide Contractor with 10 days prior written notice in the event that it elects to exercise its right to withhold under this section.

4.23 The Contractor, subcontractors, suppliers and laborers ("subcontractors") are prohibited from placing a lien on Village's property. Contractor shall execute a similar contract with subcontractors confirming that subcontractors are prohibited from placing liens on Village's property. Further, both Contractor and subcontractor warrant not to file or record liens or notices of liens against Village property.

SECTION 5. COMMENCEMENT AND COMPLETION OF WORK. The Contractor shall commence work of the date established in the Notice to Proceed. The Contractor shall prosecute the work with faithfulness and diligence and shall complete the work not later than September 1, 2013.

SECTION 6. CONTRACTOR'S ACCEPTANCE OF CONDITIONS

6.1 The Contractor hereby agrees that he/she has carefully examined the sites for the work to be performed and has fully satisfied himself/herself that such sites are correct and suitable ones for the work to be performed and he/she assumes full responsibility therefore. The provisions of this agreement shall control any inconsistent provisions contained in the specifications. All Drawings, Specifications, and agreement items contained in this Project Manuel have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions, or situations shall this agreement be more strongly construed against the Village than against the Contractor and his/his Surety.

6.2 Any ambiguity or uncertainty in the Drawings or Project Manuel shall be interpreted and construed by the Village's Engineer and his/her decision shall be final and binding upon all parties.

6.3 It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work material by the Village, its Engineer, or by any agent or representative as in compliance with the terms of this agreement and/or of the Project Manual covering said work, shall not operate as a waiver by the Village of strict compliance with the terms of this agreement, and/or the Project Manual covering said work; and the Village may require the Contractor and/or his/her insurer to repair, replace, restore and/or make to comply strictly and in all things with this agreement and the Project Manual any and all of said work and/or services which within a period of one year from and after the date of the padding, approval, and/or acceptance of any such work or services, are found to be defective or to fail in any way to comply with the Drawings and Specifications. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The Contractor shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the Contractor and/or his/her insurer, immediately after Notice to either, to repair or replace any such defective materials and workmanship shall entitle the Village, if it sees fit, to replace or repair the same and recover the reasonable cost of such replacement and/or repair from the Contractor and/or his insurer, who shall in any event be jointly and severally liable to the Village for all damage, loss, and expense caused to the Village by reason of the Contractor's breach of this agreement and/or his/her failure to comply strictly and in all things with this agreement and with the Drawings and Specifications.

6.4 If the Village exercises the right, in writing, to modify special conditions, the Contractor shall update and submit any legal documents required during the initial Solicitation by no later than sixty (60) calendar days prior to the commencement of the option period. If the updated documents are not submitted by the Contractor in complete

_____ Village

_____Contractor

form within the time specified, the Village may rescind its option, declares the Contractor to be in default of its contractual obligations and award to the next lowest and responsive bidder under the Bid 2013-PR-001 or seek a new Bid Solicitation. The Village may, at its sole option, seek monetary restitution from the Contractor as a result of damages or excess cost sustained and/or may prohibit the Contractor from submitting for future Village Bids for a period of one (1) year.

6.5 Substitutions The Village of Palmetto Bay, Florida will not accept substitute shipments of any kind, unless approved in advance by the Village Manager or his designee. Contractor is expected to furnish the brand quoted in their bid response, once awarded. Any unapproved substitute shipments will be returned at the Contractor's expense.

6.6 Preliminary Matters

a. Starting The Project. The Contractor shall begin to perform the Work within 10 days after the commencement date stated in the Notice to Proceed, but no Work shall be done at the site prior to said commencement date.

b. Before Starting Construction – Rehabilitation. Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to the Architect any conflict, error, or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Architect before proceeding with any Work affected thereby. The Contractor shall submit to the Architect for review those documents called for under the IFB and this Agreement.

c. Preconstruction – Pre-Rehabilitation Conference. A preconstruction conference attended by the Contractor, the Architect and others as appropriate will be held to discuss the Work in accordance with the applicable procedures specified in this Agreement.

d. Finalizing Schedules. At least seven (7) days before the first Pre-Construction/Pre-Rehabilitation Meeting, a conference attended by the Contractor, the Architect, and others as appropriate, the Contractor will submit the following documents, if required, for the Architect's review: Construction Schedule, Schedule of Values, MOT Plan (if applicable), Staging Plan, Mobilization Plan, submitted in accordance with the General Requirements.

SECTION 7. GENERAL CONDITIONS

7.1 Certificates Of Insurance.

After award, the Village shall immediately require that the Contractor provide the Village with the Certificate of Insurance. The Contractor shall furnish certificates of insurance to the Village prior to the commencement of operations. The certificates shall clearly indicate that the Contractor has obtained insurance in the type, amount, and classification as required for strict compliance with this Section and that no reduction in limits by endorsement during the policy term, or cancellation of this insurance shall be effective without 30 days prior written notice to the Village. The Contractor shall be required to comply with the following conditions and provide the insurance indicated below:

The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Contractor or its Subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Contractor, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Contractor or Subcontractors.

The Contractor shall not commence work under this contract until it has obtained all insurance required by the Village. The Contractor shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the

Contractor, or the Contractor's Subcontractors, suppliers and laborers incident to the performance of the Contractor's services under this contract. The Contractor shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

The Contractor shall maintain during the term of this contract the following insurance:

a. Comprehensive general liability insurance with broad form endorsement, including automobile liability, completed operations and products liability, contractual liability, severability of interest with cross liability provision, and personal injury and property damage liability with limits of $1,000,000 combined single limit per occurrence for bodily injury and property damage. The policy or policies shall name Village as additional insured and shall reflect the hold harmless provision contained herein.

b. Workers' Compensation Insurance shall be maintained during the life of the construction services contract and until such time the Village accepts all specified work as completed, in compliance with Chapter 440, Florida Statutes/statutory limits for all employees. The following must be maintained"

O Worker's Compensation Statutory
O Employer's Liability $100,000 each accident
$500,000 Disease –policy limit
$100,000 Disease-employee

If Contractor/Proposer claims to be exempt from this requirement, Contractor shall provide Village proof of such exemption along with a written request for the Village to exempt Contractor, written on Contractor's letterhead.

c. Comprehensive Automobile and Vehicle Liability Insurance. This insurance shall be written in a comprehensive form and shall protect the bidder and the Village against claims for injuries to members of the public and/or damages to property of others arising from the bidder's use of motor vehicles or any other equipment and shall cover operation with respect to on-site and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned or hired. The limit of liability shall not be less than $1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Service Office.

d. The policies shall contain waiver of subrogation against the Village where applicable and shall expressly provide that the policy or policies are primary over any other insurance that the Village may have. The Village reserves the right to request a copy of the required policies for review. All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the Village.

e. All of the insurance is to be placed with Best rated A-8 or better insurance companies qualified to do business under the laws of the State of Florida. All deductibles or self-insured retentions must be declared to and be approved by the Village Manager. The bidder shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

7.2 Assignment. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract, including any or all of its right, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the Village. The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village. None of the work or services under this contract shall be subcontracted unless Contractor obtains prior written consent from the Village.

_____ Village

_____ Contractor

Approved subcontractors shall be subject to each provision of this contract and Contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

7.3 Sunshine Law. As a political subdivision, the Village of Palmetto Bay is subject to the Florida Sunshine Act and Public Records Law. By submitting a Bid and executing a contract with the Village, Contractor acknowledges that the materials submitted are open to public inspection upon proper request. Contractor should take special note of this as it relates to proprietary information that might be included in its documentation provided to the Village.

7.4 Business Entity Disclosure Statement. Contractor and all subcontractors shall comply with the Conflict of Interest and Code of Ethics Ordinances of the Village of Palmetto Bay and Miami-Dade County, particularly Section 2-11.1(c), Miami Dade County Code.

7.5 Force Majeure. The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate this Agreement.

7.6 Waiver Of Jury Trial. The Village and the Contractor knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

7.7 Eligibility. All agents, employees and subcontractors of the bidder retained to perform services pursuant to this Agreement shall comply with all laws of the United States concerning work eligibility and comply with the Shannon Melendi Act, as adopted by the Village.

7.8 No Collusion. Attached to the Contract documents is the executed Non-Collusion Affidavit. Contractor's failure to execute the affidavit shall result in disqualification of the Contractor and termination of this Agreement.

7.9 Withdrawal Or Revision Of Bid Prior To And After Opening. Contractor is precluded from withdrawing its bid within 120 calendar days after the bid opening date.

