

1 WHEREAS, the Village Commission finds it to be in the best interests of the residents
2 of the Village to have Magna perform Phase III of the project and authorizes the appropriate
3 Village officials to execute the Agreement for stormwater services Phase III between the
4 Village and Magna, attached hereto and incorporated herein as Exhibit "1"; now, therefore

5 **BE IT RESOLVED BY THE COMMISISON OF THE VILLAGE OF**
6 **BISCAYNE PARK, FLORIDA, THAT:**

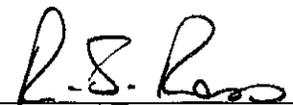
7 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
8 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

9 **Section 2.** The appropriate Village officials are hereby authorized to execute the
10 Agreement for Stormwater Services Phase III between the Village and Magna Construction, Inc.,
11 attached hereto and incorporated herein as Exhibit "1."

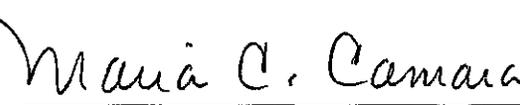
12 **Section 3.** This Resolution shall become effective upon adoption.
13

14 PASSED AND ADOPTED this 1st day of February, 2011.

**The foregoing resolution upon being
Put to a vote, the vote was as follows:**

15
16 
17
18
19 _____
Roxanna Ross, Mayor

- Mayor Ross : Yes
- Vice Mayor Bernard: Yes
- Commissioner Anderson : Yes
- Commission Childress : Yes
- Commissioner Cooper: Yes

20
21 Attest:
22
23 
24 _____
25 Maria C. Camara, Village Clerk

26
27 Approved as to form:
28
29 
30 _____
31 John J. Hearn, Village Attorney

32

AGREEMENT FOR STORMWATER SERVICES PHASE III

THIS AGREEMENT made and entered into the 17th day of February, 2011, by and between:

VILLAGE OF BISCAYNE PARK, FLORIDA
a municipal corporation
640 NE 114 Street
Biscayne Park, Florida 33161
(hereinafter referred to as "VILLAGE")

AND

MAGNA CONSTRUCTION, INC.
a Florida corporation
18361 SW 55th Street
Fort Lauderdale, Florida 33332
(hereafter referred to as "CONTRACTOR")

WHEREAS, on October 4, 2010, the Village sent out an Invitation to Bid for Phase III of the stormwater services project and received thirteen (13) responses;

WHEREAS, CONTRACTOR was found to be the lowest bidder that completed the Invitation to Bid package; and

WHEREAS, funding will be provided through a 50/50 matching grant from the Florida Department of Environmental Protection with the matching funds to be provided by the Citizens Independent Transit Trust (CITT) funds; and

WHEREAS, the Village Manager has negotiated Phase III of the contract with CONTRACTOR and the Commission has found it to be in the best interests of the residents of the Village to have CONTRACTOR perform Phase III of the project;

NOW, THEREFORE, in consideration of the benefits provided by CONTRACTOR to the citizens of the Village of Biscayne Park and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. SCOPE OF SERVICES

2.01 CONTRACTOR hereby agrees to perform and provide the equipment, materials and labor necessary for the completion of Phase III as identified in the Work Plan attached hereto and incorporated herein as Exhibit "A".

- 2.02 The work is to be completed and ready for final payment within forty five (45) calendar days from the date of the commencement of the work as specified in the Notice to Proceed.
- 2.03 VILLAGE and CONTRACTOR acknowledge that the services to be provided pursuant to this Agreement shall commence upon the approval of the Village Commission.

Section 3. LIQUIDATED DAMAGES

It is covenanted and agreed between the VILLAGE and the CONTRACTOR that time is of the essence in this Agreement and this provision shall apply to all terms and conditions contained herein. CONTRACTOR agrees that if Phase III is not completed within forty five (45) days from the date of the commencement of the work as specified in the Notice to Proceed, it shall pay VILLAGE one hundred and xx/100 dollars (\$100.00) per day, each day that the work is not complete.

