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RESOLUTION NO. 09-68

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO EMERGENCY PURCHASES; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT FOR EMERGENCY REPAIR SERVICES CONSISTENT WITH THE VILLAGE'S PROCUREMENT CODE FOR AN AMOUNT NOT TO EXCEED \$120,000; APPROVING A CONTRACT WITH PORTLAND CONSTRUCTION, INC. FOR THE SUBSTANTIAL REPAIR OF THE CURVED PEDESTRIAN BRIDGE AT CORAL REEF PARK; PROVIDING AN EFFECTIVE DATE.

13       **WHEREAS**, the Village of Palmetto Bay is known as the Village of Parks, and,

14       **WHEREAS**, several years ago Miami-Dade County transferred Coral Reef Park to the  
15 Village of Palmetto Bay; and,

16       **WHEREAS**, Coral Reef Park contains a pedestrian bridge that spans the C-100 canal  
17 under the jurisdiction of South Florida Water Management District (SFWMD); and,

18       **WHEREAS**, it has come to the Village's attention that the pedestrian bridge is in need  
19 of emergency repairs to allow the bridge's continued utilization for park patrons; and,

20       **WHEREAS**, the Village needs to obtain a permit from SFWMD to initiate the  
21 necessary repairs to the structure; and,

22       **WHEREAS**, the necessary repairs are required immediately as the condition of the  
23 bridge could cause imminent harm to users; and,

24       **WHEREAS**, the condition of the bridge is an emergency condition that requires  
25 immediate remediation; and,

26       **WHEREAS**, the Village's procurement code, at section 2-175(h), relating to Emergency  
27 procurement, entitles the procurement of goods and services when there exists a threat to public  
28 health, welfare or safety, provided that such emergency procurements shall be made with such  
29 competition as is practicable under the circumstances; and,

30       **WHEREAS**, the Village sought three bids for contractor services, and based upon prior  
31 experience and the price term the Village Manager recommends Portland Construction  
32 Company for the procurement of services to repair the pedestrian bridge at Coral Reef Park.

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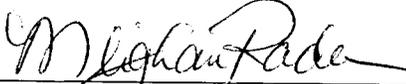
1 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**  
2 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

3 **Section 1:** The Village Council approves the emergency procurement of bridge  
4 repair services for the pedestrian bridge at Coral Reef Park for an aggregate cost not to exceed  
5 \$120,000.

6 **Section 2:** The Village Manager is hereby authorized to execute a contract with  
7 Portland Construction Company to immediately complete the required emergency bridge  
8 repairs. A copy of the contract for services is attached hereto.

9 **Section 3:** This resolution shall take effect immediately upon adoption.

10 PASSED and ADOPTED this 10<sup>th</sup> day of August, 2009.

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12  
13 Attest:   
14 Meighan Rader  
15 Village Clerk  
16

  
Eugene P. Flinn, Jr.  
Mayor

17 APPROVED AS TO FORM:  
18  
19  
20   
21 Eve A. Boutsis  
22 Office of the Village Attorney  
23  
24  
25  
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27 FINAL VOTE AT ADOPTION:  
28

29 Council Member Ed Feller	<u>YES</u>
30	
31 Council Member Howard Tendrich	<u>YES</u>
32	
33 Council Member Shelley Stanczyk	<u>YES</u>
34	
35 Vice-Mayor Brian W. Pariser	<del>YES</del>
36	
37 Mayor Eugene P. Flinn, Jr.	<u>YES</u>

**AGREEMENT BETWEEN VILLAGE OF PALMETTO BAY  
AND PORTLAND SERVICES, LLC  
FOR CORAL REEF PARK PEDESTRIAN BRIDGE REPAIRS**

**THIS AGREEMENT** is executed and entered into on this \_\_\_\_\_ day of August, 2009, between the Village of Palmetto Bay, Florida, a Florida municipal corporation, (hereinafter referred to as the "Village" or "Owner") and Portland Services, LLC, a Florida Limited Liability Corporation, licensed and authorized to do business in the State of Florida, (hereinafter referred to as the "Contractor"), whose place of business is 14540 SW 136<sup>th</sup> Street, Suite 102, Miami, Florida 33186.

**WHEREAS**, pursuant to Section 2-175 of the Village's Procurement Code, the Village requested three emergency bids from qualified contractors to procure emergency repair services for the Coral Reef Park pedestrian curved pedestrian bridge, and the Contractor provided the lowest bid; and,

**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 mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

**SECTION 1. WHEREAS CLAUSES**

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

**SECTION 2. SCOPE OF SERVICES AND COMPENSATION**

2.1 The scope and compensation are outlined in the attached Exhibit 1. Contractor is hired to repair and/or replace the Bridge at Coral Reef Park.

2.2 The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown in Exhibit 1 and shall do everything required by this contract and any other contract documents.

**SECTION 3. CONTRACT SUM**

3.1 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:

3.2 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 \$84,500. The Village shall also pay for permits, in addition to the amount to Contractor.

**SECTION 4. COMMENCEMENT AND COMPLETION OF WORK**

4.1 The Contractor shall commence work of the date established in the Notice to Proceed.

4.2 The Contractor shall prosecute the work with faithfulness and diligence and shall complete the work not later than 90 days after the permit approval by the South Florida Water Management District.

**SECTION 5. CONTRACTOR'S ACCEPTANCE OF CONDITIONS**

5.1 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.

5.2 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 any other document covering said work, shall not operate as a waiver by the Village of strict compliance with the terms of this agreement; 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 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 requirements of attached Exhibit 1. 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.

**SECTION 6. LIQUIDATED DAMAGES**

6.1 It is mutually agreed that time is of the essence of this agreement and should the Contractor fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the Contractor, the Village will retain the amount of \$500.00 per calendar day as fixed, agreed, and liquidated damages for each calendar day elapsing beyond the specified time for completion or any authorized extension thereof, which sum shall represent the actual damages which the Village will have sustained by failure of the Contractor to complete the work within the specified time; it being further agreed that said sum is not penalty, but is the stipulated amount of damages sustained by the Village in the event of such default by the Contractor.

6.2 For the purposes of this section, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.

## SECTION 7. PARTIAL AND FINAL PAYMENTS

7.1 In accordance with the provisions fully set forth in the General Conditions, and subject to additions and deductions as provided, the Village shall pay the Contractor as follows:

7.1.1 Within 30 days after receipt of the Contractor's request for payment by the Village, the Village shall make payments to the Contractor on the lump sum amount established by this agreement for all work that has been performed strictly in accordance with this agreement and until such work has been accepted by the Village.

7.1.2 Upon submittal by the Contractor of evidence satisfactorily to the Village that all payrolls, material bills and other costs incurred by the Contractor in connection with the work have been paid in full, and also, after all guarantees that may be required in the specifications have been furnished and are found to be acceptable by the Village, payment on the account of this agreement shall be made within thirty (30) days after completion by the Contractor of all work covered by this agreement and acceptance of such work by the Village.