7.10 Contractor shall not cause any mechanics' liens or any other encumbrances to affect the premises. At Village's option, relevant provisions of Chapter 713, Florida Statutes, shall be complied with by Contractor.

7.11 Workmanship of units will be inspected and approved by the Village Manager or his designee.

7.12 Indemnification. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify, defend, and hold harmless the Village; the Consultant; and their officers, directors, agents, and employees, against and from all claims and liability arising under, by reason of or incidentally to the Contract or any performance of the Work, but not from the sole negligence or willful misconduct of the Village and/or the Consultant. Such indemnification by the Contractor shall include but not be limited to the following:

a. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Contractor, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Contractor, its employees, or agents;

b. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Contractor's or Subcontractor's own employees engaged in the Work resulting in actions brought by or on behalf of such employees against the Village and/or the Consultant;

c. Liability or claims arising directly or indirectly from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Contractor, its employees, or agents;

d. Liability or claims arising directly or indirectly from the use or manufacture by the Contractor, its employees, or agents in the performance of this Contract of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Contract;
e. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Village or any other parties by the Contractor, its employees, or agents;

f. Liabilities or claims arising directly or indirectly from the willful misconduct of the Contractor, its employees, or agents; and,

g. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the Contractor.

7.12.1 The Contractor shall reimburse the Village, and the Consultant for all costs and expenses, (including but not limited to fees and charges of Architect, engineers, attorneys, and other professionals, and court costs) incurred by said Village, and the Architect/Consultant in enforcing the provisions of this Section.

7.12.2 The indemnification obligation under this section shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Village shall not be held liable or responsible for any claims which may result from acts, errors or omissions of the Contractor or its subcontractors, suppliers or laborers. In reviewing, approving or rejecting any submissions or acts of the Contractor, the Village in no way assumes responsibility or liability for the acts, errors or omissions of the Contractor or subcontractors.

7.12.3 The Contractor shall not commence work under this contract until it has obtained all insurance required by the Village. The Contractor shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of a negligent act, error, or omission or misconduct of the Contractor, or the Contractor's subcontractors, suppliers and laborers incident to the performance of the Contractor's services under this contract. The Contractor shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence.

7.13 Samples. Samples of items, when required, must be furnished by the Contractor free of charge to the Village. Each individual sample must be labeled with the Contractor's name and manufacturer's brand name. samples shall be delivered to the Village within five (5) calendar days of the request. The Village shall not be responsible for returning samples.

7.14 Surety Letter / Performance Bond/Payment Bond.

Evidence from a surety duly authorized to carry the business of Suretyship in the State of Florida indicating without conditions or qualifications that the Contractor is capable at the time of the bid solicitation of obtaining a Performance Bond and Payment Bond, each in an amount equal to 100% of the contract amount, pursuant to requirements as described on the Payment Bond Form found on pages 37-39 of the bid document. The letter shall make reference to the fact that the bonds would be applicable specifically to the Thalatta Estate Renovation Project. The evidence regarding bonding capacity shall take the form of a letter from a surety indicating that such capacity exists for the Contractor. Letters indicating 'unlimited' bonding capability are not acceptable. Any surety providing such letter must be rated at least A or better and Class VIII or better by A.M. Best and Company. Evidence of surety's rating shall be attached to the letter. The letter musts specifically state that the surety has read the underlying Request for Bid and has evaluated the Contractor's backlog and work-in-progress in determining bonding capacity. As an alternative, or in addition to the surety letter required by this section, the Contractor may submit a letter or

_____ Village

_____Contractor

letters from bank(s) indicating a willingness to issue a letter of credit in the amount equal to 100% of contract amount without conditions or qualifications at the time of the bid submission. To be considered valid, each letter must be issued by a bank having long-term, unsecured debt ratings of not less than 'A' or 'A2', as applicable, issued by at least two of the three rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's Rating Group). The bank's long term, unsecured debt rating shall be stated in each letter of bank support.

7.15 Drug Free Workplace. Contractor shall provide for a drug free workplace under Florida Statute Section 287.087, as amended. Failure to provide proof of compliance when requested shall be cause for termination of this agreement. In order to have a drug-free workplace program, a business shall:

a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the action that will be taken against employees for violations of such prohibition.

b. Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

c. Give each employee engaged in providing the commodities or contractual services that are under this agreement a copy of the statement specified in subsection "a."

d. In the statement specified in subsection "a", notify the employees that, as a condition of working on the commodities or contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.

e. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.

f. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

7.16 Public Entity Crimes (PEC). Contractor has executed the Public Entity Crimes Form and has confirmed that the entity has not been placed on a convicted vendor list. Contractor, during the term of this agreement, may not be placed on the convicted vendor, as upon such a conviction, the Contractor may not transact business with any public entity in excess of the threshold amount provided in Sec. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

7.17 Property. Property owned by the Village of Palmetto Bay is the responsibility of the Village of Palmetto Bay. Such property furnished to a Contractor for repair, modification, study, etc., shall remain the property of the Village of Palmetto Bay. Damages to such property occurring while in the possession of the Contractor shall be the responsibility of the Contractor. Damages occurring to such property while in route to the Village of Palmetto Bay shall be the responsibility of the Contractor. In the event that such property is destroyed or declared a total loss, the Contractor shall be responsible for replacement value of the property at the current market value, less depreciation of the property if any.

7.18 Contractor Qualifications And Submission Requirements. Contractor, consistent with the bid requirements has submitted the following as evidence of Contractor's qualifications and experience:

1. State of Florida or Miami-Dade County License
2. Articles of Incorporation
3. Relative Experience – list of similar projects performed for other municipalities, governmental agencies, or privately owned facilities for the past two (2) years
4. Bidder Qualification Statement (form enclosed)

_____ Village

_____ Contractor

7.19 No Partnership Or Joint Venture. Nothing contained in this agreement or the underlying bid shall be deemed or construed to create a partnership or joint venture between the Village of Palmetto Bay and Contractor, or to create any other similar relationship between the parties.

7.20 Village's Responsibilities. The Village will furnish the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designed for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Village, unless otherwise specified in the Contract Documents. Other access to such lands or rights-of-way for the Contractor's convenience shall be the responsibility of the Contractor.

The Contractor will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of material and equipment. The Village will, upon request, furnish to the Contractor, copies of all available boundary surveys and subsurface tests at no cost.

SPECIAL CONDITIONS

SECTION 8: SPECIAL CONDITIONS:

8.1 Time of Essence. As time is of the essence and as such Contractor is to strictly comply with the highly compressed timeline for completion of work; with substantial liquidated damages for failure to meet the given completion date of September 1, 2013. The Contractor agrees to complete all specified renovations on or before September 1st, 2013. Exceptions in the form of an extension of time completion may be considered for interior work only; however, should this be granted in writing by the Village, any and all equipment, supply, materials, etc. shall be removed from the grounds daily during allowable days of work (other than days facility is booked/rented for use) and left in a clean and orderly condition; and any negotiated extension for interior work shall not be granted past October 11th, 2013. Failure to comply with the construction schedule shall be considered a material breach of this agreement.

8.2 Continuing the Work. The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Village. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and the Village may otherwise agree in writing.

8.3 Complete Project Required / Liquidated Damages To Be Assessed:

These specifications describe the various items or classes of work required, enumerating or defining the extent of same necessary, but failure to list any item or classes under scope of the several sections shall not relieve the contractor from furnishing, installing or performing such work where required by any part of these specifications, or necessary to the satisfactory completion of the project on or before the deadline for completion.

Given contracted events booked and confirmed at Thalatta Estate beginning September 1st, 2013; Liquidated Damages of $500.00 per day shall be assessed to the Contractor for each day beyond the mandatory completion date should any exterior work not be completed in its entirety. Due to the contractual use of the site, the liquidated damages award shall be increased, after September 15th, 2013 to $1,000.00 per day shall be assessed to the Contractor for each day beyond September 15th, 2013 should any exterior work not be completed in its entirety. Liquidated Damages of $1,000 per day shall be assessed to the Contractor for each day beyond the negotiated extension date for all interior work not completed in its entirety. Liquidated damages, as applicable. If awarded this contract, the undersigned will Substantially Complete the work by the September 1st, 2013 deadline. Time for completion of the work shall be considered as the essence of this contract, and shall be subject to liquidated damages for delays as delineated above. The Liquidated Damages shall apply for base bid with full completion of the whole of the work. *In an effort to expedite project commencement the sub-contractors are asked to obtain their permits via the "walk thru" procedure.