Section 4. CONSIDERATION

- 4.01 VILLAGE agrees to compensate CONTRACTOR for the services performed by CONTRACTOR in the amount of one hundred eleven thousand nine hundred eighty three and 47/100 dollars (\$111,983.47) upon completion of the work specified in Section 2 above in a satisfactory manner as determined by the Village's designated engineer/project manager.
- 4.02 Method of Billing and Payment.
 - (a) CONTRACTOR shall submit an invoice, together with a status report, showing work completed on the project. The invoice, together with the status report shall be submitted to Ana Garcia, Village Manager, Village of Biscayne Park, 640 NE 114 Street, Biscayne Park, Florida 33161.
 - (b) VILLAGE will make its best efforts to pay CONTRACTOR within thirty (30) calendar days of receipt of invoice the total shown to be due on such invoice provided that the commensurate work has been performed satisfactorily.

Section 5. INSURANCE

- 5.01 Prior to commencing work, CONTRACTOR shall provide VILLAGE with certified copies of all insurance policies providing coverage as required.
- 5.02 CONTRACTOR shall secure and maintain, at its own expense, and keep in effect during the full period of the Agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:
 - (a) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence.

AGREEMENT FOR STORMWATER SERVICES PHASE III

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a municipal corporation
640 NE 114 Street
Biscayne Park, Florida 33161
(hereinafter referred to as "VILLAGE")

AND

MAGNA CONSTRUCTION, INC.
a Florida corporation
P.O. Box 327418
Fort Lauderdale, Florida 33332
(hereafter referred to as "CONTRACTOR")

WHEREAS, on October 4, 2010, the Village sent out an Invitation to Bid for Phase III of the stormwater services project and received thirteen (13) responses;

WHEREAS, CONTRACTOR was found to be the lowest bidder that completed the Invitation to Bid package; and

WHEREAS, funding will be provided through a 50/50 matching grant from the Florida Department of Environmental Protection with the matching funds to be provided by the Citizens Independent Transit Trust (CITT) funds; and

WHEREAS, the Village Manager has negotiated Phase III of the contract with CONTRACTOR and the Commission has found it to be in the best interests of the residents of the Village to have CONTRACTOR perform Phase III of the project;

NOW, THEREFORE, in consideration of the benefits provided by CONTRACTOR to the citizens of the Village of Biscayne Park and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. SCOPE OF SERVICES

2.01 CONTRACTOR hereby agrees to perform and provide the equipment, materials and labor necessary for the completion of Phase III as identified in the Work Plan attached hereto and incorporated herein as Exhibit "A".

- 2.02 The work is to be completed and ready for final payment within seventy five (75) calendar days from the date of the commencement of the work as specified in the Notice to Proceed.
- 2.03 VILLAGE and CONTRACTOR acknowledge that the services to be provided pursuant to this Agreement shall commence upon the approval of the Village Commission.

Section 3. LIQUIDATED DAMAGES

It is covenanted and agreed between the VILLAGE and the CONTRACTOR that time is of the essence in this Agreement and this provision shall apply to all terms and conditions contained herein. CONTRACTOR agrees that if Phase III is not completed within seventy five (75) days from the date of the commencement of the work as specified in the Notice to Proceed, it shall pay VILLAGE one hundred and xx/100 dollars (\$100.00) per day, each day that the work is not complete.

Section 4. CONSIDERATION

- 4.01 VILLAGE agrees to compensate CONTRACTOR for the services performed by CONTRACTOR in the amount of one hundred eleven thousand nine hundred eighty three and 47/100 dollars (\$111,983.47) upon completion of the work specified in Section 2 above in a satisfactory manner as determined by the Village's designated engineer/project manager.
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Section 5. INSURANCE

- 5.01 Prior to commencing work, CONTRACTOR shall provide VILLAGE with certified copies of all insurance policies providing coverage as required.
- 5.02 CONTRACTOR shall secure and maintain, at its own expense, and keep in effect during the full period of the Agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:
- (a) **Professional Liability Insurance** in an amount not less than \$1,000,000 per occurrence.

