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**RESOLUTION NO. 2010-13**

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**A RESOLUTION OF THE VILLAGE COMMISSION OF THE  
VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING  
THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE  
THE AGREEMENT FOR THE RECREATION CENTER  
HARDENING PROJECT BETWEEN THE VILLAGE AND  
BEJAR CONSTRUCTION. INC.; PROVIDING FOR AN  
EFFECTIVE DATE**

WHEREAS, the Village of Biscayne Park entered into an agreement with the State of Florida, Division of Emergency Management on December 15, 2009, to receive a state funded sub-grant in the amount of \$60,000 for the hardening of the existing Ed Burke Recreation Center facility; and

WHEREAS, the Village of Biscayne Park entered into an agreement with the Safe Neighborhood Parks Bond Program on December 1, 2009, to receive a matching grant in the amount of \$55,000 for interior renovations of the existing Ed Burke Recreation Center facility; and

WHEREAS, the Village of Biscayne Park issued a Request for Bids for Phase II Alterations and Phase II Miscellaneous Repairs to the Ed Burke Recreation Center on March 1, 2010; and

WHEREAS, the Village received a total of seven (7) proposals; and

WHEREAS, negotiations pertaining to the services to be performed were undertaken in accordance with the Consultant Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes; and

WHEREAS, staff recommends that the contract be awarded to Bejar Construction, Inc.; and



# **AGREEMENT**

**THIS AGREEMENT** is made and entered into this 15th day of June, 2010, between VILLAGE OF BISCAYNE PARK , a Florida municipal corporation, (hereinafter referred to as "Village"), located at 640 Northeast 114<sup>th</sup> Street, Biscayne Park, Florida and Bejar Construction, Inc., a Florida corporation (hereinafter referred to as "Contractor"), located at 6326 SW 191<sup>st</sup> Avenue, Pembroke Pines, Florida for Phase II Alterations and Phase II Miscellaneous Repairs and all related items specified in the plans and specifications at The Ed Burke Park Recreation Center (hereinafter referred to as the "Property"), in accordance with the Contract Documents, hereinafter defined.

That the Village and Contractor for the consideration hereinafter named, agree as follows:

## **ARTICLE 1**

### **THE CONTRACT DOCUMENTS**

The contract documents are enumerated with the following order of priority:

- A.) This Agreement;
- B.) Exhibits "A" through "H" of the Bid Documents
- C.) Any written interpretations and modifications of the Contract Documents to be made from time to time by the Village's Representative, as hereinafter provided in this Agreement.

Any of the Contract Documents not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto.

## **ARTICLE 2**

### **SCOPE OF WORK**

The work to be performed consists of "Phase II Alteration" and "Phase II Miscellaneous Repairs".

Phase II Alteration includes strengthening of the existing building by installation of new reinforcing at the exterior walls of this facility as shown on plans, modifications and strengthening of the roof joists, including anchoring the bearing ends of the existing wood joists to the existing tie beams by new metal straps, installation of new impact resistance windows and doors as shown on plans, exterior and interior painting of the building, removing and replacing the existing double ceiling at the area that the roof joist

will be modified, including replacing the light fixtures in this area to match existing and all related items specified on plans and specifications.

Phase II Miscellaneous Repair, includes re-roofing of the existing building, new kitchen counter and window, replacing existing floor tiles with new ceramic or vinyl tiles in the game room, new handicap door, new awning above the new kitchen counter and all related items specified on plans and specifications.

The Contractor will provide all materials, supervision, labor, tools and equipment necessary to carry out the work in strict accordance with the Contract Documents, and perform all work that is reasonably inferable there from as being necessary to accomplish the intent of the Contract Documents, and as required by all applicable laws, ordinances and rules and regulations and any amendments thereto. The work to be performed shall hereinafter be referred to as the "Work." Contractor is responsible for providing generator as part of his contract at the job site to provide electricity for his tools to complete the work.

### ARTICLE 3

#### TIME OF COMMENCEMENT & COMPLETION

The Work to be performed under this Agreement shall be commenced within twenty one (21) days of the date that Village notifies Contractor to commence the Work, unless otherwise approved in writing by the Village for the extension of Work Commencement. The work shall be completed within One Hundred and Twenty (120) calendar days from the date of commencement subject to any authorized extensions of time as set forth in Article 8 of this Agreement. All Work shall be performed in an expeditious manner.