_____ Village

_____ Contractor

8.4 Contractor's Responsibilities.

a. Supervision and Superintendence: The Contractor will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain a qualified supervisor or superintendent at the Work site who shall be designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor(s) shall be present at each site at all times as required to perform adequate supervision and coordination of the Work. (Copies of written communications given to the Superintendent shall be mailed to the Contractor's office).

b. Labor, Materials and Equipment:
1.The Contractor will provide competent, suitably qualified personnel to lay out the Work and perform construction as required by the Contract Documents. They will at all times maintain good discipline and order at the site.
2.The Contractor will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, local telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
3.All materials and equipment will be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the site in their original packages or containers with seals unbroken and labels intact.
4.All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise provided in the Contract Documents.

8.5 Concerning Qualifications Of Subcontractors, Material Men, And Suppliers.

a. Contractor shall submit to the Village for acceptance a list of the names of Subcontractors and such other persons and organizations (including those who are to furnish principal items of materials or equipment) proposed for those portions of the Work as to which the identity of Subcontractor and other persons and organizations must be submitted as specified in the underlying Invitation to Bid. Within thirty (30) working days from the Notice of Award, the Village will notify the Bidder in writing if after due investigation, the Village has reasonable objection to any subcontractor, person, or organization on such list. Failure of the Village to make objection to any Subcontractor, person, or organization on the list within thirty (30) days of the receipt shall constitute an acceptance of such Subcontractor, person or organization. Acceptance of any such Subcontractor, person or organization shall not constitute a waiver of any right of the Village to reject defective work, material, or equipment, or work, material, or equipment not in conformance with the requirements of this Contract Document and all attachments.

b. If, prior to the Notice of Award, the Village has reasonable objection to and refuses to accept any Subcontractor, person or organization listed, the apparent low Bidder may, prior to Notice of Award, submit an acceptable substitute without an increase in their bid price.

c. The Contractor understands and agrees to specifically require and bind every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Village. The Contractor shall be responsible for the coordination of the trades, Subcontractor and material men engaged upon their Work.

d. The Village will not undertake to settle any differences between the Contractor and its Subcontractors or between Subcontractors. If in the opinion of the Village, any Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, they shall be promptly replaced by the Contractor if and when

_____ Village

_____Contractor

directed by the Village in writing. The Contractor will not employ any Subcontractor, against whom the Village may have reasonable objection, nor will the Contractor be required to employ any Subcontractor who has been accepted by the Village, unless the Village determines that there is good cause for doing so.

e. The Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by him and of persons and organizations for whose acts any of them may be liable to the same extent that they are responsible for the acts and omissions of persons directly employed by them. Nothing in the Contract Documents shall create any contractual relationship between Village and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Village to pay or to see to payment of any persons due subcontractor or other person or organization, except as may otherwise be required by law. Village may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the Contractor on account of specified Work done in accordance with the schedule values.

f. The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Village.

g. All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor.

h. The Contractor shall be responsible for the coordination of the trades, Subcontractors and material men engaged upon their Work.

i. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of these General Conditions and other Contract Documents insofar as applicable to the Work of Subcontractors, and give the Contractor the same power as regards to terminating any subcontract that the Village may exercise over the Contractor under any provisions of the Contract Documents.

j. The Village will not undertake to settle any differences between the Contractor and their Subcontractors or between Subcontractors.

k. If any Subcontractor on the Project proves to be incompetent or otherwise unsatisfactory, they shall be promptly replaced by the Contractor if and when directed by the Village in writing.

8.6 Safety And Protection. The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including but not limited to OSHA regulations. They will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to:

a. All employees and other persons who may be affected thereby,
b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and
c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor will designate a responsible member of their organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor to the Village.

_____ Village

_____Contractor

8.7 Emergencies. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Village, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. Contractor will give the Village prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the Contractor believes that additional Work done by him in an emergency which arose from causes beyond his control entitles him to an increase in the Contract Price or an extension of the Contract Time as provided in the Contract documents.

8.8 Public Convenience And Safety. The Contractor shall, at all times, conduct the Work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. "Street Closed" signs shall be placed immediately adjacent to the Work, in a conspicuous position, at such locations as traffic demands. At any time that streets are required to be closed, the Contractor shall notify law enforcement agencies and in particular, the Palmetto Bay Policing Unit, before the street is closed and again as soon as it is opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

8.9 Use of the Premises. The Contractor shall confine his apparatus, storage of materials, and operations of his workmen to the limits indicated by law, ordinances, permits and directions of the Village, and shall not unnecessarily encumber any part of the site. The Contractor shall not overload or permit any part of any structure to be loaded with such weight as will endanger its safety, nor shall he subject any party of the work to stresses or pressures that will endanger it. Furthermore, the Contractor shall enforce the Village's instructions in connection with signs, advertisements, fires and smoking.

8.10 Protection Of Existing Property Improvements. Any existing surface or subsurface improvements, such as pavements curbs, sidewalks, pavers, pipes or utilities, footings, or structures (including portions thereof), trees and shrubbery, not otherwise identified as part of the Work shall be protected from damage during maintenance activities. Any such improvements damaged during construction of the Project shall be restored at the expense of the Contractor to a condition equal to that existing at the time of award of Contract.

8.11 Differing Site Conditions. The Village as part of the bid document provided a Report of Subsurface Exploration and Foundation Evaluations prepared for Bermello Ajamil & Partners, Inc. as prepared by Geosol, Inc., and which document is part of the Contract Documents. The Contractor shall within forty eight (48) hours of their discovery, and before such conditions are disturbed, notify the Village in writing, of:

a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or
b. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally inherent in Work of the character provided for in this Contract.
c. The Village's Architect shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
d. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such difference.
e. If the Village and the Contractor are unable to agree as to the amount or length thereof, a claim may be made as provided in Sections 15 and 16.
f. The Contractor's failure to give notice of differing site conditions within 48 hours of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice as required above; provided, however, the time prescribed therefore may be extended

_____ Village

_____Contractor

by the Village. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

8.12 Physical Conditions – Underground Utilities

a. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site are based on information and data furnished to the Village or the Architect by the owners of such Underground Utilities or by others. Unless it is expressly provided in the Conditions and/or the Section entitled "Protection of Existing Facilities" of This Agreement, the Village and the Architect shall not be responsible for the accuracy or completeness of any such information or data, and the Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of which will be considered as having been included in the Contract Price.

b. Not Shown or Indicated: If an Underground Utility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the Contractor could not reasonably have been expected to be aware of, the Contractor shall identify the Village of such Underground Utility and give written notice thereof to that Village, and shall notify the Architect in accordance with the requirements of the Conditions herein and Section entitled "Protection of Existing Facilities" of This Agreement.

8.13 Reference Points. The Contractor shall furnish all lines, grades, and bench marks required for proper execution of the Work. The Contractor shall preserve all bench marks, stakes, and other survey marks, and in case of their removal or destruction by its own employees or by its subcontractor's employees, the Contractor shall be responsible for the accurate replacement of such reference points by professionally qualified personnel.

8.14 Asbestos, Hazardous Waste, Or Toxic Or Radioactive Materials. If the Contractor observes, uncovers, or otherwise becomes aware of any asbestos, hazardous waste, or toxic or radioactive material at the site to which the Contractor or any Subcontractor, Supplier, or other person may be exposed, the Contractor shall immediately notify the Village and the Architect and thereafter confirm any oral notice in writing. The Village will promptly consult with the Architect concerning such condition and determine the necessity of Village's retaining special Consultants or qualified experts to deal therewith. The Contractor shall not perform any Work in connection therewith prior to receipt of special written instructions from the Village through the Architect.

SECTION 9. SPECIFICATIONS. The Site Specifications can be found attached hereto as Exhibits 5 and 6.

SECTION 10. ARCHITECT'S STATUS DURING CONSTRUCTION

10.1 Village's Representative. The Architect will be the Village's representative during the construction period. The duties and responsibilities and the limitations of authority of the Architect as the Village's representative during construction are set forth in the Contract Documents.

10.2 Visits To Site. The Architect will make visits to the site during construction to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not, during such visits or as a result of such observations of the Contractor's Work in progress, supervise, direct, or have control over the Contractor's Work.

10.3 Project Representation. The Architect may furnish a Resident Project Representative to assist in observing the performance of the Work. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Conditions to this Agreement.