## SECTION 8. TERM/TERMINATION

8.1 **Term of Agreement.** This agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to section 8.2 or other applicable sections of this agreement. The project shall specify the period of service agreed to by the Village and Contractor for services to be rendered under the project agreement.

8.2 **Termination for Convenience.** The Village may terminate this agreement for convenience at any time by giving thirty (30) days notice in writing to the Contractor. The Contractor will be paid for the value of service performed pursuant to the schedule contained in the statement of work, up to and including the termination date. Contractor will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses. In the event that the Village improperly terminates the agreement for default under paragraph 8.3, the termination shall be deemed a termination for convenience under this paragraph. The parties shall additionally comply with supplemental provisions at section 15.3

8.3 **Termination for Default.** The Village party may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of the agreement, which has not been cured within ten (10) days from the date of receipt of written notice of breach from the party seeking termination, and the supplement provisions, at section 15.2. Contractor is entitled to terminate as provided under the supplemental provisions, section 15.4. Termination shall be effective as of the end of the notice period in the case of any uncured material

breach. Contractor may terminate this agreement prior to the expiration of the initial term or any subsequent renewal term upon not less than ten (10) days prior written notice to the Village in the event that Contractor is unable to complete the services identified in section 2 due to causes beyond Contractor's control. The Village shall have no liability to the Contractor for future profits or losses in the event of termination for default. 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 agreement. Should Contractor provide the Village with written notice of cancellation of agreement, Contractor will be required to refund a pro-rata share of the compensation identified in section 2.

8.4 **Termination for Delay.** If the project is suspended or the Contractor's services are delayed by the Village for more than 90 consecutive days, the Contractor may terminate this agreement by giving not less than 10 days written notice as provided under section 15.4. The liability of the Village upon termination by the Contractor for suspension or delay of this 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.

8.5 **Termination for Lack of Funds.** Notwithstanding any other provisions of the agreement, if the funds anticipated by the Village for the payment of work under this agreement 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 agreement without penalty by giving not less than 10 days written notice of the lack of available funding.

For any portion of the work that is funded by county, state, 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, or federal authority. The Village shall submit all required documents requesting payment within a reasonable time. 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, or federal funding authority. This is a pay-when-paid clause.

## **SECTION 9. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES**

9.1 **Authority to Execute Changes or Requests for Additional Services.** The Village Manager is authorized to negotiate and execute change orders, in an amount not to exceed \$20,000.00, per change order. Changes, which exceed \$20,000.00, shall be approved by the Village Council. All other terms and conditions of the underlying attached bid, bid response, and contract documents provide for terms and conditions relating to change in work orders.

## **SECTION 10. RIGHT TO WITHHOLD**

10.1 If work under this agreement is not performed in accordance with the terms hereof, the Village has the right to withhold any payment due to the Contractor, of any sums as the Village

may deem sufficient to protect it against loss, or to ensure payment of claims, and, at its option, the Village may apply the sums in the manner as the Village may deem proper to secure itself or to satisfy the claims. The Village will provide Contractor with 10 days prior written notice in the event that it elects to execute its right to withhold under this paragraph.

#### **SECTION 11. INTEREST PAYMENTS**

11.1 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 section 218.74, Florida Statutes.

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

#### **SECTION 12. SURVIVAL OF PROVISIONS**

12.1 Any terms or conditions of either this agreement or any subsequent project agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

#### **SECTION 13. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

13.1 All finished or unfinished documents, including by not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the Village or furnished by the Contractor pursuant to any project agreement, shall become the property of the Village, whether the project for which they are made is completed or not, and shall be delivered by Contractor to the Village within five calendar days after receipt of written notice requesting delivery of said documents or digital files. The Contractor shall have the right to keep one record set of the documents upon completion of the project; however, in no event shall the Contractor, without the Village's prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

13.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files, or other data, entered into by the Contractor for each specific project shall provide that all documents and rights obtained by virtue of the subcontracts shall become the property of the Village.

13.3 All final plans and documents prepared by the Contractor shall bear the endorsement and seal of a person duly registered as a professional engineer, Building Official, landscape Building Official, professional geologist, or land surveyor, as appropriate, in the State of Florida and date approved and/or scaled. Contractor shall within three business days of ascertaining or determining that the registered professional engineer, landscape Building Official, professional geologist or land surveyor is no longer affiliated with Contractor or barred from practicing under his/her license, shall notify Village of the event and obtain the services of another, duly qualified and registered professional.

**SECTION 14. RECORDS/AUDITS**

14.1 Contractor shall maintain and require subcontractors to maintain, complete and correct records, books, documents, papers, and accounts pertaining to the specific project. Such records, books, documents, papers, and accounts shall be available at all reasonable times for examination and audit by the Village manager or any authorized Village representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each project agreement. Incomplete or incorrect entries in such records, books, documents, papers, or accounts will be grounds for disallowance by or reimbursement to the Village of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the Village.

14.2 The Contractor shall comply with Chapter 119, Florida Statutes, as applicable.

14.3 Refusal of the Contractor to comply with these provisions shall be grounds for immediate termination for cause by the Village of this agreement or any project agreement.

14.4 The parties shall comply with the provisions of Supplemental provisions, section 16.3.

**SECTION 15. INDEPENDENT CONTRACTOR**

15.1 The Contractor is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Contractor.

**SECTION 16. ASSIGNMENT; AMENDMENTS**

16.1 This agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Contractor, without prior written consent of the Village.

16.2 No modification, amendment, or alteration in the terms or conditions of this agreement shall be effective unless contained in a written documents executed with the same formality as this agreement.

**SECTION 17. INDEMNIFICATION/HOLD HARMLESS**

17.1 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.

17.2 The Contractor shall not commence work under this agreement until it has obtained all insurance required by the Village. The Contractor shall defend, indemnify and hold harmless from any and all claims, liability, losses, expenses and causes of action arising 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 agreement. The Contractor shall pay all claims, losses, fines, penalties, costs and expenses of any nature whatsoever resulting from its intentional misconduct or negligence. Contractor shall also comply with the Supplemental Conditions of Section 00800, Section 6.13.

17.3 Pursuant to section 768.28, Florida Statutes, the Contractor shall indemnify and hold harmless the Village and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or any persons employed or utilized by the Contractor in the performance of this or any project agreement.

#### SECTION 18. INSURANCE

18.1 The Contractor shall secure and maintain throughout the duration of this agreement and any project agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Village against hazards or risks of loss as specified below. The Contractor shall also comply with the Supplemental Provisions of SECTION 00800, Section 5.2. The insurance coverage shall include a minimum of:

A. Professional Liability Insurance in the amount of \$1,000,000.00 with deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which the Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Contractor or any person employed by him/her in connection with this agreement. This insurance shall be maintained for three (3) years after completion of the construction and acceptance of any project covered by this agreement. However, the Contractor may purchase Specific Project Professional Liability Insurance which is also acceptable.