### ARTICLE 4

#### PAYMENTS

In no event shall any payments be made until after the Notice of Commencement has been duly completed and recorded in accordance with governing authority and a certified copy has been posted prominently upon the Property. Thereafter, payments shall be made in accordance with the following schedule:

4.1 Thirty days following the commencement of the work and every thirty days thereafter until the completion of the works the Contractor shall submit to the Village Manager a request for a progress payment supported by the following: A) a sworn and certified progress payment affidavit which recites that all laborers, material suppliers and subcontractors dealing with the Contractor have been paid in full up through the date of the affidavit, B) partial releases of lien from Contractor and any lienors serving a notice to owner to Village prior to payment, C) evidence that payment of any indebtedness incurred with respect to the Work of Contractor, as may be required

by Village, and D) evidence that all Work has been performed as required pursuant to the Contract Documents up to the time of the request for payment. Prior to issuance of any progress payments, the Work shall be inspected by the Village's Representative and any governing authorities as may be required.

4.2 Upon compliance with the requirements of Article 4.1 the Village shall pay 90% of the progress payment to the Contractor but the Village may, in its discretion, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Contractor. The retained amount shall be held by the Village and paid as a Final Payment pursuant to the terms of Article 5.

4.3 Payments may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Village's property, (6) failure of the Work to progress satisfactorily or according to schedule, or (7) failure to carry out the Work in accordance with the Contract Documents.

4.4 No payments made under this Agreement shall be evidence of performance of this Agreement, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use of the Work by the Village constitute acceptance of the Work hereunder or any part thereof.

## ARTICLE 5

### FINAL PAYMENT

5.1 The Village shall make the final payment representing all outstanding retained funds within One Hundred Twenty (120) days after completion of the Work provided the Agreement be then fully performed and Contractor has complied with the other requirements set forth in Article 4 and this Article 5.

5.2 Final payment shall not be due until the Contractor has delivered to the Village a complete release of all liens and release or waivers of lien from all lienors.

5.3 Final payment may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Village's property, (6) failure of the Work to progress satisfactorily or according to schedule, or (7) failure to carry out the Work in accordance with the Contract Documents.

5.4 Village may, in its discretion, make all or any portion of any of the final payments by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said payment from the sum due Contractor. In the event there are claims which exceed the final payment amount, no payment shall be made until Contractor deposits the amount of any such deficiency with Village.

5.5 The making of final payment shall not constitute a waiver of any claims by the Village.

## ARTICLE 6

### VILLAGE'S REPRESENTATIVE

6.1 ARBAB ENGINEERING, INC., shall be the Village's Representative during construction and until issuance of the final Certificate for Payment and shall hereinafter be referred to as the "Village's Representative" or "Engineer of Record". Arbab Engineering, Inc. "the engineer of record" may notify the contractor in writing of a designated Inspector to document and record daily work progress as required by progress inspections.

6.2 The Village's Representative and Inspector shall at all times have access to the Work.

6.3 The Village's Representative will make periodic visits to the site to familiarize himself with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents.

6.4 Based on such inspections, the Village's Representative will determine the amount owing to the Contractor and will issue a certificate authorizing payment in accordance with Article 4 of this Agreement. No issuance of a payment shall constitute an acceptance of any Work not in accordance with the Contract Documents.

6.5 The Village's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. He will make decisions on all claims and disputes between the Village and the Contractor. His decisions as it relates to the following items shall be final: interpretation and requirements of the Contract Documents, conformance of Contractor's Work with the Contract Documents, all matters relating to artistic effect of the Work, and minor changes in the Work.

6.6 The Village's Representative will have authority to reject Work, which does not conform to the Contract Documents. In such event Contractor shall have forty-eight (48) hours to correct such Work to the reasonable satisfaction of Village's Representative, or be deemed in default of the contract.

## ARTICLE 7

### CONTRACTOR

7.1 Contractor represents that it is a properly qualified and licensed Contractor in good standing with the governing authorities of the State of Florida and is a corporation in good standing, organized and existing under the laws of the State of Florida. Contractor further represents that it has read, examined and understands the Contract Documents and that it is well qualified and able to perform this Work; that it has a sufficient number of qualified workers to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work, and is financially capable of performing this Agreement.