10.4 Clarifications And Interpretations. The Architect will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Architect may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

10.5 Authorized Variations In Work. The Architect may authorize minor variations in the Work from the 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 require the Contractor to perform the Work involved promptly. If the Contractor believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract time and the parties are unable to agree as to the amount or extent thereof, the Contractor may make a claim therefore as provided under the indemnification or insurance provision..

10.6 Rejecting Defective Work. The Architect will have authority to reject Work which the Architect believes to be defective and will also have authority to require special inspection or testing of the Work as provided in this agreement, whether or not the Work is fabricated, installed, or completed.

10.7 Contractor Submittals, Change Orders, And Payments

a. In accordance with the procedures set forth in the in this Agreement, the Architect will review all Contractor submittals, including shop drawings, samples, substitutes, or "or equal" items, etc., in order to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the requirements of the Contract Documents and be compatible with the design concept of the completed project as a functioning whole as indicated by the Contract Documents. The Architect's review will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto.

b. In connection with the Architect's responsibilities as to Change Orders, see Subsection 10.9 and Section 11.

c. In connection with the Architect's responsibilities in respect of Applications for Payment, see provision relating to same.

10.8 Decisions On Disputes.

a. The Architect will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work; the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work; and those claims in respect to changes in the Contract Price or Contract Time will be referred initially to the Architect in writing with a request for formal decision in accordance with this Section, which the Architect will render in writing within thirty (30) days of receipt of the request. Written notice of each such claim, dispute, and other matter will be delivered by the Contractor to the Architect promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise thereto. Written supporting data will be submitted to the Architect within sixty (60) days after such occurrence unless the Architect allows an additional period of time to ascertain more accurate data in support of the claim.

b. When functioning as arbiter and judge, the Architect will not show partiality to the Village or the Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in

such capacity. The rendering of a decision by the Architect with respect to any such claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in this agreement). will be a condition precedent to any exercise by the Village or the Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Law or Regulations in respect of any such claim, dispute, or other matter.

10.9 Limitation On Architect's Responsibilities

a. Neither the Architect's authority to act under this Section or other provisions of the Contract Documents nor any decision made by the Architect in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any Supplier, any surety for any of them, or any other person or organization performing any of the Work.

b. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as reviewed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of the Architect as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the Work for compliance with the requirements of the Contract Documents, and conformance with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the Architect any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions relating to being an independent contractor.

c. The Architect will not have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations, applicable to the performance of the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

d. The Architect will not be responsible for the acts or omissions of the Contractor nor of any subcontractor, supplier, or any other person or organization performing any of the Work.

SECTION 11. CHANGES IN THE WORK

11.1 General

a. Without invalidating the Agreement and without notice to any surety, the Village may at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by a written Field Order and/or a Change Order issued by the Architect. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents. Attached hereto is the Form Change Order, which shall provide additional instructions, required additional Work or direct the omission of Work previously ordered. Only those changes in the Work that are approved on the Change Order, in the Form attached hereto, and executed by an authorized representative of Village ("Change Order"), shall be binding on the Village.

b. If the Village and the Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Field Order, a claim may be made therefore as provided in section 1 or 13.

c. The Contractor shall not be entitled to an increase in the Contract Price nor an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended,

modified, supplemented by Change Order, except in the case of an emergency and except in the case of uncovering Work as provided in this agreement.

d. The Village and the Contractor shall execute appropriate Change Orders covering:

1.changes in the Work which are ordered by the Village pursuant to the provisions of this agreement;

2.changes required because of acceptance of defective Work under this agreement;

3.changes in the Contract Price or Contract Time which are agreed to by the parties; or

4.any other changes agreed to by the parties.

d. If notice of any change is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

f. Village may order changes in the Work by initiating a change order request, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Contractor shall prepare a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related to the design phase, the Contractor's estimate of the Changes in the Contract Sum attributable to the changes set forth in such Change Order Request and proposed adjustments, if any to the Substantial Completion Date resulting from such Change Order Request. If the Village and the Contractor agree on a cost ("agreed Cost") a Change Order shall be processed by the Village and delivered to the Contractor for signature. Contractor shall not commence changes in the Work until it receives Village's written Notice to Proceed or the Change Order is executed. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the Contract Sum, the Substantial Completion Date, subject to performance thereof and payment therefore pursuant to the terms of the Agreement and such Change Order. Work provided by unit price may be increased or decreased in quantity as directed by the Village approval, provided that the basis for adjustment of the Contract Sum shall be the unit prices agreed upon by the Village upon the date of this Agreement.

g. In the event the Village and the Contractor cannot agree on any adjustment in the Contract Sum, extensions to the Contract Time, or adjustment to the Substantial Completion Date, the Contractor shall nevertheless proceed to perform the Work required by the Village's Change Order Request upon receipt of the Village's written Notice to Proceed. The Contractor shall keep separate records of all costs and time required to perform the Work required by the Change Order Request, and an equitable adjustment will be made upon agreement between the Contractor and Village. The Contractor shall submit its time and material costs that accrue as a result of the Change Order Request on a weekly basis. If the Village does not approve such submittals within seven (7) days following submission, the Contractor may cease work related to such Change Order Request until the parties agree upon the terms and conditions of such Change Order Request.

h. In the event that changes in the Work are required on an emergency basis in order to protect the health and safety of the public, the Contractor shall proceed at the written direction of the Village's authorized agent without a written Change Order from Village. The Contractor shall keep separate records of all costs and time required to perform the Work. After review and approval by the Village, the Contractor shall invoice Village in accordance on a time and materials basis. IN the event that the Work can be stopped without any further harm to the public but additional Work ins necessary, the Contractor shall deliver the Contractor's Estimate to the Village as soon as practical and comply with the provisions herein.

_____ Village

_____Contractor

i. It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the plans and specifications and addenda. No adjustment in the Contract Sum or the Substantial Completion Date shall be made unless (a) such refinement or detailing results in changes in the scope, quality, function and/or intent of the plans and specifications and addenda not reasonably inferable or anticipatable by a Contractor of the Contractor's experience and expertise; (b) the Contractor advises Village in writing within 10 calendar days of the Contractor's receipt of said refinements and details that an adjustment is required; and (c) Village agrees to the adjustment.

j. Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement and release by the Contractor of all matters relating to the change in the Work which is subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

11.2 Allowable Quantity Variations

a. In the event of an increase or decrease in bid item quantity of a unit price contract, the total amount of Work actually done or materials or equipment furnished shall be paid for according to the unit price established for such Work under the Contract Documents, wherever such unit price has been established; provided, that an adjustment in the Contract Price may be made for changes which result in an increase or decrease in the quantity of any unit price bid item of the Work in excess of twenty-five (25) percent. The Contractor shall prepare a detail description of work showing quantities, pricing, and economic and market justifications supporting the increase in price. The Village will either accept or reject the price increase.

b. In the event a part of the Work is to be entirely eliminated and no lump sum or unit price is named in the Contract Documents to cover such eliminated Work, the price of the eliminated Work shall be agreed upon in writing by the Village and the Contractor. If the Village and the Contractor fail to agree upon the price of the eliminated Work, said price shall be determined in accordance with the provisions of Section 17, below.

SECTION 12.CHANGE OF CONTRACT PRICE

12.1 General

a. The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at its expense without change in the Contract Price.

b. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered by the Contractor to the Architect promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after such occurrence (unless the Architect allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the Contractor is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by the Architect if the Village and the Contractor cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Section.

c. 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:

_____ Village

_____Contractor

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.

2. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Section 12.4.

3. On the basis of the cost of Work (determined as provided in Sections 12.2 and 12.3) plus a Contractor's fee for overhead and profit (determined as provided in Section 12.4).

