



# Village of Biscayne Park Commission Agenda Report

**Village Commission Meeting Date:**

**July 7, 2015**

**Subject:**

**Resolution 2015-36 An Amendment to the Contract between the Village of Biscayne Park and Bejar Construction, Inc. for the Construction of the Public Safety and Administration Annex Extending the Term of the Contract for a Period of Thirty (30) Days**

**Prepared By:**

**Heidi Siegel, AICP, Village Manager**

**Sponsored By:**

**Staff**

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## **BACKGROUND**

On December 9, 2014 the Village Commission approved a contract with Bejar Construction for the construction of the Public Safety and Administrative Annex (Resolution 2014 –96). The contract stipulates that all work shall be completed by June 1, 2015. This deadline was set to correlate with the State of Florida grant requirements.

As previously reported to the Village Commission, due to Miami-Dade County site drainage requirements the issuance of the final civil site plan was delayed until May 12, 2015. This delay caused the contractor to delay site work including drainage, septic system installation and drain field, parking and sodded areas. Throughout the project the contractor has kept the Village Manager informed of his progress and has been attentive to the time constraints of this project, including work on Saturdays. The delay of the civil permit delayed other aspects of the project include water service and permanent power to the site. The contractor provided the Village with an updated project schedule on June 25, 2015 and has given assurances that substantial completion will be met by July 30, 2015.

## **FISCAL / BUDGET IMPACT**

While the agreement with the State required all work to be completed by June 30, 2015, the Village has been verbally assured that any work started, but not completed, by June 30<sup>th</sup> will be funded through the first quarter of the State's fiscal year (September 2015). On June 24, 2015 the Village Manager received this assurance in writing (See attached letter from Jeannie Russell, Contract Manager). The granting of

July 7, 2015

**Commission Agenda Report**

**Resolution 2015-36 Amendment to the Contract with Bejar Construction, Inc. Extending the Term of the Contract for a Period of Thirty (30) Days**

an extension to Bejar Construction will allow the Village to meet the September 15, 2015 deadline with the State since the Village has already started a task in the final phases of the project.

**STAFF RECOMMENDATION**

Due to the extenuating circumstance of the permitting process and the contractor's diligent effort at the site, Staff supports this extension.

**ATTACHMENTS**

- Resolution 2015-36
- Contract between the Village of Biscayne Park and Bejar Construction with General Conditions
- Amendment to the Contract between the Village of Biscayne Park and Bejar Construction, Inc. for the Construction of the Public Safety and Administration Annex Extending the Term of the Contract for a Period of Thirty (30) Days
- Letter dated June 24, 2015 from Jeannie Russell, Contract Manager at the State of Florida Department of Economic Opportunity

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**RESOLUTION NO. 2015-36**

**A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE AMENDMENT TO THE CONTRACT BETWEEN THE VILLAGE OF BISCAYNE PARK AND BEJAR CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE PUBLIC SAFETY AND ADMINISTRATION ANNEX EXTENDING THE TERM OF THE CONTRACT FOR A PERIOD OF THIRTY (30) DAYS; PROVIDING FOR AN EFFECTIVE DATE**

17 WHEREAS, On December 9, 2014, the Village of Biscayne Park and Bejar Construction,  
18 Inc. entered into a Contract for the construction of the Public Safety and Administration Annex,  
19 which Contract is incorporated herein by reference as Exhibit "1" (hereinafter the "Contract");  
20 and

21 WHEREAS, Paragraph 3.1 of the Contract states that the work shall be completed no  
22 later than June 30, 2015; and

23 WHEREAS, both parties are desirous of extending the term of the Contract; and

24 WHEREAS, the Village Commission has found it to be in the best interests of the Village  
25 and its residents to extend the Contract;

26 **NOW THEREFORE IT IS HEREBY RESOLVED BY THE VILLAGE**  
27 **COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

28 **Section 1.** The foregoing "WHEREAS" clauses are hereby ratified as true and correct  
29 and incorporated herein by this reference.

30 **Section 2.** The appropriate Village officials are hereby authorized to execute the  
31 Amendment to the Contract between the Village of Biscayne Park and Bejar Construction, Inc.  
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1 for the construction of the Public Safety and Administration Annex, extending the Contract for a  
2 period of thirty (30) days, up to and including July 30, 2015.

3 **Section 3.** This Resolution shall take effect upon adoption.

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6 PASSED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2015.

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

Mayor Coviello: \_\_\_\_  
Vice Mayor Anderson: \_\_\_\_  
Commissioner Jonas: \_\_\_\_  
Commissioner Ross: \_\_\_\_  
Commissioner Watts: \_\_\_\_

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David Coviello, Mayor

Attest:

\_\_\_\_\_

Maria C. Camara, Village Clerk

Approved as to form:

\_\_\_\_\_

John J. Hearn, Village Attorney

## CONTRACT

This CONTRACT, made and entered into this 9<sup>th</sup> day of December, 2014, by and between:

**VILLAGE OF BISCAYNE PARK**  
640 NE 114<sup>th</sup> Street  
Biscayne Park, Florida 33161  
(hereinafter referred to as "OWNER")

&

**BEJAR CONSTRUCTION, INC.**  
6326 S.W. 191<sup>st</sup> Avenue  
Pembroke Pines, Florida 33332  
(hereinafter referred to as "CONTRACTOR")

### **WITNESSETH:**

IN CONSIDERATION of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do mutually agree as follows:

### ARTICLE 1

#### THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents, attached hereto and made a part hereof, consist of the Invitation to Bid, Instructions to Bidders, Construction Services Agreement General Conditions, Drawings, Plans, Specifications, Bid Form, Bid Security, CONTRACTOR'S Bid (including documentation accompanying Bid and post Bid documentation submitted prior to the Notice of Award), Qualifications Statement, Contract, Addenda, the record of the Contract award by OWNER'S Village Commission, the Notice of Award, Notice to proceed, Payment and Performance Bonds, and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the Contract.