B. Comprehensive general liability insurance with broad form endorsement, including automotive liability, completed operations and products liability, contractual liability, severability of interest with cross liability and property damage liability with limits of \$1,000,000.00 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. Coverage must be afforded in a form not more restrictive than the latest edition of the Commercial General Liability Policy without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad

Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

C. Workers' Compensation Insurance in compliance with Chapter 440, Florida Statutes, as presently written or hereafter amended, and applicable federal law. The policies must include Employer's Liability with minimum limits of \$500,000 per accident.

18.2 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 to the Village.

18.3 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 and have agents upon whom service of process may be made in the State of Florida.

18.4 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 paragraph 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.

18.5 The Village is to be specifically included as an additional insured for the liability of the Village resulting from operations performed by or on behalf of Contractor in performance of this or any project agreement. Contractor's insurance, including that applicable to the Village as an additional insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies has been issued to each.

18.6 Prior to the execution of this agreement, Contractor shall provide the Village manager with evidence of insurability from the Contractor's insurance carrier or a certificate of insurance. Prior to execution of any project agreement, the Contractor shall provide to the Village manager, certificates of insurance evidencing the required insurance coverage's. The certificates of insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any project agreement and shall state that such insurance is as required by the and any project agreement. The Village reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the services, renewal certificates of insurance or policies shall be furnished 30 days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than 30 days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the certificate(s) is subject to approval of the Village Manager.

18.7 Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this agreement.

18.8 All deductibles or self-insured retentions must be declared to and be approved by the Village manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Village manager may require the Contractor, as a condition of execution of a particular project agreement, to provide a bond or other monetary consideration to cover the Contractors' deductible for professional liability insurance.

#### **SECTION 19. REPRESENTATIVE OF VILLAGE AND CONTRACTOR**

19.1 **Village Representative.** It is recognized that questions in the day-to-day conduct of this agreement will arise. The Village designates the Director of Public Work, as the person to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

19.2 **Contractor Representative.** Contractor shall inform the Village representative, in writing, of the representative of the Contractor to whom all communications pertaining to the day-to-day conduct of this agreement shall be addressed.

#### **SECTION 20. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL**

20.1 The Village does not waive sovereign immunity 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 agreement, 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.

20.2 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 21. MEDIATION**

21.1 Any claim or dispute arising out of or related to this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

21.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon.

21.3 Agreements reached in mediation shall be enforceable as settlement agreements in the circuit court for the 11<sup>th</sup> judicial circuit for the State of Florida.

#### **SECTION 22. ENTIRE CONTRACT**

22.1 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.

### **SECTION 23. SUBCONTRACTORS**

23.1 None of the work or services under this agreement shall be subcontracted unless Contractor obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of this agreement and Contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

23.2 The Contractor shall not assign, transfer or pledge any interest in this agreement without prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this agreement 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.

23.3 In the event the Contractor requires the services of any subcontractors or other professional associations in connection with services covered by any project agreement, the Contractor must secure the prior written approval of the Village manager. The Contractor shall utilize his/her best efforts to utilize subcontractors where principal place of business is located within the Village of Palmetto Bay, Florida.

23.4 Any subcontract with a subcontractor shall afford to the Contractor right against the subcontractor which correspond to those rights afforded to the Village against the Contractor herein, including but not limited to those rights of termination as set forth herein.

23.5 No reimbursement shall be made to the Contractor for any subcontractors that have not been previously approved by the Village for use by the Contractor.

23.6 The Contractor, subcontractors, suppliers, and laborers are prohibited from placing a lien on Village's property.

### **SECTION 24. NOTICES**

24.1 Whenever either party desires to give notice to the other, it must be given by hand delivery, facsimile, or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice and identified the following persons as the contracting officers.

**FOR CONTRACTOR:**

Ernesto Lopez, President  
Portland Services, LLC  
14541 SW 136<sup>th</sup> Street, Suite 102  
Miami, Florida 33186

**FOR VILLAGE:**

Village of Palmetto Bay  
8950 S.W. 152<sup>nd</sup> Street  
Palmetto Bay, Florida 33157  
Attention: Ron E. Williams, Village Manger

**WITH COPY TO:**

Eve A. Boutsis,  
Office of Village Attorney  
18001 Old Cutler Road, Suite 556  
Palmetto Bay, Florida 33157

**SECTION 25. CONSENT TO JURISDICTION**

25.1 The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this agreement or any project agreement. Venue of any action to enforce this agreement or any project agreement shall be in Miami-Dade County.

**SECTION 26. GOVERNING LAW**

26.1 This agreement and any project agreement shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 27. HEADINGS**

27.1 Headings are for convenience of reference only and shall not be considered in any interpretation of this agreement.

**SECTION 28. EXHIBITS**

28.1 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.

**SECTION 29. SEVERABILITY**

29.1 If any provision of this agreement or any project agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the

remainder of this agreement, and the application of such provisions to persons or situations other than those to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

### **SECTION 30. COUNTERPARTS**

30.1 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 31. WARRANTY OF AUTHORITY**

31.1 The signatories to this agreement warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this agreement and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

### **SECTION 32. PERFORMANCE BOND**

32.1 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 \$600,000 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.

32.2 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.

32.3 Recovery by the Village under a performance bond, construction bond or under insurance shall not limit the Contractor's indemnification obligations set forth 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 33. ADDITIONAL BOND**

33.1 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 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

**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.

**ATTEST:**

**VILLAGE OF PALMETTO BAY**

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Ron E. Williams  
Village Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

**ATTEST**

**[Contractor Company]**

\_\_\_\_\_  
Clerk

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

Name: Ernesto Lopez, President

Title: Portland Services, LLC

Date: \_\_\_\_\_

**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend and supplement the Agreement, SECTION 00500, and other provisions of the Contract Documents.

ARTICLE 1 -- DEFINITIONS

- 1.1 Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated:

Addenda - Written or graphic instruments issued prior to the opening of Bids which make additions, deletions, or revisions to the Contract Documents.

Agreement - The written contract between the Owner and the Contractor covering the Work to be performed; when other documents are attached to the Agreement they become part of the contract.

Application for Payment - The form furnished by the Building Official 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) submitted in response to this Invitation for Bid.

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 Building Official, which is signed by the Contractor and the Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement pursuant to Article 10.

Consultant - The Building Official or Engineer of Record.

Contract Documents - 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, Supplementary Conditions, Technical Specifications, 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 Owner, 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 - Anyone with whom the Owner has entered into a contractual 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 Building Official's recommendation of final payment.

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 Building Official 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.

Building Official - The Building Official or Engineer which prepared the Contract Documents, and which acts as the Owner's agent in 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.

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

General Requirements - Division 1 of the Technical Specifications.

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 Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein within the time specified, the Owner will consider to enter into an Agreement.

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

Owner - The public body or authority with whom the Contractor has entered into the Agreement and for whom the Work is to be provided.

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 Building Official 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 Building Official 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 Building Official, 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 Article 14, Paragraph 14.8. 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 Owner of the Contractor's obligation to complete all the Work in complete compliance with the Contract Documents. IF the Project is behind schedule, the Owner may direct the Contractor to expedite the Work at no additional cost to the Owner 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.

Supplementary Conditions - The part of the Contract Documents which make additions, deletions, or revisions to these General Conditions.