12.2 Cost Of Work (Based On Time And Materials)

a. General: The term "Cost of Work" means the sum of all costs necessarily incurred and paid by the Contractor for labor, materials, and equipment in the proper performance of extra Work. Except as otherwise may be agreed to in writing by the Village, such costs shall be in amounts no higher than those prevailing in the locality of the Project. Whenever any extra Work is in progress, for which the definite price has not been agreed on in advance, the Contractor shall each day, report to the Architect the amount and cost of the labor and material used, and any other expense incurred in such extra Work on the preceding day, and no claim for compensation for such extra Work will be allowed unless such report shall have been made.

b. Labor: The cost of labor used in performing extra Work by the Contractor, a subcontractor, or other forces will be the sum of the following:

1. The actual wages paid plus any employer payments to, or on behalf of workers for fringe benefits including health and welfare, pension, vacation, and similar purposes. The cost of labor may include the wages paid to foremen when determined by the Architect that the services of foremen do not constitute a part of the overhead allowance.
2. All payment imposed by state and federal laws including, but not limited to, compensation insurance, and social security payments.
3. The amount paid for subsistence and travel required by collective bargaining agreements, or in accordance with the regular practice of the employer.
4. At the beginning of the extra Work and as later requested by the Architect, the Contractor shall furnish the Architect proof of labor compensation rates being paid.

c. Materials: The cost of materials used in performing extra Work will be the cost to the purchaser, whether Contractor or subcontractor, from the supplier thereof, except as the following are applicable:

1. Trade discounts available to the purchaser shall be credited to the Village notwithstanding the fact that such discounts may not have been taken by the Contractor.

2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Architect. Markup except for actual costs incurred in the handling of such materials will not be allowed.

3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on extra Work items or the current wholesale price for such materials delivered to the Work site, whichever price is lower.

4. If in the opinion of the Architect the cost of material is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Work site less trade discount. The Village reserves the right to furnish materials for the extra Work and no claim shall be made by the Contractor for costs and profit on such materials.

_____ Village

_____ Contractor

d. Equipment: The Contractor will be paid for the use of equipment as stated in the latest edition of the "Compilation of Rental Rates for Construction Equipment" by Associated Equipment Distributors. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the Village for the total period of use. The Contractor may furnish cost data which might assist the Architect in the establishment of the rental rate.

1. All equipment shall, in the opinion of the Architect, be in good working condition and suitable for the purpose for which the equipment is to be used.

2. Before construction equipment is used on the extra Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Architect, in duplicate, a description of the equipment and its identifying number.

3. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

4. Individual pieces of equipment or tools having a replacement value of $100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

5. Rental time will not be allowed while equipment is inoperative due to breakdowns.

d. Equipment on the Work Site: The rental time to be paid for equipment on the Work site shall be the time the equipment is in productive operation on the extra Work being performed and, in addition, shall include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the site of the extra Work on other than the extra Work. The following shall be used in computing the rental time of equipment on the Work site.

1. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2 hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

2. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2 day of operation. When Village-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the Contractor will be paid for the equipment and operator, as set forth in Sections (3), (4), and (5), following.

3. Payment for the equipment will be made in accordance with the provisions in subsection d, herein.

4. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the Work site, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra Work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein in accordance with the provisions of Section 12, herein, which

_____ Village

_____Contractor

surcharge shall constitute full compensation for payments imposed by state and federal laws and all other payments made to or on behalf of workers other than actual wages.

5. To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Section 12.3, herein.

12.3 Special Services

a. Special Work or services are defined as that Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry. The following may be considered by the Architect in making estimates for payment for special services:

1. When the Architect and the Contractor, by agreement, determine that a special service or Work is required which cannot be performed by the forces of the Contractor or those of any of its subcontractors, the special service or Work may be performed by an entity especially skilled in the Work to be performed. After validation of invoices and determination of market values by the Architect, invoices for special services or Work based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs.

2. When the Contractor is required to perform Work necessitating special fabrication or machining process in a fabrication or a machine shop facility away from the job site, the charges for that portion of the Work performed at the off-site facility may, by agreement, be accepted as a special service and accordingly, the invoices for the Work may be accepted without detailed itemization.

3. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of the allowances for overhead and profit specified in this agreement, an allowance of five (5) percent will be added to invoices for special services.

c. All Work performed hereunder shall be subject to all of the provisions of the Contract Documents and the Contractor's sureties shall be bound with reference thereto as under the original Agreement. Copies of all amendments to surety bonds or supplemental surety bonds shall be submitted to the Village for review prior to the performance of any Work hereunder.

12.4 Reserved.

12.5 Excluded Costs

a. The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships) general managers, Architect, engineers, estimators, attorneys' auditors accountants, purchasing and contracting agents, expediters, time keepers, 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 covered by the termination for default provision of this Agreement all of which are to be considered administrative costs covered by the Contractor's allowance for overhead and profit;
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site;
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;
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly 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.

_____ Village

_____Contractor

SECTION 13.CHANGE OF CONTRACT TIME

13.1 General

a. The Contract Time may only be changed by a Change Order. Any claim for an extension of the Contract Time shall be based on written notice delivered by the Contractor to the Architect promptly (but in no event later than seven (7) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 15 days after such occurrence (unless the Architect allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Architect in accordance with Section 12 if the Village and the Contractor cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this Section.

b. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor provided that such time lost affects the critical path as shown on the schedule if a claim is made therefore as provided in Section 13.1a. Such delays shall include: acts or neglect by the Village or others performing additional Work as contemplated by Section 12, or by acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, labor disputes, sabotage, or freight embargoes.

c. Force Majeure: The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence.

d. All time limits stated in the Contract Documents are of the essence of the Agreement.

13.2 Extensions Of Time For Delay Due To Inclement Weather

a. Contract Times may be extended by the Architect because of delays in the completion of the Work due to unusually severe weather, provided that the Contractor shall, within ten (10) days of the beginning of any such delay, notify the Architect in writing of the cause of delay and request an extension of Contract Times. The Architect will ascertain the facts and the extent of the delay and extend the Contract times when, in its judgment, the findings of the fact justify such an extension.

b. The Contractor shall base its construction schedule upon the inclusion of the number of days of inclement weather specified in Section entitled "Inclement weather delays" provision of this Agreement. No extension of the Contract Time due to inclement weather will be considered until after the said number of days of inclement weather has been reached. However, no reduction in Contract Time will be made if said number of days of inclement weather is not reached.

SECTION 14. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.1 Warranty And Guarantee. The Contractor warrants and guarantees to the Village and the Architect that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of defects known to the Village or Architect shall be given to the Contractor. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this section.

_____ Village

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14.2 Access To Work. The Architect, other representatives of the Village, testing agencies, and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspections, and testing. The Contractor shall provide proper and safe conditions for such access.

14.3 Tests And Inspections.

a. The Contractor shall give the Architect timely notice of readiness of the Work for all required inspections, tests, or approvals.

b. If Laws or Regulations of any public body having jurisdiction other than the Village require any Work to specifically be inspected, tested, or approved, the Contractor shall pay all costs in connection therewith. The Village shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Village's or the Architect's acceptance of a Supplier of materials or equipment proposed as a substitution or (or equal) to be incorporated in the Work, or of materials or equipment submitted for review prior to the Contractor's purchase thereof for incorporation in the Work. The costs of all inspections, tests, and approvals in addition to the above which are required by the Contract Documents shall be paid by the Village (unless otherwise specified). The Village will pay for failed tests and "stand-by time" by the Laboratory Tests personnel and others. No testing fees have been included in the Contractor's bid response.

c. The Architect will make, or have made, such inspections and test as the Architect deems necessary to see that the Work is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in this Agreement, the cost of such inspection and testing will be borne by the Village. In the event such inspections or tests reveal non-compliance with the requirements of the Contract Documents, the Contractor shall bear the cost of corrective measures deemed necessary by the Architect, as well as the cost of subsequent re-inspection and retesting. Neither observations by the Architect nor inspections, tests, or approvals by others shall relieve the Contractor from the Contractor's obligation to perform the Work in accordance with the Contract Documents.

d. All inspections, tests, or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the Architect and the Contractor.

e. If any Work (including the Work of others) that is to be inspected, tested, or approved is covered without written concurrence of the Architect, it must, if requested by the Architect, be uncovered for observation. Such uncovering shall be at the Contractor's expense unless the Contractor has given the Architect timely notice of the Contractor's intention to perform such test or to cover the same and the Architect has not acted with reasonable promptness in response to such notice.

f. If any Work is covered contrary to the written request of the Architect, it must, if requested by the Architect, be uncovered for the Architect's observation and replaced at the Contractor's expense.

g. If the Architect considers it necessary or advisable that covered Work be observed by the Architect or inspected or tested by others, the Contractor, at the Architect's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Architect may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, the Contractor shall bear all direct, indirect, and consequential costs and damages of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including but not limited to fees and charges of Architect, engineers, attorneys, and other professionals. However, if such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the Contractor may make a claim therefore as provided above.

_____ Village

_____Contractor

14.4 Village May Stop The Work. If the Work is defective, or the Contractor fails to perform Work in such a way that the completed Work will conform to the Contract Documents, the Village may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Village to stop the Work shall not give rise to any duty on the part of the Village to exercise this right for the benefit of the Contractor or any other party.