## **ARTICLE 2**

### **SCOPE OF THE WORK**

- 2.1 The CONTRACTOR shall furnish all of the labor, materials, equipment, transportation, supplies and services necessary to perform all of the work required by the Contract Documents for:

#### **PUBLIC SAFETY AND ADMINISTRATION ANNEX CONSTRUCTION**

## **ARTICLE 3**

### **CONTRACT TIME**

- 3.1 **TIME IS OF THE ESSENCE OF THIS CONTRACT.** The work to be performed under this Contract shall be commenced upon the date of Contract Commencement specified in the Notice to Proceed and, subject to authorized adjustments, shall be substantially complete and ready for final payment within one hundred sixty-five (165) calendar days from the date of Contract Commencement. Final completion of the work will be thirty (30) calendar days after Substantial Completion, and no later than June 30, 2015. Failure to achieve timely final completion shall be regarded as a breach of this Contract and subject to the appropriate remedies including but not limited to, liability for liquidated damages in accordance with Paragraph 11.4 of the Construction Services General Conditions.

## **ARTICLE 4**

### **CONTRACT SUM**

- 4.1 The OWNER shall pay the CONTRACTOR in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of Eight Hundred Thirty Three Thousand Four Hundred Seventy Eight Dollars (\$833,478.00).

## **ARTICLE 5**

### **PROGRESS PAYMENTS**

- 5.1 The CONTRACTOR may requisition payments for work completed during the project at intervals of not more than once a month in accordance with Article 13 of the Construction Services General Conditions. The CONTRACTOR's requisition shall show a complete breakdown of the project components, the quantities completed and the amount due, together with properly executed Releases of Liens by all subcontractors, suppliers and materialmen who were included in the CONTRACTOR's current and previous applications for payment and any other supporting documentation as may be required by the OWNER'S

Representative or Contract Documents. Each requisition shall be submitted in triplicate to the OWNER'S Representative for approval. The OWNER shall make payment to the CONTRACTOR within thirty (30) calendar days after approval by the OWNER'S Representative of the CONTRACTOR's requisition for payment.

- 5.2 Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the OWNER until the work is totally completed as specified and accepted by the OWNER except that after fifty percent (50%) of the work has been completed, the OWNER may reduce the retainage to five percent (5%) of all monies earned.
- 5.3 The OWNER may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
  - 5.3.1 Defective work not remedied.
  - 5.3.2 Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the CONTRACTOR.
  - 5.3.3 Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.
  - 5.3.4 Damage to another contractor not remedied.
  - 5.3.5 Liability for liquidated damages that has been incurred by the CONTRACTOR.
  - 5.3.6 Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.
  - 5.3.7 Reasonable evidence that the work will not be completed within the Contract Time.
  - 5.3.8 Persistent failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or consent of surety satisfactory to the OWNER, which will protect the OWNER in the amount withheld, payment may be made in whole or in part.

## **ARTICLE 6**

### **FINAL PAYMENT**

- 6.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the OWNER to the CONTRACTOR in accordance with the provisions of Article 13 of the Construction Services General Conditions when the work has been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the OWNER'S Representative.

**ARTICLE 7**

**MISCELLANEOUS PROVISIONS**

- 7.1 Terms used in this Agreement which are defined in the Construction Services General Conditions of the Contract shall have the meanings designated in those Conditions.
- 7.2 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Miami-Dade County, Florida.
- 7.3 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.
- 7.4 The OWNER reserves the right to issue separate Purchase Orders for the procurement of material, supplies and equipment in connection with this project if it is beneficial to the OWNER. CONTRACTOR shall be responsible for all OWNER-furnished equipment from date CONTRACTOR receives and takes possession of equipment furnished by the OWNER until items are installed and the project is completed. CONTRACTOR shall be responsible for the installation of any OWNER-furnished equipment.
- 7.5 CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without OWNER'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless OWNER shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the OWNER may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Contract in duplicate.

THIS AGREEMENT will be effective on December 9<sup>th</sup>, 2014.

**VILLAGE OF BISCAYNE PARK, FLORIDA**



\_\_\_\_\_  
David Coviello, Mayor

ATTEST:



\_\_\_\_\_  
Maria C. Camara, Village Clerk

APPROVED AS TO FORM:

[Signature]  
John J. Hearn  
Village Attorney

**CONTRACTOR**  
[Signature]  
For Bejar Construction, Inc.

State of: Florida

County of: Miami Dade

On this, the 18th day of Dec, 2014, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Benny Bejar (name of corporate officer), President (title), of Bejar Construction, Inc (name of corporation), a FL (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand and official seal

[Signature]  
Notary Public, State of Florida



Printed, typed or stamped name of Notary Public exactly as commissioned  
 Personally known to me, or  
 Produced identification:

\_\_\_\_\_  
(Type of identification produced)

**CONSTRUCTION SERVICES AGREEMENT**  
**GENERAL CONDITIONS**

**ARTICLE 1 - DEFINITIONS**

Wherever used in these Construction Services Agreement General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Addenda** - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding Documents or the Contract Documents.