7.2 Contractor warrants and represents to the Village that it has visited the site of the Work, examined the actual job condition and that Contractor is familiar with local conditions and all things required that will have a bearing on performance of Contractor's work and Contractor's costs, including but not limited to traffic maintenance, disposal, handling and storage of the materials, access and restrictions to the units, access roads to the site, the conditions of the work area, and the character of the Work. Contractor shall be responsible to perform any additional inspections and conduct any necessary tests as may be required to determine the suitability of the site conditions, including, but not limited to, underground conditions and ground water table conditions. Contractor acknowledges that the Village and the Village's Representative have made no representations and hereby disclaim any responsibility for subsurface conditions. Failure on the part of Contractor to completely or properly evaluate any factors of costs prior to signing this Agreement shall not form a basis for additional compensation from the Village. Furthermore, it is Contractor's sole responsibility to locate all existing utilities prior to starting the Work. Should Contractor damage any existing utilities, it shall promptly repair the damage at no additional cost to Village. Execution of this Agreement shall be conclusive evidence that Contractor has investigated and is satisfied as to the site conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of the Contract Documents.

7.3 The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. All Work shall be performed by craftsmen skilled in the trades and application of materials involved.

7.4 Unless otherwise specifically noted, the Contractor shall provide and pay for all permits, licenses, governmental charges, inspection fees, labor, materials, equipment, tools, construction, equipment, machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work. The Village shall supply water and sanitary facilities. The Village shall designate an area in which the Contractor may store a reasonable supply of materials and equipment, however, the

Village shall assume no liability for said materials and equipment. It shall be the Contractor's responsibility to maintain such storage area in a safe and orderly fashion.

7.5 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ any unfit person or anyone not skilled in the task assigned to him. The Village may require the Contractor to remove any employee the Village deems incompetent, careless, insubordinate or otherwise objectionable to work on this project.

7.6 The Contractor warrants to the Village and the Village's Representative that all materials incorporated in the Work will be new unless otherwise specified, and that all Work will be of first quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. Contractor shall not substitute any materials for those materials specified by the Contract Documents without the prior written consent of Village and Village Representative.

7.7 The Contractor shall pay all sales (if applicable), consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Work.

7.8 The Contractor shall give all notices, and warrants and represents that the Work when completed will comply with all laws, ordinances, rules, regulations, and orders of any public authority and all amendments thereto, and all other authorities having jurisdiction over the Work and Property. Contractor acknowledges that Village does not have the knowledge to determine compliance with the foregoing items and is relying on Contractor's knowledge and expertise of same. Contractor shall be liable for any deviation from any laws, ordinances, rules, regulations, and orders of any public authority even if in strict compliance with the Contract Documents. Contractor shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to, the cost of removing existing work, the cost of replacing any work with work conforming to the applicable requirements and any attorney's fees or other expenses incurred by Village in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

7.9 The Contractor shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor. The Contractor shall confine all operations, equipment, apparatus and storage of materials to the immediate area of work to the greatest possible extent. The Contractor must be present to accept delivery of all equipment and materials shipments. The Village's personnel will not knowingly accept, unload or store anything delivered to the site addressed to the Contractor or for the Contractor's use. Inadvertent acceptance of delivery shall not constitute acceptance or responsibility for any of the materials or equipment. It shall be

the Contractor's responsibility to assume all liability for equipment and material delivered to the site.

7.10 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work Contractor shall remove, at his sole cost and expense, all his waste materials and rubbish from and about the Property as well as his tools and equipment, shall clean all surfaces, and shall leave the Work "broom clean" or its equivalent, daily except as otherwise specified. Contractor agrees to immediately repair at its sole cost and expense all damages to the Property arising from or relating to Contractor's performance of the Work including but not limited to damages to paving, landscape items, sprinkler heads, underground sprinkler or water lines, electric conduits, telephone cables, gas lines or other above or underground equipment.