14.5 Correction Or Removal Of Defective Work. If required by the Architect, the Contractor shall promptly, either correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Architect, remove it from the site and replace it with non-defective Work. The Contractor shall bear all direct, indirect and consequential costs and damages of such correction or removal, including but not limited to fees and charges of Architect, engineers, attorneys, and other professionals made necessary thereby.

14.6 One-Year Correction Period.

a. If within one year after the date of Substantial 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 or by any specific provision of the Contract Documents, any Work is found to be defective, the Contractor shall promptly, without cost to the Village and in accordance with Village's written notification, either correct such defective Work, or, if it has been rejected by the Village, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the such notification, or in an emergency where delay would cause serious risk of loss or damage, the Village may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs and damages of such removal and replacement including but not limited to fees and charges of Architect, engineers, attorneys and other professionals will be paid by the Contractor.

b. Where defective Work (and damage to other Work resulting there from) has been corrected, removed or replaced under Subsection 14.6, the correction period hereunder, with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

SECTION 15.PAYMENTS TO CONTRACTOR AND COMPLETION

15.1 Schedule Of Values (Lump Sum Price Breakdown). The schedule of values or lump sum price breakdown established as provided in this Agreement shall serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Architect.

15.2 Unit Price Bid Schedule. Progress payments on account of Unit Price Work will be based on the number of units completed.

15.3 Application For Progress Payment.

a. Unless otherwise prescribed by law, on the 25th of each month, or other agreed upon date, the Contractor shall submit to the Architect for review, an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

b. The Application for Payment shall identify, as a subtotal, the amount of the Contractor's Total Earnings to Date, plus the Value of Materials Stored at the Site which have not yet been incorporated in the Work, and less a deductive adjustment for materials installed which were not previously incorporated in the Work, but for which payment was allowed under the provisions for payment for Materials Stored at the Site, but not yet incorporated in the Work.

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_____Contractor

c. The Net Payment Due to the Contractor shall be the above-mentioned subtotal from which shall be deducted the amount of retainage specified in this Agreement, and the total amount of all previous payments made to the Contractor.

d. The Value of Materials Stored at the Site shall be an amount equal to the specified percent of the value of such materials as set forth in this Agreement. Said amount shall be based upon the value of all acceptable materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing; provided, each such individual item has a value of more than $5,000 and will become a permanent part of the Work. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the Contractor has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the Village's interest therein, all of which will be satisfactory to the Village.

15.4 Contractor's Warranty Of Title. The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by an Application for Payment, whether incorporated in the Work or not, will pass to the Village no later than the time of final payment free and clear of all liens.

15.5 Review Of Applications For Progress Payment

a. The Architect will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Village, or return the Application to the Contractor indicating in writing the Architect's reasons for refusing to recommend payment. In the later case, the Contractor may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with the Architect's recommendation, the amount recommended will (subject to the provisions of Section 17) become due and when due will be paid by the Village to the Contractor.

b. The Village may refuse to make payment of the full amount recommended by the Architect because claims have been made against the Village on account of the Contractor's performance of the Work or Liens have been filed in connection with the Work or there are other items entitling the Village to a credit against the amount recommended, but the Village must give the Contractor written notice within seven (7) days (with a copy to the Architect) stating the reasons for such action.

15.6 Partial Utilization.

a. The Village shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to completion of the Work. Whenever the Village plans to exercise said right, the Contractor will be notified in writing by the Village, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service.

b. It shall be understood by the Contractor that until such written notification is issued, all responsibility for care and maintenance of all items or portions of the Work to be partially utilized shall be borne by the Contractor. Upon issuance of said written notice of partial utilization, the Village will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

c. The Contractor shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the Village and the Contractor's one year correction period shall commence only after the date of Substantial Completion for the Work.

15.7 Substantial Completion. When the Contractor considers the Work ready for its intended use the Contractor shall notify the Village and the Architect in writing that the Work is substantially complete and request that the

_____ Village

_____Contractor

Architect prepare a Certificate of Substantial Completion/Notice of Completion. Within a reasonable time thereafter, the Village, the Contractor, and the Architect shall make an inspection of the Work to determine the status of completion. If the Architect does not consider the Work substantially complete, the Architect will notify the Contractor in writing giving the reasons therefore. If the Architect considers the Work substantially complete, the Architect will prepare and deliver to the Village for its execution and recordation the Certificate of Substantial Completion/Notice of Completion signed by the Architect and Contractor, which shall fix the date of Substantial Completion. As applicable, there shall be attached to the Certificate/Notice a list of items to be completed or corrected before final payment.

15.8 Final Application For Payment. After the Contractor has completed all correction Work referred to in Section 17 and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in this Agreement) and other documents, all as required by the Contract Documents, and after the Architect has indicated that the Work is acceptable, the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the Village) of all liens arising out of or filed in connection with the Work.

15.9 Final Payment And Acceptance

a. If, on the basis of the Architect's observation of the Work during construction and final inspection, and the Architect's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the Architect is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Architect will, within fourteen (14) days after receipt of the final Application for Payment, indicate in writing the Architect's recommendation of payment and present the Application to the Village for payment.

b. After acceptance of the Work by the Village's governing body, the Village will make final payment to the Contractor of the amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:

1. Liquidated damages, as applicable. See Section 8.3.
2. Two times the value of outstanding items of correction Work or punch list items indicated on the Certificate of Substantial Completion/Notice of Completion as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the Village within the time stated on the Certificate of Substantial Completion/Notice of Completion, otherwise the Contractor does hereby waive any and all claims to all monies withheld by the Village to cover the value of all such uncompleted or uncorrected items.

15.10 Release Of Retainage And Other Deductions

a. After executing the necessary documents to initiate the lien period, and not more than forty-five (45) days thereafter (based on a 30-day lien filing period and 15-day processing time), the Village will release to the Contractor the retainage funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the Village pursuant to Section 17.

b. After filing of the necessary documents to initiate the lien period, the Contractor shall have thirty (30) days to complete any outstanding items of correction Work remaining to be completed or corrected as listed on a final punch list made a part of the Certificate of Substantial Completion/Notice of Completion. Upon expiration of the 45 days, referred to in Section 17, the amounts withheld pursuant to the provisions of Section 16 herein, for all remaining Work items will be returned to the Contractor; provided, that said Work has been completed or corrected to the satisfaction of the Village within said thirty (30) days.

_____ Village

_____Contractor

Otherwise, the Contractor does hereby waive any and all claims for all monies withheld by the Village under the Contract to cover two (2) times the value of such remaining uncompleted or uncorrected items.

15.11 Contractor's Continuing Obligation. The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Architect, nor the issuance of a Certificate of Substantial Completion/Notice of Completion, nor any payment by the Village to the Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the Village, nor any act of acceptance by the Village nor any failure to do so, nor any review of a Shop Drawing or sample submittal, will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents.

15.12 Final Payment Terminates Liability Of Village. Final payment is defined as the last progress payment made to the Contractor for earned funds, less retainage as applicable, less deductions listed in Section 17 herein. The acceptance by the Contractor of the final payment referred to in Section 17 herein, shall be a release of the Village and its agents from all claims of liability to the Contractor for anything done or furnished for, or relating to, the Work or for any act or neglect of the Village or of any person relating to or affecting the Work, except demands against the Village for the remainder, if any, of the amounts kept or retained under the provisions of Section 17 herein; and excepting pending, unresolved claims filed prior to the date of the Certificate of Substantial Completion/Notice of Completion.

_____ Village

_____ Contractor

SECTION 16. SUSPENSION OF WORK AND TERMINATION - MODIFICATIONS – CHANGE ORDERS

16.1 The Village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the work. The Village may order temporary stoppage of the work or delay in performance that does not alter the scope of work. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this contract.

16.2 If any change causes an increase or decrease in the price charged, the maximum amount of the contract, or the time required for performance of any part of the work under this contract, or otherwise affects the conditions of this contract, the Village shall make an equitable adjustment to the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract with a written change order.

16.3 Change orders, if applicable, may be priced, at a maximum of 10% markup on materials, services and labor related to the change order. Documentation of pricing will be required.

SECTION 17. TERMINATION FOR DEFAULT

17.1 The Village may terminate this contract, in whole or in part, when the Village determines, in its sole and absolute discretion that the Contractor is not making sufficient progress thereby endangering ultimate contract performance, or is not materially complying with any term or provision of this Contract.