**Agreement** - The written agreement between OWNER and CONTRACTOR covering the Work to be performed including other Contract Documents that are attached to the Agreement or made a part thereof.

**Application for Payment** - The form accepted by OWNER'S REPRESENTATIVE and/or OWNER which is to be used by CONTRACTOR in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bid** - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

**Bonds** - Bid, performance and payment bonds and other instruments of security.

**Change Order** - A document recommended by Contractor, OWNER'S REPRESENTATIVE, or Owner which is signed by CONTRACTOR, OWNER'S REPRESENTATIVE and 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.

**Contract Documents** - The Contract Documents consist of the Drawings, Plans and Specifications, Bid Form, Instructions to Bidders, CONTRACTOR'S Bid, including documentation accompanying Bid and post Bid documentation submitted prior to the Notice of Award, Qualifications Statement, Contract, Addenda, and Notice of Award, Notice to Proceed, Payment and Performance Bonds, the Construction Services General Conditions, Supplementary Conditions, any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the contract.

**Contract Price** - The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of the Contract in the case of Unit Price Work).

**Contract Time** - The date stated in the Agreement for the completion of the work.

**CONTRACTOR** - The person, firm or corporation with whom OWNER has entered into the Agreement.

**Defective** - An adjective which when modifying the Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to OWNER'S REPRESENTATIVE and/or OWNER'S recommendation of final payment.

**Drawings** - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by OWNER'S REPRESENTATIVE and/or OWNER and are referred to in the Contract Documents.

**Field Order** - A written order issued by OWNER'S REPRESENTATIVE and/or OWNER which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time.

**Notice of Award** - The written notice by 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 OWNER will sign and deliver the Agreement.

**Notice to Proceed** - A written notice given by OWNER to CONTRACTOR (with a copy to OWNER'S REPRESENTATIVE and/or OWNER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents. This written notice will also state the dates of substantial and final completion of the project.

**OWNER** - The Village Commission and their representative, the Village Manager of the Village of Biscayne Park, Florida with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

**OWNER'S REPRESENTATIVE** - The consulting company representing the Village of Biscayne Park, Florida, throughout the project.

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

**Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and Workmanship as applied to the Work and certain administrative details applicable thereto.

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

**Supplier** - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**Underground Facilities** - 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: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television sewage and drainage removal, traffic or other control systems or water, and all irrigation systems on or contiguous to the worksite.

**Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**Work Allowance:** A pre-set amount of funds added to the bid form pricing page. These moneys are only to be used for additional work that may be needed due to change orders and unforeseen conditions that increase the submitted bid amount, as approved by the Village. This work allowance will not be made part of the contract sum as shown in the contract documents.

**Work Directive Change** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by OWNER'S REPRESENTATIVE and/or OWNER ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in Paragraph 4.2 or 4.3 or to emergencies under Paragraph 5.13. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in Paragraph 9.3.

**Written Amendment** - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical aspects rather than strictly Work related aspects of the Contract Documents.

## **ARTICLE 2 - PRELIMINARY MATTERS**

### **2.1 Delivery of Bonds and Insurance:**

Prior to award of the Contract by OWNER, CONTRACTOR shall deliver to OWNER copies of the certificate(s) of insurance evidencing the coverages required hereunder and specifically providing that the Village of Biscayne Park is an additional named insured or additional insured. Payment and performance bonds which CONTRACTOR is required to furnish in accordance with this Contract must be provided to OWNER within fifteen (15) days after issuance of Notice of Award.

### **2.2 Commencement of Contract Time; Notice to Proceed:**

The Work shall commence subsequent to the execution of this Contract by all parties and upon a written Notice to Proceed from OWNER. No Work shall be done at the site prior to the date on which the Contract Time commences to run.

OWNER shall furnish to CONTRACTOR up to three (3) copies of the Contract Documents. Additional copies will be furnished upon request, at the cost of reproduction.

**2.3 Preconstruction Conference:**

Within twenty (20) days after the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, OWNER'S REPRESENTATIVE and/or OWNER and others as appropriate will be held to discuss the schedules referred to in Paragraph 2.4, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a Working understanding among the parties as to the Work.

**2.4 Finalizing Schedules:**

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, OWNER'S REPRESENTATIVE and/or OWNER, and others as appropriate will be held to finalize the schedules and procedures to establish a Working understanding among the parties. The finalized progress schedule will be acceptable to OWNER'S REPRESENTATIVE and/or OWNER as providing an orderly progression of the Work to completion within the Contract time, but such acceptance will neither impose on OWNER'S REPRESENTATIVE and/or OWNER'S responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to OWNER'S REPRESENTATIVE and/or OWNER as providing a Workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to OWNER'S REPRESENTATIVE and/or OWNER as to form and substance.

**ARTICLE 3 - CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE**

**3.1 Entire Agreement:**

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

**3.2 Intent:**

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) 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 will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any

governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of 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 OWNER, CONTRACTOR, or OWNER'S REPRESENTATIVE, or any of their consultants, agents or employees from those set forth in the Contract Documents.

### **3.3 Conflict, Error or Discrepancy:**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to OWNER'S REPRESENTATIVE and/or OWNER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from OWNER'S REPRESENTATIVE and/or OWNER.