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

Technical Specifications - Those portions of the Contract Documents consisting of the General Requirements and written technical descriptions of products and execution of the Work.

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.

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 - 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.

ARTICLE 2 -- PRELIMINARY MATTERS

2.1 DELIVERY OF BONDS/INSURANCE CERTIFICATES

- A. When the Contractor delivers the signed Agreements to the Owner, the Contractor shall also deliver to the Owner such Bonds and Insurance Policies and Certificates as the Contractor may be required to furnish in accordance with the Contract Documents.

2.2 COPIES OF DOCUMENTS

- A. The Owner shall furnish to the Contractor the required number of copies of the Contract Documents specified in the Supplementary Conditions.

2.3 COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED

- A. The Contract Time will start to run on the commencement date stated in the Notice to Proceed.

2.4 STARTING THE PROJECT

- A. 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.

2.5 BEFORE STARTING CONSTRUCTION

- A. 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 Building Official any conflict, error, or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Building Official before proceeding with any Work affected thereby.
- B. The Contractor shall submit to the Building Official for review those documents called for under Section 01300 - Administrative Requirements.

2.6 PRECONSTRUCTION CONFERENCE

- A. A preconstruction conference attended by the Contractor, the Building Official and others as appropriate will be held to discuss the Work in accordance with the applicable procedures specified in the General Requirements.

2.7 FINALIZING SCHEDULES

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

### ARTICLE 3 -- CONTRACT DOCUMENTS: INTENT AMENDING, REUSE

#### 3.1 INTENT

- A. The Contract Documents comprise the entire agreement between the Owner 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 Owner, the Contractor, or the Building Official 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 Building Official in writing at once and before proceeding with the Work affected thereby, shall obtain a written interpretation, clarification, or correction from the Building Official.

#### 3.2 ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

- A. 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. Agreement, Section 00500
  3. Addenda
  4. Contractor's Bid (Bid Form)
  5. Supplementary Conditions

6. Notice Inviting Bids
7. Instructions to Bidders
8. General Conditions
9. Technical Specifications
10. Referenced Standard Specifications
11. Drawings

B. 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

### 3.3 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

A. 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 (pursuant to Article 10).

### 3.4 REUSE OF DOCUMENTS

A. Neither the Contractor, nor any Subcontractor or Supplier, nor any other person or organization performing any of the Work under a contract with the Owner 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.

## ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

### 4.1 AVAILABILITY OF LANDS

A. The Owner shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the Owner, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the Contractor exclusive occupancy of the lands or rights-of-way provided. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment; provided, that the Contractor shall not enter upon nor use any property not under the control of the Owner until a written temporary construction easement agreement has been executed by the Contractor and the property owner, and a copy of said easement furnished to the Building Official prior to said use; and, neither the Owner nor the

Building Official shall be liable for any claims or damages resulting from the Contractor's unauthorized trespass or use of any such properties.

#### 4.2 DIFFERING SITE CONDITIONS

- A. The Contractor shall notify the Building Official in writing of the following unforeseen conditions, hereinafter called differing site conditions, promptly upon their discovery (but in no event later than fourteen (14) days) and before they are disturbed:
  - 1. Subsurface or latent physical conditions at the site of the Work differing materially from those indicated, described, or delineated in the Contract Documents including; and
  - 2. Unknown physical conditions at the site of the Work of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.
- B. The Building Official will review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise the Owner in writing of the Building Official's findings and conclusions.
- C. If the Owner concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the difference.
- 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. If the Owner and the Contractor are unable to agree as to the amount or length thereof, a claim may be made herefore as provided in Articles 11 and 12.
- E. The Contractor's failure to give notice of differing site conditions within fourteen (14) days of their discovery or before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

#### 4.3 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 Owner or the Building Official by the owners of such Underground Utilities or by others. Unless it is expressly provided in the Supplementary Conditions and/or the Section entitled "Protection of Existing Facilities" of the General Requirements, the Owner and the Building Official 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 owner of such Underground Utility and give written notice thereof to that owner, and shall notify the Building Official in accordance with the requirements of the Supplementary Conditions and Section entitled "Protection of Existing Facilities" of the General Requirements.

#### 4.4 REFERENCE POINTS

- A. The Contractor shall furnish all lines, grades, and bench marks required for proper execution of the Work.
- B. 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.

#### 4.5 ASBESTOS, HAZARDOUS WASTE, OR TOXIC OR RADIOACTIVE MATERIALS

- A. 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 Owner and the Building Official and thereafter confirm any oral notice in writing. The Owner will promptly consult with the Building Official concerning such condition and determine the necessity of Owner'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 Owner through the Building Official.

### ARTICLE 5 – BONDS AND INSURANCE

#### 5.1 PERFORMANCE AND OTHER BONDS

- A. The Contractor shall furnish Performance and Payment Bonds, each in the amount set forth in the Supplementary Conditions as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. The Performance Bond shall remain in effect at least until one year after the date of Substantial Completion/Notice of Completion as applicable, except as otherwise provided by Law or Regulation or by the Contract Documents; provided, that the amount of said Performance Bond may be reduced to twenty-five (25) percent of the Contract Price, or \$1,000, whichever is greater or as greater as stated in the Supplemental General Conditions. The Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions.

- B. If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the Contractor shall within seven (7) days thereafter substitute another Bond and Surety, which must be acceptable to the Owner.

## 5.2 INSURANCE

- A. The Contractor shall purchase and maintain the insurance required under this Paragraph. Such insurance shall include the specific coverage set out herein and be written for not less than the limits of liability and coverage provided in the Supplementary Conditions, or required by law, whichever are greater. All insurance shall be maintained continuously during the life of the Agreement up to the date of Substantial Completion/Notice of Completion as applicable, pursuant to acceptance of the Work by the Owner's governing body, but the Contractor's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required.
- B. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the Owner by certified mail. All such insurance shall remain in effect until date of Substantial Completion and at all times thereafter when the Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.6. In addition, the insurance required herein shall name the Owner, the Building Official, and their officers, directors, agents, and employees as "additional insureds" under the policies.
1. Workers' Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" endorsement. The Contractor shall require each subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such Work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance. In case any class of employees is not protected, under the Workers' Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.
  2. Comprehensive General Liability: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to persons other than its employees or damage to property of the Owner or others arising out of any act or omission of the Contractor or its

agents, employees, or subcontractors. The policy shall also include protection against claims insured by usual personal injury liability coverage, a "protective liability" endorsement to insure the contractual liability assumed by the Contractor under the indemnification provisions in the General Conditions. To the extent that the Contractor's Work, or Work under its direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.

3. Comprehensive Automobile Liability: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, nonowned, or hired.
4. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either require each of its subcontractors to procure and to maintain Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplementary Conditions or insure the activities of its subcontractors in the Contractor's own policy, in like amount.
5. Builder's Risk: This insurance shall be of the "all risks" type, shall be written in completed value form, and shall protect the Contractor, the Owner, and the Building Official against risks of damage to buildings, structures, and materials and equipment. The amount of such insurance shall be not less than the insurable value of the Work at completion. Builder's risk insurance shall provide for losses to be payable to the Contractor, the Owner, and the Building Official as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the Contractor, the Owner, and the Building Official. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any external cause including windstorm, flood and earthquake. Allowable exclusions, if any, shall be as specified in the Supplementary Conditions.