7.11 The Contractor shall indemnify and hold harmless the Village and the Village's Representative and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees, at both the trial and appellate level, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and/or (3) by any false representation, breach of warranty or breach of any of the covenants or obligations of Contractor set forth in this Agreement, or (4) for any payment or performance made by Village to any third party in order to fully or partially perform or discharge any valid and binding liability or obligation of Contractor in relation to the Work. In any and all claims against the Village or the Village's Representative or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workmen's compensation acts, disability benefit acts or other employee benefit acts. One Thousand Dollars (\$1,000.00) of the sums payable hereunder is specific consideration for this indemnity. The provisions of this paragraph shall survive termination of this Agreement.

7.12 The Contractor shall coordinate and provide the schedules in a manner to complete the project in the most expeditious and economical manner possible. The Contractor shall not be responsible for the painted finish of the Work. The repaired surface must be finished in proper condition to receive specified paint systems and/or products.

7.13 Contractor agrees that his Work shall not unreasonably interfere with the normal operation of the Property. Contractor shall ascertain, observe and comply with all rules and regulations in effect on the site, including, but not limited to parking and traffic

regulations, security restrictions, and hours of allowable ingress and egress. Interference with or inconvenience to residents shall be kept to a minimum. All required exits, doors, passageways, elevators and walks are to be kept unobstructed wherever possible. Hours of work are permitted on the Property between 8:30 am and 5:30 pm every day except Sundays and National Holidays.

## ARTICLE 8

### SUBCONTRACTS

Contractor may subcontract portions of the Work contemplated under this Agreement upon submission and approval of the Village of its proposed subcontractor. Contractor hereby assigns to Village all its contract rights with respect to subcontractors and material and equipment suppliers that provided work, materials and equipment to this project in accordance with the Contract Documents, including but not limited to all Contractor's rights to make claims regarding quality of the work, merchantability of the materials and equipment, feasibility and fitness for the particular purpose of materials, equipment and workmanship described in this Agreement. It is further agreed that all subcontracts and material and equipment purchase contracts entered into by Contractor or its subcontractors or material suppliers, shall contain a provision stating that the Village may bring claim directly against any subcontractor of Contractor for breach of Contract, warranty rights, quality of workmanship, merchantability of equipment, feasibility and fitness for the particular purpose of materials and equipment and workmanship, and create third party beneficiary rights of Village in said agreements. It is further agreed and understood that such assignment(s) is part of the consideration to Village for entering into this Agreement with Contractor and may not be withdrawn. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against Village or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the Village, in addition to Contractor, to make claim for damages or indemnification against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects of deficiencies in the Work or materials and equipment.

## ARTICLE 9

### TIME

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

9.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which Village's Representative may determine justifies the delay, then the Contract Time shall be extended by written Change Order for such reasonable time as the Village's Representative may determine. All requests for extensions of time other than those

associated with changes in the Work, must be submitted in writing to Village representative within two (2) business days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

9.3 In the event that Contractor is delayed in the progress of the Work, and is granted an extension of time in which to perform the Work; in no instance will Contractor be entitled to increased costs, compensation or damages as a result of delay. Notwithstanding the provisions of Article 22 of this Agreement, all rights to claim damages by reason of delay are hereby waived by the Contractor.

9.4 The parties agree that time is of the essence in the performance of this Agreement. Completion of the Work under this Agreement shall be no more than One Hundred Twenty (120) calendar days from the date of commencement as defined in Article 3 subject to any authorized extensions of time as indicated by a written change order pursuant to paragraph 9.2 of this Article 9. In the event the Work is not completed within One Hundred Twenty (120) calendar days from the commencement date and has not been extended by change order, the Village shall be entitled to collect liquidated damages for delay. Contractor and Village agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the impossibility of determining these damages, the sum of Five Hundred Dollars (\$500.00) for each calendar day shall be assessed for each calendar day of delay in completion of the Work as liquidated damages. It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties. This provision for liquidated damages for delay shall not affect the Village's right to terminate this Agreement as provided in Article 16. The Village's exercise of their right to terminate this Agreement shall not release the Contractor from his obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Village or, at the Village's option may be deducted from future payments that may be due and owing to Contractor.

## ARTICLE 10

### PROTECTION OF PERSONS & PROPERTY

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, including but not limited to the erection of lighting and barricades around all trenched areas. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall comply with all regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for

whose acts any of them may be liable, shall be remedied by the Contractor at his sole cost and expense.