### **3.4 Amending and Supplementing Contract Documents:**

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

3.4.1 A Change Order; or

3.4.2 A formal written amendment.

### **3.5 Supplements, Minor Variations or Deviations:**

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized in one or more of the following ways:

3.5.1 OWNER'S REPRESENTATIVE and/or OWNER'S approval of a Shop Drawing or sample; or

3.5.2 OWNER'S REPRESENTATIVE and/or OWNER'S written interpretation or clarification.

3.5.3 A field order.

### **3.6 Reuse of Documents:**

Neither CONTRACTOR nor any subcontractors or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect Contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other Documents (or copies of any thereof) prepared by or bearing the seal of the OWNER'S REPRESENTATIVE and/or OWNER; and they shall

not reuse any of them on extensions of the Project or any other project without written consent of OWNER.

**ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

**4.1 Availability of Lands:**

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 CONTRACTOR. CONTRACTOR shall provide at CONTRACTOR'S own expense and without liability to OWNER any and all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. CONTRACTOR shall furnish to OWNER copies of written permission that is obtained from the owners of such facilities. It is the responsibility of the CONTRACTOR to leave the additional lands in the same condition as prior to work startup. Any damages caused by CONTRACTOR will be remedied at CONTRACTORS expense.

**4.2 Physical Conditions:**

4.2.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or OWNER'S REPRESENTATIVE by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.2.1.1 OWNER and OWNER'S REPRESENTATIVE shall not be responsible for the accuracy or completeness of any such information or data; and

4.2.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the work, the costs of all of which will be considered as having been included in the Contract Price.

4.2.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any work affected thereby (except in an emergency as permitted by paragraph 5.13), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and OWNER'S REPRESENTATIVE. OWNER'S REPRESENTATIVE and/or OWNER will

promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. CONTRACTOR shall be allowed an extension of the Contract Time to the extent that any delay is attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and of which existence CONTRACTOR could not reasonably have been expected to be aware. If the parties are unable to agree as to the appropriate length of delay, CONTRACTOR may make a claim therefore as provided in this Contract.

#### **4.3 Reference Points:**

OWNER shall provide engineering surveys to establish reference points for construction which in OWNER'S REPRESENTATIVE and/or OWNER'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work to protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to OWNER'S REPRESENTATIVE and/or OWNER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

### **ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES**

#### **5.1 Supervision and Superintendence:**

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. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

#### **5.2 Dedicated Superintendent**

CONTRACTOR shall keep on the worksite at all times during its progress a competent dedicated superintendent and any necessary assistants who shall not be replaced without written notice to OWNER and OWNER'S REPRESENTATIVE unless the superintendent proves to be unsatisfactory to CONTRACTOR and ceases to be in his employ. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

### **5.3 Labor, Materials and Equipment:**

CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. 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 CONTRACTOR will not permit overtime Work or the performance of Work on Sunday or any legal holiday without OWNER'S written consent given after prior written notice to OWNER'S REPRESENTATIVE and/or OWNER.

5.3.1 Unless otherwise specified in the bid documents, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

5.3.2 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by OWNER'S REPRESENTATIVE and/or OWNER, 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 provision of any such instructions will be effective to assign to OWNER'S REPRESENTATIVE and/or OWNER, or any of OWNER'S REPRESENTATIVE and/or OWNER'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 Articles 8 and 9.

### **5.4 Substitutes or "Or Equal" Items**

5.4.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER'S REPRESENTATIVE and/or OWNER if sufficient information is submitted by CONTRACTOR to allow OWNER'S REPRESENTATIVE and/or OWNER to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by OWNER'S REPRESENTATIVE and/or OWNER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER'S

REPRESENTATIVE and/or OWNER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application must state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct Contract with OWNER for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by OWNER'S REPRESENTATIVE and/or OWNER in evaluating the proposed substitute. OWNER'S REPRESENTATIVE and/or OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

5.4.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER'S REPRESENTATIVE and/or OWNER, if CONTRACTOR submits sufficient information to allow OWNER'S REPRESENTATIVE and/or OWNER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by OWNER'S REPRESENTATIVE and/or OWNER will be similar to that provided in Paragraph 5.4.1 as applied by OWNER'S REPRESENTATIVE and/or OWNER and as may be supplemented in the Contract Documents.

5.4.3 OWNER'S REPRESENTATIVE and/or OWNER will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER'S REPRESENTATIVE and/or OWNER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER'S REPRESENTATIVE and/or OWNER'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

## **5.5 Concerning Subcontractors, Suppliers and Others:**

5.5.1 CONTRACTOR shall be fully responsible to OWNER and OWNER'S REPRESENTATIVE for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by his Subcontractors, Suppliers and of persons for whose acts any of them may be liable and any other persons

and organizations performing or furnishing of the Work under a direct or indirect Contract with CONTRACTOR to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any Contractual relationship between OWNER or OWNER'S REPRESENTATIVE and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or OWNER'S REPRESENTATIVE to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.

5.5.2 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and OWNER'S REPRESENTATIVE.

## **5.6 Patent Fees and Royalties:**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

## **5.7 Permits:**

CONTRACTOR shall obtain and pay for all permits and licenses. CONTRACTOR shall pay all government charges and inspection fees as required by OWNER. OWNER reserves the right to waive as it deems appropriate all municipal permit fees related to this contract. However, OWNER shall require that CONTRACTOR to pay all fees relative to inspections and re-inspections, as they may be required from time to time.

## **5.8 Laws and Regulations:**

5.8.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Neither OWNER nor OWNER'S REPRESENTATIVE shall be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations.