## ARTICLE 6 -- CONTRACTOR'S RESPONSIBILITIES

### 6.1 SUPERVISION AND SUPERINTENDENCE

- A. The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be responsible for the means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incidental thereto. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

- B. The Contractor shall designate in writing and keep on the Work site at all times during its progress a technically qualified, superintendent, who shall not be replaced without written notice to the Owner and the Building Official. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall issue all its communications to the Owner through the Building Official.
- C. The Contractor's supervisor or superintendent shall be present at the site of the Work at all times while Work is in progress. Failure to observe this requirement shall be considered as suspension of the Work by the Contractor until such time as such supervisor or superintendent is again present at the site.

## 6.2 LABOR, MATERIALS, AND EQUIPMENT

- A. The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall furnish, erect, maintain, and remove the construction plant and any temporary works as may be required. The Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and the Contractor will not permit overtime Work or the performance of Work on Saturday, Sunday, or any legal holiday without the Owner's written consent given after prior written notice to the Building Official.
- B. Except as otherwise provided in this Paragraph, the Contractor shall receive no additional compensation for overtime Work, i.e., Work in excess of eight (8) hours in any one calendar day or forty (40) hours in any one calendar week, even though such overtime Work may be required under emergency conditions and may be ordered by the Building Official in writing. Additional compensation will be paid the Contractor for overtime Work only in the event extra Work is ordered by the Building Official and the change order specifically authorizes the use of overtime Work and then only to such extent as overtime wages are regularly being paid by the Contractor for overtime Work of a similar nature in the same locality.
- C. All costs of inspection and testing performed during overtime Work by the Contractor which is allowed solely for the convenience of the Contractor shall be borne by the Contractor. The Owner shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the Contractor.
- D. Unless otherwise specified in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, instrumentation, electronics, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and

incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work.

- E. All materials and equipment to be incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All Suppliers' warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the Owner. If required by the Building Official, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provisions of any such instructions will be effective to assign to the Building Official, or any of the Building Official's Consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraphs 9.9C and 9.9D.

### 6.3 ADJUSTING PROGRESS SCHEDULE

- A. The Contractor shall submit any adjustments in the progress schedule to the Building Official for acceptance in accordance with the provisions for "Submittals" in the General Requirements.

### 6.4 SUBSTITUTES OR "OR-EQUAL" ITEMS

- A. The Contractor shall submit proposed substitutes or "or-equal" items in accordance with the provisions for "Submittals" in the General Requirements.

### 6.5 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. The Contractor shall be responsible to the Owner and the Building Official for the acts and omissions of its subcontractors and their employees to the same extent as Contractor is responsible for the acts and omissions of its own employees. Nothing contained in this Paragraph shall create any contractual relationship between any subcontractor and the Owner or the Building Official nor relieve the Contractor of any liability or obligation under the prime Contract.

In no event shall Owner or its representatives have control over or charge of or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with Work, since these are solely Contractor's responsibility except as specifically provided in this agreement. Owner will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. Owner will not have control over or charge of and will

not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents, or employees, or of any other persons performing portions of the Work.

## 6.6 PERMITS

- A. Unless otherwise provided in the Supplementary Conditions 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 Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Owner 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 Owner 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 Building Official 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 Owner or the Building Official 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 Owner in the Contract Documents. The Contractor shall indemnify, defend and hold harmless the Owner and the Building Official 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.

## 6.7 LAWS AND REGULATIONS

- A. 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 Building Official. The Contractor shall indemnify,

defend, and hold harmless the Owner, the Building Official, 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.

#### 6.8 TAXES

- A. 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.

#### 6.9 USE OF PREMISES

- A. The Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to (1) the Project site, (2) the land and areas identified in and permitted by the Contract Documents, and (3) the other land and areas permitted by Laws and Regulations, rights-of-way, permits, and easements. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Owner or the Building Official by any such owner or occupant because of the performance of the Work, the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim through litigation. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold the Owner and the Building Official harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of Building Official, engineers, attorneys, and other professionals, and court costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against the Owner or the Building Official to the extent based on a claim arising out of the Contractor's performance of the Work.

#### 6.10 SAFETY AND PROTECTION

- A. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. all employees on the Work and other persons and organizations who may be affected thereby;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, mechanical equipment, electronics, instrumentation, and utilities not designated for removal, relocation, or replacement in the course of construction.
- B. The Contractor shall comply with all applicable Laws and Regulations (whether referred to herein or not) of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
  - C. The Contractor shall designate a responsible representative 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 Owner.

#### 6.11 SHOP DRAWINGS AND SAMPLES

- A. The Contractor shall submit shop drawings and samples in accordance with the provision for "Submittals" in the General Requirements.

#### 6.12 CONTINUING THE WORK

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

#### 6.13 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify, defend, and hold harmless the Owner; 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 Owner and/or the Consultant. Such indemnification by the Contractor shall include but not be limited to the following:
  1. 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;
  2. 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 Owner and/or the Consultant;

3. 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;
  4. 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 uncopied composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Contract;
  5. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the Owner or any other parties by the Contractor, its employees, or agents;
  6. Liabilities or claims arising directly or indirectly from the willful misconduct of the Contractor, its employees, or agents; and,
  7. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the Contractor.
- B. The Contractor shall reimburse the Owner, and the Consultant for all costs and expenses, (including but not limited to fees and charges of Building Official, engineers, attorneys, and other professionals, and court costs) incurred by said Owner, and the Building Official/Consultant in enforcing the provisions of this Paragraph 6.13.
- C. The indemnification obligation under this Paragraph 6.13 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.

#### 6.14 CONTRACTOR'S DAILY REPORTS

- A. The Contractor shall complete a daily report indicating manpower, major equipment, subcontractors, weather conditions, etc., involved in the performance of the Work. The daily report shall be completed on forms prepared by the Contractor and acceptable to the Building Official. A copy of the daily reports, for the period covered, will be submitted to the owner with each pay request.

#### 6.15 ASSIGNMENT OF CONTRACT

- A. The Contractor shall not assign, sublet, sell, transfer, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the Owner except as imposed by law. If the Contractor violates this provision, the Contract may be terminated at the option of the Owner. In such event, the Owner shall be relieved of all liability and obligations to the Contractor and to its assignee or transferee, growing out of such termination.