- (b) **Worker's Compensation and Employer's Liability Insurance** for all employees of CONTRACTOR engaged in work under the Agreement in accordance with the laws of the State of Florida. CONTRACTOR shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- (c) **Comprehensive General Liability Insurance** with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence

Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage:

\$1,000,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence

- (1) Premises and Operations;
- (2) Independent Contractors;
- (3) Products and Completed Operations;
- (4) Broad Form Property Damage;
- (5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
- (6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and

- (d) **Comprehensive Automobile Liability Insurance** for all owned, non-owned and hired automobiles and other vehicles used by CONTRACTOR in the performance of the work with the following minimum limits of liability:

\$300,000.00 Combined Single Limit, Bodily
Injury and Property Damage
Liability per occurrence

- 5.03 **ALL LIABILITY INSURANCE POLICIES SHALL SPECIFICALLY PROVIDE THAT THE VILLAGE OF BISCAYNE PARK IS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF THE CONTRACTOR UNDER THE AGREEMENT.** Insurance companies selected must be acceptable to VILLAGE. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused

until at least thirty (30) calendar days written notice has been given to VILLAGE by certified mail.

- 5.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide:

Financial Stability B+ to A+

- 5.05 CONTRACTOR is required to submit a list of claims presently outstanding against their professional liability coverage. This information must be provided by and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be provided by and signed by the agent of the insurance carrier.

Section 6. INDEMNIFICATION

- 6.01 **GENERAL INDEMNIFICATION:** CONTRACTOR shall indemnify, save and hold harmless VILLAGE, its officers, agents and employees, from any and all damages, losses, liabilities and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of CONTRACTOR or his subcontractors, agents, officers, employees or independent contractors pursuant to the Agreement, specifically including but not limited to those caused by or arising out of any act, omission, negligence or default of CONTRACTOR and/or his subcontractors, agents, servants or employees in the provision of the services under the Agreement.
- 6.02 **PATENT AND COPYRIGHT INDEMNIFICATION:** CONTRACTOR agrees to indemnify, save and hold harmless VILLAGE, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement.

Section 7. WARRANTIES OF QUALITY AND CONDITION

- 7.01 CONTRACTOR represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship for one (1) year after the date of final acceptance by the VILLAGE.
- 7.02 CONTRACTOR represents and warrants that the materials used are not currently known to be harmful to public health and safety.
- 7.03 If within one (1) year the VILLAGE observes any breach of warranty described in

this Section that is curable by the CONTRACTOR, the CONTRACTOR shall, at the request of the VILLAGE, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the VILLAGE. The VILLAGE shall give notice to the CONTRACTOR of such breach with reasonable promptness.

- 7.04 If within one (1) year the VILLAGE observes a breach of warranty described in this Section that is not curable by CONTRACTOR, the CONTRACTOR is responsible for reimbursing the VILLAGE for damages, expenses and loss incurred by the VILLAGE as a result of the breach. However, if the CONTRACTOR disclosed the risk of this breach in the Proposal and the VILLAGE accepted that it may occur, it shall not be deemed a breach for purposes of this Section of this Agreement.

Section 8. TERMINATION

- 8.01 This Agreement is terminable by either VILLAGE or CONTRACTOR at any time on thirty (30) days written notice to the other party as provided in Section 19 below.

Section 9. RECORDS AND AUDIT

- 9.01 VILLAGE reserves the right to audit the records of CONTRACTOR relating to this Agreement at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by VILLAGE. If required by VILLAGE, CONTRACTOR shall agree to submit to an audit by an independent certified public accountant selected by VILLAGE. CONTRACTOR shall allow VILLAGE to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

- 10.01 It is understood and agreed that CONTRACTOR is and shall remain an independent contractor with respect to the services being performed by CONTRACTOR pursuant to this Agreement and shall not, for any purpose, be deemed an employee of VILLAGE.