5.8.2 If CONTRACTOR observes that the Specifications or Drawings are at variance with any laws or regulations, CONTRACTOR shall give OWNER'S REPRESENTATIVE and/or OWNER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in Paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws or regulations, and without such notice to OWNER'S REPRESENTATIVE and/or OWNER, CONTRACTOR shall bear all costs arising therefrom.

## **5.9 Taxes:**

5.9.1 CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions which are applicable during the performance of the Work.

## **5.10 Use of Premises:**

5.10.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of Workers to the Project site and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. 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 OWNER or OWNER'S REPRESENTATIVE by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Contract specifically applies to claims arising out of CONTRACTOR'S use of the premises.

5.10.2 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

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

## **5.11 Record Documents:**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record Documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to OWNER'S REPRESENTATIVE and/or OWNER for reference. Upon completion of the Work, these record Documents, samples and Shop Drawings will be delivered to OWNER'S REPRESENTATIVE for OWNER.

## **5.12 Safety and Protection:**

- 5.12.1 CONTRACTOR shall provide a construction fence on lots 19 and 20.
- 5.12.2 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the worksite and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, irrigation systems, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.
- 5.12.3 CONTRACTOR shall furnish watchmen, flagmen, warning signs, cones, barricades, flashing lights and other necessary safeguards in sufficient numbers and at appropriate locations to protect and divert vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new Work. Such watchmen and flagmen shall be furnished on a twenty-four (24) hour basis when conditions require. CONTRACTOR and all Subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and prevent injury to persons or fire damage to any construction, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private, particularly when gas or arc welding and cutting is taking place. Open flames including the use of flambeaux are strictly prohibited. No additional payment will be made for signs, barricades, lights, flags, watchmen, flagmen, required fire extinguishing apparatus and personnel, and other protective devices. CONTRACTOR shall not use explosives on the site, nor allow explosives of any type or nature to be brought upon the site of the construction, without the express written approval of OWNER and OWNER'S REPRESENTATIVE. When the use of explosives is authorized by OWNER and OWNER'S REPRESENTATIVE, CONTRACTOR shall exercise the utmost care in handling and usage of such explosives for the protection of life and property. All explosives shall be stored in a safe manner and storage places shall be clearly marked - "DANGEROUS - EXPLOSIVES" and placed in the care of competent watchmen. When such use of explosives becomes necessary, CONTRACTOR shall furnish to OWNER, proof of insurance coverage, adequately providing public liability and property damage insurance as a rider attached to CONTRACTOR'S policies unless otherwise included.
- 5.12.4 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety or 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. CONTRACTOR shall notify owners of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property

caused directly or indirectly by workers employed by and of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and OWNER'S REPRESENTATIVE has issued a notice to OWNER and CONTRACTOR in accordance with Paragraph 13.8 that the Work is acceptable (except as otherwise expressly provided in connection with substantial Completion).

5.12.5 CONTRACTOR shall designate a responsible representative at the worksite whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

### **5.13 Emergencies:**

5.13.1 In emergencies affecting the safety or protection of persons or the Work or property at the worksite or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER'S REPRESENTATIVE to OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give OWNER'S REPRESENTATIVE and/or OWNER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If OWNER'S REPRESENTATIVE and/or OWNER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order will be issued or an amendment made through proper procedures to document the consequences of the changes or variations.

5.13.2 CONTRACTOR shall be required to remove all materials from the job site and provide safe storage for the same, that may be blown about or become a hazard during a hurricane or windstorm. CONTRACTOR shall also take necessary precautions to remove bulkheads, dams or other structures blocking drains in the event of the threat of flooding condition. No extra pay will be allowed for this Work.

### **5.14 Shop Drawings and Samples:**

5.14.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the Project Specifications or plans, CONTRACTOR shall submit to OWNER'S REPRESENTATIVE and/or OWNER for review and approval in accordance with the accepted schedule of Shop Drawing submissions or for other appropriate action if so indicated, five (5) copies of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as OWNER'S REPRESENTATIVE and/or OWNER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria,

materials and similar data to enable OWNER'S REPRESENTATIVE and/or OWNER to review the information as required.

- 5.14.2 CONTRACTOR shall also submit to OWNER'S REPRESENTATIVE and/or OWNER for review and approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 5.14.3 Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 5.14.4 At the time of each submission, CONTRACTOR shall give OWNER'S REPRESENTATIVE and/or OWNER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to OWNER'S REPRESENTATIVE and/or OWNER for review and approval of each such variation. Failure to point out such departures shall not relieve CONTRACTOR from his responsibility to comply with the Contract Documents.

## **5.15 Continuing the Work**

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

## **5.16 Indemnification:**

- 5.16.1 General Indemnification: The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR for the work of the Contract shall constitute specific consideration to CONTRACTOR for the indemnification to be provided under the Contract. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify, save and hold harmless OWNER, its officers, agents and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of OWNER'S REPRESENTATIVE and/or OWNER, architects, attorney's, consultants and other professionals and court and arbitration costs arising out of or resulting from the performance of the Work excluding the

sole negligence of OWNER. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting therefrom; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of this project including the warranty period; (d) the use of any improper materials; (e) any construction defect including patent defects; (f) any act or omission of CONTRACTOR or his Subcontractors, agents, servants or employees; (g) the violation of any federal, state, county or Village laws, by-laws, ordinances or regulations by CONTRACTOR, his Subcontractors, agents, servants or employees; (h) the breach or alleged breach by CONTRACTOR of any term of the Contract, including the breach or alleged breach of any warranty or guarantee.