### ARTICLE 7 -- OTHER WORK

## 7.1 RELATED WORK AT SITE

- A. The Owner may perform other Work related to the Project at the site by the Owner's own forces, have other Work performed by utility owners, or let other direct contracts therefor which may contain General Conditions similar to these. If the fact that such other Work is to be performed was not noted in the Contract Documents, written notice thereof will be given to the Contractor prior to starting any such other Work.
- B. The Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the Owner, if the Owner is performing the additional Work with the Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such Work, and shall properly connect and coordinate the Work with theirs. The Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other Work. The Contractor shall not endanger any Work of others by cutting, excavating, or otherwise altering their Work and will only cut or alter their Work with the written consent of the Building Official and the others whose Work will be affected.
- C. If any part of the Contractor's Work depends for proper execution or results upon the Work of any such other contractor or utility owner (or Owner), the Contractor shall inspect and report to the Building Official in writing any delays, defects, or deficiencies in such Work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure to report such delays, defects, or deficiencies will constitute an acceptance of the other Work as fit and proper for integration with the Contractor's Work except for latent or nonapparent defects and deficiencies in the other Work.

## 7.2 COORDINATION

- A. If the Owner contracts with others for the performance of other Work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized and the extent of such authority and responsibilities will be provided in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither the Owner nor the Building Official shall have any authority or responsibility in respect of such coordination.
- B. Notwithstanding any other provision of this Contract to the contrary, the Building Official shall have no authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or the Contract Time. In the event any such deviation is sought, prior written approval from the Owner must be obtained.

ARTICLE 8 -- OWNER'S RESPONSIBILITIES

8.1 COMMUNICATIONS

- A. The Owner shall issue all its communications to the Contractor through the Building Official. Copies of all notices required under this Contract delivered by one party to the Building Official shall be simultaneously delivered to the other party. Upon request of Owner, Contractor will also furnish Owner with Copies of any other items delivered to Building Official.

8.2 PAYMENTS

- A. The Owner shall make payments to the Contractor as provided in Paragraphs 14.5 and 14.8.

8.3 LANDS, EASEMENTS, AND SURVEYS

- A. The Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.1 and 4.5. The Owner shall identify and make available to the Contractor copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by the Building Official in preparing the Drawings and Technical Specifications as set forth in Paragraph 4.2.

8.4 CHANGE ORDERS

- A. The Owner shall execute Change Orders as indicated in Paragraph 10.1D.

8.5 INSPECTIONS AND TESTS

- A. The Owner's responsibility in respect of certain inspections, tests, and approvals is set forth in Paragraph 13.3B.

8.6 SUSPENSION OF WORK

- A. In connection with the Owner's right to stop Work or suspend Work, see Paragraphs 13.4 and 15.1. Paragraphs 15.2 and 15.3 deal with the Owner's right to terminate services of the Contractor under certain circumstances.

ARTICLE 9 --VILLAGE'S STATUS DURING CONSTRUCTION

9.1 OWNER'S REPRESENTATIVE

- A. The Building Official will be the Owner's representative during the construction period. The duties and responsibilities and the limitations of authority as the Owner's representative during construction are set forth in the Contract Documents.

## 9.2 VISITS TO SITE

- A. The Building Official 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 Building Official will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Building Official 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.

## 9.3 PROJECT REPRESENTATION

- A. The Building Official 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 Supplementary Conditions.

## 9.4 CLARIFICATIONS AND INTERPRETATIONS

- A. The Building Official 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 Building Official may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

## 9.5 AUTHORIZED VARIATIONS IN WORK

- A. The Building Official 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 therefor as provided in Article 11 or 12.

## 9.6 REJECTING DEFECTIVE WORK

- A. The Building Official will have authority to reject Work which the Building Official believes to be defective and will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.3G, whether or not the Work is fabricated, installed, or completed.

## 9.7 CONTRACTOR SUBMITTALS, CHANGE ORDERS, AND PAYMENTS

- A. In accordance with the procedures set forth in the General Requirements, the Building Official 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 Building Official'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 Building Official's responsibilities as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with the Building Official's responsibilities in respect of Applications for Payment, see Article 14.

## 9.8 DECISIONS ON DISPUTES

- A. The Building Official 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 under Articles 11 and 12 in respect to changes in the Contract Price or Contract Time will be referred initially to the Building Official in writing with a request for formal decision in accordance with this Paragraph, which the Building Official 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 Building Official 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 Building Official within sixty (60) days after such occurrence unless the Building Official allows an additional period of time to ascertain more accurate data in support of the claim.
- B. When functioning as arbiter and judge, the Building Official will not show partiality to the Owner 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 Building Official 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 Paragraph 14.12) will be a condition precedent to any exercise by the Owner 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.

## 9.9 LIMITATION ON BUILDING OFFICIAL'S RESPONSIBILITIES

- A. Neither the Building Official's authority to act under this Article 9 or other provisions of the Contract Documents nor any decision made by the Building Official in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Building Official 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 Building Official 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 Building Official 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 of Paragraph 9.9C or 9.9D.
- C. The Building Official 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 Building Official will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
- D. The Building Official 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.

## ARTICLE 10 -- CHANGES IN THE WORK

### 10.1 GENERAL

- A. Without invalidating the Agreement and without notice to any surety, the Owner 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 Building Official. 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 Owner ("Change Order"), shall be binding on the Owner.

- B. If the Owner 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 therefor as provided in Articles 11 or 12.
- 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 Paragraph 13.3G.
- D. The Owner and the Contractor shall execute appropriate Change Orders covering:
  - 1. changes in the Work which are ordered by the Owner pursuant to Paragraph 10.1A;
  - 2. changes required because of acceptance of defective Work under Paragraph 13.7;
  - 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.
- E. 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. Owner 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 Owner and the Contractor agree on a cost ("agreed Cost") a Change Order shall be processed by the Owner and delivered to the Contractor for signature. Contractor shall not commence changes in the Work until it receives Owner'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 Owner approval, provided that the basis for adjustment of the Contract Sum shall be the unit prices agreed upon by the Owner upon the date of this Agreement.

G. In the event the Owner 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 Owner's Change Order Request upon receipt of the Owner'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 Owner. 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 Owner 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 Owner's authorized agent without a written Change Order from Owner. The Contractor shall keep separate records of all costs and time required to perform the Work. After review and approval by the Owner, the Contractor shall invoice Owner 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 Owner as soon as practical and comply with the provisions herein.

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 Owner in writing within 10 calendar days of the Contractor's receipt of said refinements and details that an adjustment is required; and (c) Owner 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.

## 10.2 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 Owner 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 Owner and the Contractor. If the Owner and the Contractor fail to agree upon the price of the eliminated Work, said price shall be determined in accordance with the provisions of Article 11.

## ARTICLE 11 -- CHANGE OF CONTRACT PRICE

### 11.1 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 Building Official 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 Building Official 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 Building Official in accordance with Paragraph 9.8A if the Owner 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 Paragraph 11.1B.
- 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:
  - 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 Paragraph 11.4.
  - 3. On the basis of the cost of Work (determined as provided in Paragraphs 11.2 and 11.3) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.4).

## 11.2 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 Owner, 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 Building Official 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 Building Official 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 Building Official, the Contractor shall furnish the Building Official 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 Owner 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 Building Official. 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 Building Official 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 Owner 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.

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 Owner for the total period of use. The Contractor may furnish cost data which might assist the Building Official in the establishment of the rental rate.

1. All equipment shall, in the opinion of the Building Official, 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 Building Official, 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 therefor.
5. Rental time will not be allowed while equipment is inoperative due to breakdowns.