## ARTICLE 11

### CONTRACTOR'S LIABILITY INSURANCE

11.1 The Contractor shall purchase and maintain such insurance as will protect him from claims under Worker's Compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death and from claims for damages to property which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by any of them. The Contractor shall purchase and maintain insurance coverage in the amounts set forth on the Certificate of Insurance attached hereto as Exhibit "C."

11.2 The Village shall be named as an additional insured in all policies required to be maintained hereunder with the exception of the Worker's compensation insurance. As a condition precedent to entitlement to payment, Contractor must maintain the above-described coverage and furnish a copy of all policies to the Village. Certificates of Insurance shall be delivered to the Village prior to the commencement of the Work, and said certificates shall contain a provision that coverage afforded under the policies will not be cancelled without thirty (30) days prior written notice to the Village. In the event Contractor should fail to pay the insurance premiums, the Village, at its option, may pay the premiums and deduct said amount from the contract sum.

11.3 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- A. Premises operation coverage as applicable.
- B. Independent contractors protective.
- C. Products and completed operations.
- D. Personal injury liability and employment exclusion deleted.

The insurance required by this Agreement shall be written for not less than the following limits or greater if required by law:

- A. Worker's Compensation, Statutory.
- B. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractor's Protective; Products & Completed Operations; Broad Form Property Damage):

1. Bodily Injury: (i) \$1,000,000.00 Each Occurrence; (ii) \$2,000,000.00 Aggregate.
2. Property Damage: (i) \$1,000,000.00 Each Occurrence; (ii) \$2,000,000.00 Aggregate.
3. Contractual Liability: Bodily Injury: (i) \$1,000,000.00 Each Occurrence; (ii) \$2,000,000.00 Aggregate.
4. Business Auto Liability (including owned, non-owned and hired motor vehicles): Bodily Injury: (i) \$1,000,000.00 Each Person; (ii) \$1,000,000.00 Each Occurrence.
5. If the General Liability coverage is provided by a Commercial Liability policy, the General Aggregate shall be not less than \$1,000,000.00 and it shall apply, in total, to this Project only. Fire Damage Limit shall be no less than \$1,000,000.00 on any one Fire. Medical Expense Limit shall be not less than \$1,000,000.00 on any one person.
6. Umbrella Excess Liability: \$1,000,000.00 over primary insurance.

## ARTICLE 12

### CORRECTION OF WORK & WARRANTY

12.1 The Contractor shall, within forty eight (48) hours of written notice from the Village, correct any work that fails to conform to the requirements of the Contract Documents and unconditionally guarantees and warrants that Contractor shall correct any defects due to faulty materials, equipment, and/or Workmanship which appear within a period of Ten (10) years from the Date of Completion of the Work. Those items specifically covered by the Manufacturers' warranties shall in no way be deemed to limit Contractor's warranty herein and are in addition to and not in lieu of but is in addition to any other warranties, express or implied, which may be provided by law.

12.2 The Contractor shall bear all costs of correcting such defective work. This obligation shall survive termination of this Agreement.

12.3 Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents or law. The establishment of the time periods set forth in paragraph 12.1 above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations and any damages caused by the Contractor including but not limited to any

action commenced by the Village for negligence, strict liability, breach of contract or warranties.

### ARTICLE 13

#### SHOP DRAWINGS

13.1 If requested by the Village's Representative, the Contractor shall review, approve and submit to Village for review and approval by the Village's Representative, drawings, product data, samples and similar submittals, with reasonable promptness and in such sequence as to cause no delay in the Work.

13.2 By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that he has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

13.3 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Village's Representative's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Village's Representative in writing of such deviation at the time of submittal and the Village's Representative has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Village's Representative's approval thereof.

13.4 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved in writing by the Village's Representative. Such Work shall be in accordance with approved submittals.

### ARTICLE 14

#### CHANGES IN THE WORK

Any changes in the Work or any adjustment in the Contract Sum or the contract time shall only be made upon written change order executed by the Village and Contractor. If Contractor proceeds with such work without obtaining a written change order it shall be assumed that Contractor has performed such work at no additional charge. The requirement for written change orders executed by the Village and Contractor under this Article cannot be waived.