Section 11. CONFLICT OF INTEREST

- 11.01 CONTRACTOR covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with VILLAGE. CONTRACTOR further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CONTRACTOR or its employees, must be disclosed in writing to VILLAGE.

11.02 CONTRACTOR is aware of the conflict of interest laws of the Municipal Code of the Village of Biscayne Park, Dade County and the State of Florida, Chapter 112, Florida Statutes (2004), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

11.03 CONTRACTOR warrants that it has not employed or retained any person employed by VILLAGE to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by VILLAGE any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of this privilege.

Section 12. ASSIGNMENT

12.01 This is a services Agreement whereby VILLAGE has expressly retained CONTRACTOR. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of VILLAGE which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS

13.01 CONTRACTOR shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Village of Biscayne Park and of any other public authority, which may be applicable to this Agreement.

Section 14. VENUE

14.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Eleventh Judicial Circuit in and for Dade County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party against the losing party including reasonable appellate attorney's fees, interest and taxable costs.

Section 15. GOVERNING LAW

15.01 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY

16.01 In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT

17.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY

18.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

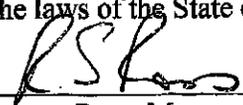
19.01 All notices or other communications required or permitted under this Agreement shall be in writing and given by either hand delivery, registered/certified mail, return receipt requested or overnight courier to:

VILLAGE: Ana M. Garcia, Village Manager
Village of Biscayne Park
640 NE 114 Street
Biscayne Park, Florida 33161

CONTRACTOR: Mitchell Tourino, President
Magna Construction, Inc.
18361 SW 55th Street
Fort Lauderdale, Florida 33332

IN WITNESS WHEREOF, the VILLAGE OF BISCAVNE PARK and MAGNA CONSTRUCTION, INC., have caused these presents to be executed in their respective names by the proper officials the day and year first above written.

VILLAGE OF BISCAVNE PARK, FLORIDA
a municipal corporation, organized and existing
under the laws of the State of Florida

By: 
Roxanna Ross, Mayor

ATTEST:


Maria Camara, Village Clerk

Approved as to form:

By: [Signature]
John J. Hearn, Village Attorney

State of Florida
County of Dade

The foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the 16 day of February, 2010, by Roxanna Ross and Maria Camara, Mayor and Village Clerk, respectively.

NOTARY PUBLIC-STATE OF FLORIDA
Liliana Arrazola
Commission # DD796913
Expires: JUNE 11, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]
Notary Public, State of Florida

MAGNA CONSTRUCTION, INC.

By: [Signature]
Mitchell Tourino, President

State of Florida
County of Dade

On this, the 17th day of February, 2011, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Mitchell Tourino, President of Magna Construction, Inc., a Florida corporation, on behalf of the corporation.

[Signature]
Notary Public, State of Florida



Approved as to form:

By: [Signature]
John J. Hearn, Village Attorney

State of Florida
County of Dade

The foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the 17th day of February, 2011, by ~~Roxanna Ross and Maria Camara, Mayor and Village Clerk, respectively.~~



Albertha Wilks Patterson
COMMISSION #DD729
EXPIRES: NOV. 18, 2011
WWW.AARONNOTARY.COM

[Signature]
Notary Public, State of Florida

MAGNA CONSTRUCTION, INC.

By: [Signature]
Mitchell Tourino, President

State of Florida
County of Dade

On this, the 17 day of February, 2011, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Mitchell Tourino, President of Magna Construction, Inc., a Florida corporation, on behalf of the corporation.

[Signature]
Notary Public, State of Florida
MY COMMISSION # DD981413
EXPIRES April 12, 2014
(407) 399-0183 FloridaNotaryService.com