E. 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 owner-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 Paragraphs (3), (4), and (5), following.
3. Payment for the equipment will be made in accordance with the provisions in Paragraph 11.2D, 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 Paragraph 11.2B, herein, which 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 Paragraph 11.4, herein.

### 11.3 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 Building Official in making estimates for payment for special services:
1. When the Building Official 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 Building Official, 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 Paragraph 11.4, herein, an allowance of five (5) percent will be added to invoices for special services.

- B. 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 Owner for review prior to the performance of any Work hereunder.

11.4 CONTRACTOR'S OVERHEAD AND PROFIT

- A. Extra Work ordered on the basis of time and materials will be paid for at the actual necessary cost as determined by the Building Official, plus allowances for overhead and profit. For extra Work involving a combination of increases and decreases in the Work the actual necessary cost will be the arithmetic sum of the additive and deductive costs. The allowance for overhead and profit shall include full compensation for superintendence, bond and insurance premiums, taxes, office expense, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Paragraphs 11.2B, C, and D, herein including extended overhead and home office overhead. The allowance for overhead and profit will be made in accordance with the following schedule:

<u>Actual Necessary Cost</u>	<u>Overhead and Profit Allowance</u>
Labor	ten (10) percent
Materials	ten (10) percent

- B. It is understood that labor, materials, and equipment may be furnished by the Contractor or by the subcontractor on behalf of the Contractor. When all or any part of the extra Work is performed by a subcontractor, the allowance specified herein shall be applied to the labor, materials, and equipment costs of the subcontractor, to which the Contractor may add five (5) percent of the subcontractor's total cost for the extra Work. Regardless of the number of hierarchical tiers of subcontractors, the five (5) percent increase above the subcontractor's total cost which includes the allowances for overhead and profit specified herein may be applied one time only for each separate Work transaction.

11.5 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, Building Official, engineers, estimators, attorneys' auditors accountants, purchasing and contracting agents, expeditors, 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 Paragraph

- 11.3F 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. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by Paragraph 11.4 above);
  5. 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.

## ARTICLE 12 -- CHANGE OF CONTRACT TIME

### 12.1 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 Building Official 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 extent of the claim with supporting data shall be delivered within sixty (60) days after such occurrence (unless the Building Official 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 Building Official in accordance with Paragraph 9.8 if the Owner 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 Paragraph 12.1A.
- 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 CPM schedule if a claim is made therefor as provided in Paragraph 12.1A. Such delays shall include: acts or neglect by the Owner or others performing additional Work as contemplated by Article 7, 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.

## 12.2 EXTENSIONS OF TIME FOR DELAY DUE TO INCLEMENT WEATHER

- A. Contract Times may be extended by the Building Official 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 Building Official in writing of the cause of delay and request an extension of Contract Times. The Building Official 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 paragraph entitled "Inclement weather delays" of the Supplementary Conditions. 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.

## ARTICLE 13 -- WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

### 13.1 WARRANTY AND GUARANTEE

- A. The Contractor warrants and guarantees to the Owner and the Building Official that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of defects known to the Owner or Building Official shall be given to the Contractor. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

### 13.2 ACCESS TO WORK

- A. The Building Official, other representatives of the Owner, 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.

### 13.3 TESTS AND INSPECTIONS

- A. The Contractor shall give the Building Official 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 Owner require any Work to specifically be inspected, tested, or approved, the Contractor shall pay all costs in connection therewith. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Owner's or the Building Official'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 Owner (unless otherwise specified). The Contractor will pay for failed tests and "stand-by time" by the Laboratory Tests personnel and others.

- C. The Building Official will make, or have made, such inspections and test as the Building Official deems necessary to see that the Work is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in the Supplementary Conditions, the cost of such inspection and testing will be borne by the Owner. 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 Building Official, as well as the cost of subsequent re-inspection and retesting. Neither observations by the Building Official 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 Building Official 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 Building Official, it must, if requested by the Building Official, be uncovered for observation. Such uncovering shall be at the Contractor's expense unless the Contractor has given the Building Official timely notice of the Contractor's intention to perform such test or to cover the same and the Building Official has not acted with reasonable promptness in response to such notice.
- F. If any Work is covered contrary to the written request of the Building Official, it must, if requested by the Building Official, be uncovered for the Building Official's observation and replaced at the Contractor's expense.
- G. If the Building Official considers it necessary or advisable that covered Work be observed by the Building Official or inspected or tested by others, the Contractor, at the Building Official's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Building Official 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 Building Official, 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 therefor as provided in Articles 11 and 12.

#### 13.4 OWNER MAY STOP THE WORK

- A. 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 Owner 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 Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

#### 13.5 CORRECTION OR REMOVAL OF DEFECTIVE WORK

- A. If required by the Building Official, 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 Building Official, 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 Building Official, engineers, attorneys, and other professionals made necessary thereby.

#### 13.6 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 Owner and in accordance with Owner's written notification, either correct such defective Work, or, if it has been rejected by the Owner, 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 Owner 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 Building Official, 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 Paragraph 13.6, 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.

### 13.7 ACCEPTANCE OF DEFECTIVE WORK

- A. If, instead of requiring correction or removal and replacement of defective Work, the Owner prefers to accept the Work, the Owner may do so. The Contractor shall bear all direct, indirect, and consequential costs attributable to the Owner's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Owner shall be entitled to an appropriate decrease in the Contract Price.

## ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.1 SCHEDULE OF VALUES (LUMP SUM PRICE BREAKDOWN)

- A. The schedule of values or lump sum price breakdown established as provided in the General Requirements shall serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Building Official.

### 14.2 UNIT PRICE BID SCHEDULE

- A. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.3 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 Building Official 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.
- 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 the Supplementary Conditions, 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 the Supplementary Conditions. 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 Owner's interest therein, all of which will be satisfactory to the Owner.

#### 14.4 CONTRACTOR'S WARRANTY OF TITLE

- A. 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 Owner no later than the time of final payment free and clear of all liens.

#### 14.5 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

- A. The Building Official 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 Owner, or return the Application to the Contractor indicating in writing the Building Official'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 Building Official's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.5B) become due and when due will be paid by the Owner to the Contractor.
- B. The Owner may refuse to make payment of the full amount recommended by the Building Official because claims have been made against the Owner 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 Owner to a credit against the amount recommended, but the Owner must give the Contractor written notice within seven (7) days (with a copy to the Building Official) stating the reasons for such action.

#### 14.6 PARTIAL UTILIZATION

- A. The Owner 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 Owner plans to exercise said right, the Contractor will be notified in writing by the Owner, 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 Owner 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 Owner and the Contractor's one year correction period shall commence only after the date of Substantial Completion for the Work.