- 5.16.2 Patent and Copyright Indemnification: CONTRACTOR agrees to indemnify, save and hold harmless OWNER, its officers, agents and employees, from all such claims and fees, and from any and all sites and actions of every name and description that may be brought against OWNER, its officers, agents and employees, on account of any claims, fines, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against OWNER, its officers, agents and employees for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.
- 5.16.3 Pursuant to the requirements of Florida Statute 752.06, as amended, the indemnification from liability for damages caused in whole or in part by any act, omission or default by OWNER as contained in Paragraph 5.16.1 above, shall be limited to the monetary amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under the Contract. All other indemnification required hereunder shall not be limited to the amount of required comprehensive general liability insurance or any required excess insurance.
- 5.16.4 CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of OWNER, in connection with the foregoing indemnifications, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of OWNER when applicable.
- 5.16.5 OWNER reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of CONTRACTOR under the indemnification agreement. Such indemnification shall not be limited to the amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under the Contract. Nothing contained herein is intended nor shall it be construed to waive OWNER'S rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other

right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph 5.16 and its subparts.

**5.17 Liability for Use of Work for Intended Purposes:**

As an inducement for OWNER'S Commission to enter into this agreement, CONTRACTOR has represented an expertise in the construction of and completion of like projects as described in these bid specs. In reliance upon those representations, OWNER hired CONTRACTOR for specified construction services and documents. CONTRACTOR understands and agrees that OWNER intends to utilize said plans for the stated purposes and therefore CONTRACTOR shall be liable for any defective or negligent design, whether patent or latent, as such may be found by a court of competent jurisdiction.

**ARTICLE 6 - OTHER WORK**

**6.1 Related Work at Site:**

OWNER may perform other Work related to the Project at the site by OWNER'S own forces, have other Work performed by utility owners or let other direct Contracts thereof which shall contain General Conditions similar to these. Written notice thereof will be given to CONTRACTOR prior to starting any such other Work not previously noticed to CONTRACTOR; and, if CONTRACTOR believes that performance of Work other than that already noticed will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in this Contract.

**ARTICLE 7 - OWNER'S RESPONSIBILITIES - GENERALLY**

- 7.1 OWNER shall issue all communications to CONTRACTOR through OWNER'S REPRESENTATIVE and/or OWNER.
- 7.2 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due.
- 7.3 OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Article 4. Article 4 also refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site which are known and readily available to OWNER.
- 7.4 OWNER is obligated to execute Change Orders as indicated in Articles 9, 10 & 11.
- 7.5 OWNER shall have such other responsibilities and rights as are expressed in the Contract Documents.

## **ARTICLE 8 – OWNER’S REPRESENTATIVE STATUS DURING CONSTRUCTION**

### **8.1 OWNER'S Representative:**

OWNER’S REPRESENTATIVE will be OWNER'S representative during the construction period and until final payment is due. The duties and responsibilities and the limitations of authority of OWNER’S REPRESENTATIVE as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER.

### **8.2 Visits to Site:**

OWNER’S REPRESENTATIVE and/or OWNER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. OWNER’S REPRESENTATIVE and/or OWNER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site inspections, OWNER’S REPRESENTATIVE shall keep OWNER informed of the progress of the Work and shall endeavor to guard OWNER against defects and deficiencies in the Work.

### **8.3 Technical Clarifications and Interpretations:**

OWNER’S REPRESENTATIVE and/or OWNER will issue with reasonable promptness such written clarifications or interpretations of the technical requirements of the Contract Documents as OWNER’S REPRESENTATIVE and/or OWNER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in this Contract. Should CONTRACTOR fail to request interpretation of questionable items in the Contract Documents neither OWNER nor OWNER’S REPRESENTATIVE and/or OWNER will thereafter entertain any excuse for failure to execute the Work in a satisfactory manner.

### **8.4 Authorized Variations in Work:**

OWNER’S REPRESENTATIVE and/or OWNER may authorize minor variations in the Work from the technical requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a field order and will be binding on OWNER, and also on CONTRACTOR who shall perform the Work involved promptly. If 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, CONTRACTOR may make a claim therefor as provided elsewhere in this Contract.

## **8.5 Rejecting Defective Work:**

OWNER'S REPRESENTATIVE and/or OWNER will have the authority to disapprove or reject Work which OWNER'S REPRESENTATIVE and/or OWNER believes to be defective, and will also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed or completed.

## **8.6 Decisions on Disputes:**

OWNER'S REPRESENTATIVE and/or OWNER will be the initial interpreter of the technical requirements of the Contract Documents and the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Time will be referred initially to OWNER'S REPRESENTATIVE and/or OWNER in writing with a request for a formal decision in accordance with this Paragraph, which OWNER'S REPRESENTATIVE and/or OWNER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to OWNER'S REPRESENTATIVE and OWNER promptly, but in no event later than three (3) days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to OWNER'S REPRESENTATIVE and OWNER within seven (7) calendar days after such occurrence unless OWNER'S REPRESENTATIVE and/or OWNER allows an additional period of time to ascertain more accurate data in support of the claim. The rendering of a decision by OWNER'S REPRESENTATIVE and/or OWNER 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 13.8) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

## **8.7 Limitations on OWNER'S REPRESENTATIVE and/or OWNER'S Responsibilities:**

8.7.1 Neither OWNER'S REPRESENTATIVE and/or OWNER'S authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by OWNER'S REPRESENTATIVE and/or OWNER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of OWNER'S REPRESENTATIVE and/or OWNER or CONTRACTOR, any Subcontractor, any supplier, or any other person or organization performing any of the Work, or to any surety for any of them except as such duties and responsibilities are included within the Contract Documents.