17.2 Unless the Contractor's breach is waived by the Village in writing, the Village may, by written notice to the Contractor, terminate this contract upon no less than 30 day notice.

17.3 Waiver of breach of any provision of this contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this contract. The provisions herein do not limit the Village's right to legal or equitable remedies.

17.4 Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

17.5 The Village shall have no liability to the Contractor for future profits or losses in the event of termination for default.

17.6 The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

17.7 Should Contractor provide the Village with written notice of cancellation of contract, Contractor will be required to refund a pro-rata share of the compensation identified in this agreement.

17.8 In accordance with section 2-8.4.1, of the Miami-Dade County Code, any individual or corporation or other entity that attempts to meet its contractual obligations with the Village or County through fraud, misrepresentation or material misstatements shall have its Contract terminated, whenever practicable, as determined by Village. The Village may terminate or cancel any other contracts which such individual or other subcontracted entity has with the County. Such individual or entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees. The foregoing notwithstanding, any individual or entity who attempts to meet its contractual obligations with the Village or County through fraud, misrepresentation or material misstatement may be disbarred from contracting for up to five (5) years.

17.9 If termination occurs, the Contractor will be paid for allowable costs incurred in carrying out activities required by this contract up to the date and time of termination.

_____ Village

_____Contractor

SECTION 18.TERMINATION FOR DELAY

18.1 If the project is suspended or the Contractor's services are delayed by the Village for more than 30 consecutive days, the Contractor may terminate this contract by giving not less than 10 days written notice.

18.2 The liability of the Village upon termination by the Contractor for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by Contractor to the time of termination by Contractor. The Village shall not be liable for future profits or losses.

SECTION 19. SUSPENSION OF WORK BY VILLAGE. The Village, acting through the Architect, may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor. The Contractor shall resume the Work on receipt from the Architect of a notice of resumption of Work. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the Contractor makes an approved claim therefore as provided in this agreement.

SECTION 20. TERMINATION OF AGREEMENT BY VILLAGE (CONTRACTOR DEFAULT)

a. In the event of default by the Contractor, the Village may give ten (10) days written notice to the Contractor of Village's intent to terminate the Agreement and provide the Contractor an opportunity to remedy the conditions constituting the default. It shall be considered a default by the Contractor whenever Contractor shall: (1) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors; (2) fail to provide materials or workmanship meeting the requirements of the Contract Documents; (3) disregard or violate provisions of the Contract Documents or Architect's instructions; (4) fail to prosecute the Work according to the approved progress schedule; or, (5) fail to provide a qualified superintendent, competent workmen, or materials or equipment meeting the requirements of the Contract Documents. If the Contractor fails to remedy the conditions constituting default within the time allowed, the Village may then issue the Notice of Termination.

b. In the event the Agreement is terminated in accordance with the provisions herein, the Village may take possession of the Work and may complete the Work by whatever method or means the Village may select. The cost of completing the Work shall be deducted from the balance which would have been due the Contractor had the Agreement not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the Village. If such cost is less than the balance which would have been due, the Contractor shall not have claim to the difference.

SECTION 21. TERMINATION OF AGREEMENT BY Village (FOR CONVENIENCE). The Village may terminate the Agreement at any time if it is found that reasons beyond the control of either the Village or Contractor make it impossible or against the Village's interests to complete the Work. In such a case, the Contractor shall have no claims against the Village except: (1) for the value of Work performed up to the date the Agreement is terminated; and, (2) for the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date the Agreement is terminated, which would be needed in the Work and which meet the requirements of the Contract Documents. The value of Work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be determined by the Architect in accordance with the procedure prescribed for the making of the final application for payment and payment under this agreement.

SECTION 22. TERMINATION OF AGREEMENT BY CONTRACTOR The Contractor may terminate the Agreement upon ten (10) days written notice to the Village, whenever: (1) the Work has been suspended under the provisions of this agreement for more than ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume Work or to terminate the Agreement has not been received from the Village within this time period; or, (2) the Village should fail to pay the Contractor any monies due him in accordance with the

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terms of the Contract Documents and within 60 days after presentation to the Village by the Contractor of a request therefore, unless within said 10-day period the Village shall have remedied the condition upon which the payment delay was based. In the event of such termination, the Contractor shall have no claims against the Village except for those claims specifically enumerated in Section 15.3, herein, and as determined in accordance with the requirements of said Section.

SECTION 23.TERMINATION FOR LACK OF FUNDS

23.1 Not withstanding any other provisions of the contract, if the funds anticipated by the Village for the for the payment of work under this contract are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the contract without penalty by giving not less than 30 day written notification of the lack of available funding to the Contractor. The Village shall be the final authority to determine whether of not funds are available. The Village may at its discretion terminate, renegotiate and/or adjust the contract award, whichever is in the best interest of Village. Upon receipt of such notice, the Contractor shall not in

23.2 For any portion of the work that is funded by county, state, local, or federal appropriations or grants, the liability of the Village to Contractor shall be limited to payment for services when payment is received by the Village from the county, state, local, or federal authority. The Village shall submit all required documents requesting payment within a reasonable time, seven (7) working days. The Village shall not be liable to Contractor for work performed in the event that payment is not received by the Village from a county, state, local, or federal funding Village. This is a pay-when-paid clause.

SECTION 24.NO DAMAGES FOR DELAY CLAUSE

24.1 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 weather related delays. The Contractor shall not be entitled to an increase in the contract sum or payment of compensation of any kind from the Village for direct, indirect, consequential, impact, mobilization, demobilization, 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; provided, however, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Village or its agents. Otherwise, the Contractor shall be entitled only to extension of the contract time as the sole and exclusive remedy for a resulting delay, in accordance with and to the extent specifically provided above

24.2 Contractor shall not be considered in violation of this contract due to temporary delays due to major weather events, including tropical storms, depressions, severe rain, strong winds, hurricanes, etc. However, Contractor shall attempt to provide prior notice to the Village's contact person of any such weather related delays, and shall immediately proceed with services after such weather related events. Immediately proceed shall mean within 48 hours of such weather event.

SECTION 25. TITLE/OWNERSHIP TO MATERIALS FOUND ON THE WORK. The Village reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the Work until released by the Village. Any material desired to be retained by the Village shall be delivered by the Contractor to a designed area within a six (6) mile radius of the project, at no extra cost to the Village, as directed by the Village, unless otherwise specified in the Contract Documents. Neither the Contractor nor any subcontractor shall have any right, title, or interest in or to any such materials. The Contractor will be permitted to use in the Work, if approved by the Village and Architect in writing, without charge, any such materials which meet the requirements of the Contract Documents. Once the Village releases ownership of the

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_____Contractor

material, it shall become the property of the Contractor, who shall dispose of it in manner satisfactorily to the Architect, as provided for by the Contractor, at no extra cost to the Village.

SECTION 26. RIGHT TO AUDIT. If the Contractor submits a claim to the Village for additional compensation, the Village shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Contractor's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Contractor's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the Village deems desirable during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the Village for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Village.

SECTION 27. JURISDICTION AND VENUE. For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

SECTION 28. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES. The Village does not waive sovereign immunity under 768.28, Florida Statutes, for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs in any state or federal administrative, circuit court and appellate court proceedings. In the event of any litigation arising out of this agreement or project agreement, each party hereby knowingly, irrevocably, voluntarily, and intentionally waives its right to trial by jury.

SECTION 28.NOTICES All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices. Additionally, whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

SECTION 29. CONTRACTING OFFICER REPRESENTATION. For the purposes of this contract, the contracting officers are as follows:

To the Village: Ron E. Williams, Village Manager
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157

To Contractor: Burke Construction Group Inc.
10145 NW 19th Street
Doral FL 33172
David Martinez C.P.A. – C.F.O.
Tony Burke C.E.O.

_____ Village

_____Contractor

An individual or delegated committee will be designated to represent the Village in all matters pertaining to the work as it progresses. Interference by unauthorized individuals must be controlled so as no to impede the smooth progress of the work. Contractor shall review all work to be accomplished with project representative to preclude misunderstandings.

SECTION 30. RECORD RETENTION. Contractor shall comply with Chapter 119, Florida Statutes, and public record retention requirements and shall maintain a copy of all documents reflecting services rendered to Village for five (5) years after the termination of this Agreement, close out, and/or final payment has been made and all other pending matters are closed. Further, Contractor shall be provided access to Village, to any government authority, or any other person pursuant to a public records request, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

SECTION 31. WARRANTIES.