### ARTICLE 15

#### TERMINATION BY THE CONTRACTOR

If the Village's Representative fails to issue a Certificate of Payment for a period of thirty (30) days through no fault of the Contractor, or if the Village fails to make payment thereon for a period of thirty (30) days, the Contractor may, after seven (7) days written notice to the Village and the Village's Representative, terminate this Agreement and recover from the Village payment for actual expenditures for labor, materials, subcontractors, equipment and reasonable profit thereon not to exceed ten percent (10%). This sum shall be Contractor's sole remedy under this Agreement.

## ARTICLE 16

### TERMINATION BY THE VILLAGE

16.1 If the Contractor cannot satisfy the conditions and obligations imposed by the Contract Documents, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to supply properly skilled workers, or proper materials in accordance with the Contract Documents, or if he fails to make prompt payment to subcontractors or for materials or labor, or disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the Village, upon certification by the Village's Representative that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor twenty-four (24) hours written notice, terminate this Agreement and take possession of the site and of all materials, owned by the Contractor and finish the Work by whatever method the Village deems expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

16.2 If the unpaid balance of the Contract Sum exceeds the cost of completing and correcting the Work, including compensation for the Village Representative's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Village. This provision shall in no way limit Village's right to claims for any additional damages including but not limited to delay and consequential damages. This obligation for payment shall survive termination of this Agreement.

**ARTICLE 17**

**TRANSFER OF LIEN**

In the event any liens should be filed against the Property by any subcontractors or material suppliers, in connection with labor or services performed, the materials incorporated into or delivered to the Property, Contractor shall indemnify and hold Village harmless against all such liens and suits or other proceedings pertaining thereto including any and all costs and attorneys' fees, at both the trial and appellate level.

**ARTICLE 18**

**ATTORNEY'S FEES**

In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

**ARTICLE 19**

**GOVERNING LAW & VENUE**

The Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction sitting in Miami-Dade County, Florida.

**ARTICLE 20**

**SUCCESSORS & ASSIGNS**

The Village and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Village.

**ARTICLE 21**

**MODIFICATION**

No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall

be valid unless in writing and signed by the party against whom it is sought to be enforced.

## ARTICLE 22

### RIGHTS & REMEDIES

The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## ARTICLE 23

### SEVERABILITY & WAIVER

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

## ARTICLE 24

### WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the Contractor or the Village or Village's Representative, or shall be deemed to have been duly given on the date said notice was mailed by Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

For the Village:

Village Manager  
640 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

For the Contractor:

Bejar Construction, Inc.  
6326 SW 191<sup>st</sup> Avenue  
Pembroke Pines, Florida 33332

IN WITNESS WHEREOF, the parties have made and executed the Agreement on the respective dates under each signature. The Village, through its Village Manager, as authorized to execute same by the Village Commission on the 8th day of June, 2010 and Bejar Construction, Inc., signing by and through its duly authorized officer.

ATTEST:

VILLAGE OF BISCAIYNE PARK,  
FLORIDA

Maria C Camara

Maria Camara, Village Clerk

Ana M. Garcia

Ana M. Garcia, Village Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

John J. Hearn

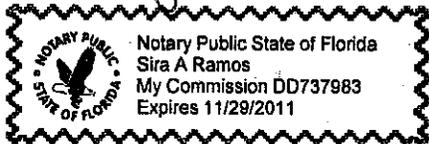
John J. Hearn, Village Attorney

ATTEST:

BEJAR CONSTRUCTION, INC.

Jaime Bilgus

[Signature]



FLORIDA  
The Sunshine State

DRIVER LICENSE CLASS E  
B260-062-70-188-0

REMY BESSON BEAR  
1529 S.W. 181 AVENUE  
RENO, NV 89515-1200

DOB: 08-21-1970 SEX: M HAIR: BRN EYES: BRN

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OPERATION OF A MOTOR VEHICLE CONSIDERED A PRIVILEGE, NOT A RIGHT, AND IS SUBJECT TO THE CANCELLATION, SUSPENSION, REVOCATION, OR ANNUAL RENEWAL BY THE FLORIDA DEPARTMENT OF TRANSPORTATION.