#### 14.7 SUBSTANTIAL COMPLETION

- A. When the Contractor considers the Work ready for its intended use the Contractor shall notify the Owner and the Building Official in writing that the Work is substantially complete and request that the Building Official prepare a Certificate of Substantial Completion/Notice of Completion. Within a reasonable time thereafter, the Owner, the Contractor, and the Building Official shall make an inspection of the Work to determine the status of completion. If the Building Official does not consider the Work substantially complete, the Building Official will notify the Contractor in writing giving the reasons therefor. If the Building Official considers the Work substantially complete, the Building Official will prepare and deliver to the Owner for its execution and recordation the Certificate of Substantial Completion/Notice of Completion signed by the Building Official 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.

#### 14.8 FINAL APPLICATION FOR PAYMENT

- A. After the Contractor has completed all correction Work referred to in Paragraph 14.7 and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in the General Requirements) and other documents, all as required by the Contract Documents, and after the Building Official 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 Owner) of all liens arising out of or filed in connection with the Work.

#### 14.9 FINAL PAYMENT AND ACCEPTANCE

- A. If, on the basis of the Building Official's observation of the Work during construction and final inspection, and the Building Official's review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the Building Official is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Building Official will, within fourteen (14) days after receipt of the final

Application for Payment, indicate in writing the Building Official's recommendation of payment and present the Application to the Owner for payment.

- B. After acceptance of the Work by the Owner's governing body, the Owner 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.
  - 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 Owner 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 Owner to cover the value of all such uncompleted or uncorrected items.

#### 14.10 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 Owner will release to the Contractor the retainage funds withheld pursuant to the Agreement, less any deductions to cover pending claims against the Owner pursuant to Paragraph 14.5B.
- 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 Paragraph 14.10A, the amounts withheld pursuant to the provisions of Paragraph 14.9B 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 Owner within said thirty (30) days. Otherwise, the Contractor does hereby waive any and all claims for all monies withheld by the Owner under the Contract to cover two (2) times the value of such remaining uncompleted or uncorrected items.

#### 14.11 CONTRACTOR'S CONTINUING OBLIGATION

- A. 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 Building Official, nor the issuance of a Certificate of Substantial Completion/Notice of Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the Owner, nor any act of acceptance by the Owner 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.

#### 14.12 FINAL PAYMENT TERMINATES LIABILITY OF OWNER

- A. Final payment is defined as the last progress payment made to the Contractor for earned funds, less retainage as applicable, less deductions listed in Paragraph 14.9B herein. The acceptance by the Contractor of the final payment referred to in Paragraph 14.9 herein, shall be a release of the Owner 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 Owner or of any person relating to or affecting the Work, except demands against the Owner for the remainder, if any, of the amounts kept or retained under the provisions of Paragraph 14.9 herein; and excepting pending, unresolved claims filed prior to the date of the Certificate of Substantial Completion/Notice of Completion.

### ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

#### 15.1 SUSPENSION OF WORK BY OWNER

- A. The Owner, acting through the Building Official, 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 Building Official 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 therefor as provided in Articles 11 and 12.

#### 15.2 TERMINATION OF AGREEMENT BY OWNER (CONTRACTOR DEFAULT)

- A. In the event of default by the Contractor, the Owner may give ten (10) days written notice to the Contractor of Owner'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 Building Official'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 Owner may then issue the Notice of Termination.
- B. In the event the Agreement is terminated in accordance with Paragraph 15.2A, herein, the Owner may take possession of the Work and may complete the Work by whatever method or means the Owner 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 Owner. If such cost is less than the balance which would have been due, the Contractor shall not have claim to the difference.

#### 15.3 TERMINATION OF AGREEMENT BY OWNER (FOR CONVENIENCE)

- A. The Owner may terminate the Agreement at any time if it is found that reasons beyond the control of either the Owner or Contractor make it impossible or against the Owner's interests to complete the Work. In such a case, the Contractor shall have no claims against the Owner 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 Building Official in accordance with the procedure prescribed for the making of the final application for payment and payment under Paragraphs 14.8 and 14.9.

#### 15.4 TERMINATION OF AGREEMENT BY CONTRACTOR

- A. The Contractor may terminate the Agreement upon ten (10) days written notice to the Owner, whenever: (1) the Work has been suspended under the provisions of Paragraph 15.1, herein, 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 Owner within this time period; or, (2) the Owner should fail to pay the Contractor any monies due him in accordance with the terms of the Contract Documents and within 60 days after presentation to the Owner by the Contractor of a request therefor, unless within said 10-day period the Owner 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 Owner except for those claims specifically enumerated in Paragraph 15.3, herein, and as determined in accordance with the requirements of said paragraph.

### ARTICLE 16 -- MISCELLANEOUS

#### 16.1 GIVING NOTICE

- A. 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.

#### 16.2 TITLE/OWNERSHIP TO MATERIALS FOUND ON THE WORK

- A. The Owner 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 Owner. Any material desired to be retained by the Owner 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 Owner, as directed by the Owner, 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 Owner and Building Official in writing, without charge, any such materials which meet the requirements of the Contract Documents. Once the Owner releases ownership of the material, it shall become the property of the Contractor, who shall dispose of it in manner satisfactorily to the Building Official, as provided for by the Contractor, at no extra cost to the Owner.

### 16.3 RIGHT TO AUDIT

- A. If the Contractor submits a claim to the Owner for additional compensation, the Owner 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 Owner deems desirable during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the Owner for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the Owner.

- END OF SECTION -

CHANGE ORDER

TO : Village of Palmetto Bay

Project: Coral Reef Park Pedestrian Bridge

Contractor: Portland Construction

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 OF PALMETTO BAY  
A Florida Municipal Corporation

CONTRACTOR  
Portland Construction

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 1**



14540 SW 136<sup>th</sup> Street, Unit 102  
Miami, FL 33186  
Telephone: (305) 969-3136  
Facsimile: (305) 969-2036  
www.portlandsvcs.com

August 5, 2009.

**Mr. Ed Silva**  
**Building Official**  
**Village of Palmetto Bay**

Ref.: **Bridge Repair at Coral Reef Park**

Dear Mr. Silva,

We are pleased to submit our proposal to provide Design Build services to repair / replace the existing bridge at the Coral Reef Park.

**Items provided by Portland Construction Company:**

- Structural Analysis at the existing bridge to assess current structural conditions.
- Demolition of existing damaged members and disposal of all debris.
- Removal of existing wooden floor
- New design of steel structure (stringer beams and Floors) keeping current existing shape and size.
- Furnish and install new metal structure.
- Concrete repairs at both supporting pile caps and columns
- Install new floor (concrete or wood depending on load capacity of the existing foundation).

**Price not to exceed: \$84,500.00 (Eighty four thousand, five hundred dollars).**

**Assumptions:**

- a. Existing concrete foundation in good condition and able to withstand new load.
- b. New metal stringers manufactured as girders and will be exposed (No cladding around them).





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**Items excluded by Portland Construction Company:**

- Cultured Stone Cladding at the bridge walls and concrete structure.
- Lanterns on the 2 columns on each end.
- Electrical work.
- Asbestos Removal if any
- Permits Fees

We hope this proposal meets with your needs and your budget. We look forward to receiving your business.

Please, feel free to contact us if you have any questions.

Very Truly Yours,

  
Ernesto Lopes  
President

10 Years providing excellence in construction