31.1 Contractor warrants that it: (a) is duly licensed by the State of Florida and Miami-Dade County to provide services identified herein; (b) has not provided a commission, bonus or other benefit or payment to any person to procure this contract other than paying the salaries of employees in the ordinary course of business; (c) has not committed a violation of a public entity crime statute and is not otherwise disqualified by the State of Florida from entering into this Agreement; (d) no member or delegate to the U.S. Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from; (e) no member, officer, or employee of the Village shall or for one (1) year after current tenure, have any interest, direct or indirect, in this contract; (f) proceeds shall not be used to influence federal legislation as defined in 31 USC 9101(1); (g) Contractor shall warrant all labor and parts for a period of one year from completion; and (h) any manufacturer's warranties shall also be provided to Village, as applicable. Contractor shall provide a Public Entity Crime Affidavit to the Village Manager upon executing this contract (included in Exhibit 7).

31.2 Contractor will meet the requirements of any manufacturer's labor and material warranty according to specifications submitted by any manufacturer with this proposal and secure warranty for Village upon completion and payment in full, as these specifications pertain to Contractor.

31.3 Contractor shall provide a one (1) year guarantee against defects in materials or work upon completion of installation, as applicable. Any materials or work which is or becomes defective during the guarantee period shall be replaced by the Contractor with the understanding that all replacements shall carry the same guarantee as the original equipment. Such replacement shall be made immediately upon receiving notification from the Village or its representatives.

31.4 The Contractor shall guarantee that the materials and workmanship of the apparatus installed or rehabilitated by the Contractor under this agreement shall be "first class" in every respect and that Contractor shall make good any defects not due to ordinary wear and tear or improper use, which may develop within one year of the date of final acceptance and final inspection of all equipment. Neither the final payment nor any provision of the agreement shall relieve the Contractor of the extent and period provided by law and upon written notice Contractor shall remedy any defects due thereto and pay all expenses for any damage to other work resulting there from. The same guarantee shall be applicable to the total job in the event equipment is reused or modified. The one-year guarantee for all windows shall start from the date of final acceptance of the complete job by the window Consultant and the Village.

SECTION 32. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS. The Village, or any of their duly authorized representatives, shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor agrees to include in first-tier subcontracts approved under this contract a clause substantially the same as

_____ Village

_____Contractor

that of this provision. The right to access and examination of records provided herein shall continue until disposition of any mediation, claims, litigation or appeals.

SECTION 33. OWNERSHIP OF DOCUMENTS. All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Contractor under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The Contractor acknowledges that all documents prepared under this contract shall be public records, and shall be subject to public inspection and copying, as provided by Florida Statutes Chapter 119. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

SECTION 34. SEVERABILITY. Should any section or any part of any section of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

SECTION 35. ENTIRE CONTRACT. 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. Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement. Each Exhibit referred to in this agreement forms an essential part of this agreement. The Exhibits if not physically attached, should be treated as part of this agreement, and are incorporated by reference. This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

SECTION 36. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

36.1 Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Contractor has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Contractor.

36.2 Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village's conflict of interest and code of ethics ordinances. A violation of this section will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor.

36.4 During the performance of the awarded contract, the successful Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin.
b. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to its race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
c. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the contracting officer that explain this clause.
d. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.

_____ Village

_____Contractor

e. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding, the notice to be provided by the contracting officer advising the labor union or workers' representatives of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
f. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and/orders of the Secretary of Labor.
g. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and/orders of the Secretary of Labor. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with the rules, regulations, and/orders.
h. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Governmental contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended, the rules, regulations, and/orders of the Secretary of Labor, or as otherwise provided by law.
i. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take the action with respect to any subcontract or purchase orders as the Department of Labor may direct as a means of enforcing the provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of the direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

36.5 Contractor and its associates covenant that they have no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor is to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in Department of Labor Regulations (29 CFR Part 3).

36.7 No member, officer or employee of Village, or its designees or agents, no member of the governing body of the locality or localities who exercise any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Contract.

36.7 The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government construction projects in excess of $2,000. The Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) Title 29, parts 1, 3, 5, 6 and 7.

SECTION 37. RECORDS AND AUDITS. The Contractor shall maintain accounts and records, including, but not limited to, personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by Village to assure proper accounting for all project funds. These records will be made available for audit purposes to Village, or any of their duly authorized representatives, and will be retained for three (3) years after the expiration of this contract unless written authorization to destroy them is provided by Village.

SECTION 38. WARRANTY OF AUTHORITY. The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other Village to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this contract.

_____ Village

_____Contractor

SECTION 39. MISCELLANEOUS PROVISION. 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.

SECTION 40. PERFORMANCE BOND.

40.1 Within ten (10) business days after its acceptance of the terms and conditions of this agreement, the Contractor shall file with the Village clerk, a bond in the amount of the contract having as a surety a company qualified to do business in the State of Florida and reasonably acceptable to the Village (the "performance bond"). The performance bond shall secure the full and faithful performance by the Contractor of all requirements, duties, and obligations imposed upon the Contractor by the provisions of this agreement. The performance bond shall provide that the surety shall give sixty (60) days prior written notice of any cancellation thereof to the Village. The Contractor shall cause the performance bond to be renewed or replaced and in effect at all times throughout the term of this agreement.

40.2 Upon the request of the Village in connection with any construction or installation of facilities under this agreement in which the cost exceeds $50,000, and prior to the issuance of any permits therefore, the Contractor shall file with the Village clerk prior to the construction or installation, a bond in an amount equal to the projected cost of the construction having as a surety a company qualified to do business in the State of Florida and reasonably acceptable to the Village (the "construction bond"). The construction bond shall be conditioned on the completion of the applicable construction of facilities by the Contractor in compliance with all applicable permits, laws, rules, and regulations. The construction bond shall provide that the surety shall give sixty (60) days prior written notice of any cancellation thereof to the Village. Upon Contractor's written request, the Village shall release each such construction bond twelve (12) months after the completion of the applicable construction and restoration in compliance with all applicable permits, laws, rules, and regulations.

40.3Recovery by the Village under a performance bond, construction bond or under insurance shall not limit the Contractor's indemnification obligations set firth in this agreement with respect to its construction, maintenance, and operations, provided that the Village shall not be entitled to double recovery. Recovery by the Village under either a bond or insurance is in addition to all other rights of the Village, whether specified in this agreement or authorized by law, provided that the Village shall not be entitled to double recovery. If a performance bond or construction bond required by this agreement and previously approved by the Village is suspended, voided, or cancelled and not replaced, then the occurrence shall be a violation of this agreement, subject to the notice and cure periods and remedies provided in this agreement.

SECTION 41. ADDITIONAL BOND. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Performance and Payment Bonds, which bonds shall be guaranteed for a 100% of the construction cost price, hereto attached for its faithful performance, the Village shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall at his/her expense, and within three (3) days after the receipt of Notice from the Village to do so, furnish an additional bond or bonds, in such a form and amount, and with such sureties as shall be satisfactory to the Village. In such event, no further payment to the Village shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in the manner and form satisfactory to the Village.

[SIGNATURE PAGE TO FOLLOW]

_____ Village

_____Contractor

IN WITNESS WHEREOF, the parties execute this agreement on the respective dates under each signature: The Village, signing by and through its Village manager, attested to by its Village clerk, duly authorized to execute same and by Contractor by and through its president, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

Village of Palmetto Bay

By: _____
Ron E. Williams, Village Manager

Contractor

By: _____
Tony Burke C.E.O.

Approved as to form:

By: _____
Eve A. Boutsis,
Office of Village General Counsel

_____ Village

_____ Contractor

CHANGE ORDER

TO : Village Of Palmetto Bay
Project: Thalatta Bid 2013-PR-01

Contractor: _____
Date:_____

This Change Order will authorize the following change to the Contract:

The Work as set forth in the Contract is hereby amended to include the items set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

This change Order constitutes full, final and complete compensation to the Contractor for all costs, expenses, overhead, and profit and any damages of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under this Contract. The Contractor acknowledges and agrees that (a) the Guaranteed Maximum Price of $_____ under the Contract will be [unchanged] [changed] by this Change Order; and (b) the schedule for performance of work will be [unchanged] [changed] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extension in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Contract shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Contract.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

VILLAGE	CONTRACTOR
By:_____	By:_____
Name: _____	Name: _____
Title: _____	Title:_ Tony Burke C.E.O.

_____ Village

_____Contractor