8.7.2 OWNER'S REPRESENTATIVE and/or OWNER will not be responsible for the acts or omissions of CONTRACTOR or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

OWNER'S REPRESENTATIVE and/or OWNER shall not be responsible for safety measures on the project. This is the responsibility of the CONTRACTOR.

## **ARTICLE 9 - CHANGES IN THE WORK**

- 9.1** OWNER, without invalidating the Agreement, may order changes in the work which do not materially alter the scope and character of the work of the Agreement or the completion date. All such changes in the work shall be authorized by a Change Order. Any individual Change Order which decreases the cost of the work to OWNER or increases the cost of the work by an amount not in excess of ten thousand and xx/100 dollars (\$10,000.00) must be authorized and approved by the Village Manager prior to their issuance. Any individual Change Order which increases the cost of the work to OWNER by an amount which exceeds ten thousand and xx/100 dollars (\$10,000.00) must be formally authorized and approved by the OWNER'S Commission prior to their issuance and before work may begin. No claim against OWNER for extra work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.
- 9.2** If OWNER and 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 Work Directive Change, a claim may be made therefor as provided in Article 10 or Article 11.
- 9.3** CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented except in the case of an emergency and except in the case of uncovering Work as those situations are addressed herein.
- 9.4** OWNER and CONTRACTOR shall execute appropriate change orders or written amendments covering:
- 9.4.1 Changes in the Work which are ordered by OWNER pursuant to Paragraph 9.1, and are required to correct defective Work or are agreed to by the parties; and
- 9.4.2 Changes in the Contract Price or Contract Time which are agreed to by the parties.
- Provided that, in lieu of executing any such change order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable laws and regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule. Proposed change orders shall be prepared by CONTRACTOR on forms approved by OWNER. When submitted for approval to OWNER they shall carry the signature of the applicable Department Director, OWNER'S REPRESENTATIVE, and CONTRACTOR.
- 9.5** If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is

required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be CONTRACTOR'S sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

## **ARTICLE 10 - CHANGE OF CONTRACT PRICE**

- 10.1** The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 10.2** The Contract Price may only be changed by a Change Order or by a written amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered to OWNER'S REPRESENTATIVE and/or OWNER promptly (but in no event later than three (3) days after the occurrence of the event giving rise to the amount of the claim with supporting data to be delivered within seven (7) days and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. No resolution of a claim for adjustment in the Contract Price shall be effective until approved by OWNER in writing. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Paragraph.
- 10.3** The value of any Work covered by a change order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
- 10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
- 10.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit including any subcontractor fees) which shall not exceed 25% of the original contract price as defined herein or contract price as modified by an acceptable change order or written amendment executed by all parties.
- 10.3.3 On the basis of the cost of the Work (determined as provided in Paragraphs 10.4 and 10.5) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in Paragraphs 10.6 and 10.7).

### **10.4 Cost of the Work**

The term "Cost of the Work" means the sum of all direct costs necessarily incurred and paid by CONTRACTOR in the proper performance of the work. Except as otherwise may be agreed to in writing by OWNER such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in Paragraph 10.5:

- 10.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the work under schedules of job classifications agreed upon by

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

10.4.2 Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and suppliers field services required in connection therewith. All cast discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

10.4.3 Supplemental costs including the following:

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

10.4.3.2 Rentals of all construction equipment and machinery and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of OWNER'S REPRESENTATIVE and/or OWNER, and the costs, of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

10.4.3.3 Sales, consumer, use or similar taxes related to the work and for which CONTRACTOR is liable, imposed by laws and regulations.

10.4.3.4 Royalty payments and fees for permits and licenses.

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

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

10.4.3.7 Cost of premiums for additional bonds and insurance required because of changes in the work.

## **10.5 Not Included in the Cost of the Work:**

The term cost of the work shall not include any of the following.

- 10.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 - all of which are to be considered administrative costs covered by CONTRACTOR'S fee.
- 10.5.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.
- 10.5.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 Costs due to the negligence of CONTRACTOR, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.5.5 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.4.

## **10.6 CONTRACTOR'S Fee:**

CONTRACTOR'S fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

- 10.6.1 A mutually acceptable negotiated fee:
  - 10.6.1.1 For costs incurred under Paragraphs 10.4.1 and 10.4.2, CONTRACTOR'S fee shall not exceed ten percent (10%).
  - 10.6.1.2 No fee shall be payable on the basis of costs itemized under Paragraphs 10.4.3.1, 10.4.3.2, 10.4.3.3, 10.4.3.4, 10.4.3.5, 10.4.3.6, 10.4.3.7, 10.5, 10.5.1, 10.5.2, 10.5.3, 10.5.4, 10.5.5 and 10.5.6.
  - 10.6.1.3 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S fee by an amount equal to ten percent (10%) for the net decrease.

10.6.1.4 When both additions and credits are involved in any one change the combined overhead and profit shall be figured on the basis of net increase if any, however, profit will not be paid on any work not performed.

## **10.7 Cost Breakdown Required:**

Whenever the cost of any work is to be determined pursuant to Paragraphs 10.4 or 10.5 CONTRACTOR will submit in a form acceptable to OWNER'S REPRESENTATIVE and/or OWNER an itemized cost breakdown together with supporting data.

## **ARTICLE 11 - CONTRACT TIME**

### **11.1 Commencement:**

The date of commencement of the Work is the date established in the Notice to Proceed.

### **11.2 Time of Substantial Completion:**

The date of substantial completion of the Work or designated portion thereof is the date certified by OWNER'S REPRESENTATIVE and/or OWNER when construction is sufficiently complete, in accordance with the Contract Documents, so OWNER can occupy or utilize the Work or designated portion thereof for the purposes for which it is intended.

### **11.3 Change of Contract Time:**

11.3.1 All time limits stated in the Contract Documents are of the essence of the Agreement. NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE OWNER BY REASON OF ANY DELAYS. CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from OWNER for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of OWNER or its agents. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station.

11.3.2 **NO RECOVERY FOR EARLY COMPLETION.** If the CONTRACTOR submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the OWNER shall not be liable to the CONTRACTOR for any costs incurred because of delay or hindrance should the CONTRACTOR be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the OWNER to the CONTRACTOR shall be consistent with and applicable only to the completion of the work and completion dates set forth in these Construction Services General Conditions.

11.3.3 The Contract Time may only be changed by a change order or a written amendment. Any claim for extension of time shall be made in writing to OWNER'S REPRESENTATIVE and/or OWNER not more than three (3) days after the detection or beginning of the occurrence of the event giving rise to the delay and stating the general nature of the claim; otherwise, it shall be waived. In the case of a continuing delay only one claim is necessary. CONTRACTOR shall provide an estimate of the probable effect of such delay on the progress of the Work.

#### **11.4 Liquidated Damages:**

Upon failure of CONTRACTOR to complete the Work within the time specified for final completion, (plus approved extensions if any) CONTRACTOR shall pay to OWNER the sum of five hundred dollars (\$500.00) for each calendar day that the substantial completion of the Work is delayed beyond the time specified in the Contract for substantial completion, as fixed and agreed liquidated damages and not as a penalty. After substantial completion, if CONTRACTOR neglects, fails or refuses to complete the remainder of the Work within the Contract Time or any approved extension thereof, CONTRACTOR shall pay to OWNER the sum of one hundred dollars (\$100.00) for each calendar day (plus approved extensions if any) after the time specified in the Contract for final completion and readiness for final payment as fixed and agreed liquidated damages and not as a penalty. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by OWNER as a consequence of such delay and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract on time. Regardless of whether or not a single Contract is involved, the above-stated liquidated damages shall apply separately to each portion of the Work for which a time of completion is given. OWNER shall have the right to deduct from and retain out of moneys which may be then due or which may become due and payable to CONTRACTOR, the amount of such liquidated damages and if the amount retained by OWNER is insufficient to pay in full such liquidated damages, the CONTRACTOR shall pay in full such liquidated damages. CONTRACTOR shall be responsible for reimbursing OWNER, in addition to liquidated damages or other per day damages for delay, for all costs of engineering, architectural fees, and inspection and other costs incurred in administering the construction of the project beyond the completion date specified or beyond an approved extension of time granted to CONTRACTOR whichever is later.

**ARTICLE 12 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**12.1 Warranty and Guarantee:**

CONTRACTOR warrants and guarantees to OWNER and OWNER'S REPRESENTATIVE that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted. CONTRACTOR warrants to OWNER that the consummation of the Work provided for in the Contract Documents will not result in the breach of any term or provisions of, or constitute a default under any indenture, mortgage, Contract, or agreement to which CONTRACTOR is a party. CONTRACTOR warrants that there has been no violation of copyrights or patent rights in connection with the Work of the Contract.

**12.2 Access to Work:**

OWNER'S REPRESENTATIVE and other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

**12.3 Tests and Inspection:**

- 12.3.1 CONTRACTOR shall give OWNER'S REPRESENTATIVE and/or OWNER or Village Building Division Inspector timely notice of readiness of the Work for all required inspections, tests or approvals.
- 12.3.2 CONTRACTOR shall assume full responsibility, pay all costs in connection therewith and furnish OWNER'S REPRESENTATIVE and/or OWNER the required certificates of inspection, testing or approval for all materials, equipment or the Work or any part thereof unless otherwise specified herein.
- 12.3.3 If any Work (including the Work of others) that is to be inspected, tested or approved is covered without written concurrence of OWNER'S REPRESENTATIVE and/or OWNER, it must, if requested by OWNER'S REPRESENTATIVE and/or OWNER, be uncovered for examination and properly restored at CONTRACTOR'S expense. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given OWNER'S REPRESENTATIVE and/or OWNER timely notice of CONTRACTOR'S intention to cover the same and OWNER'S REPRESENTATIVE and/or OWNER has not acted with reasonable promptness in response to such notice.
- 12.3.4 Neither observations by OWNER'S REPRESENTATIVE and/or OWNER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents.

## **12.4 Uncovering the Work:**

- 12.4.1 If any work is covered contrary to the written request of OWNER'S REPRESENTATIVE and/or OWNER, it must, if requested by OWNER'S REPRESENTATIVE and/or OWNER, be uncovered for OWNER'S REPRESENTATIVE and/or OWNER'S observation and replaced at CONTRACTOR'S expense.
- 12.4.2 If OWNER'S REPRESENTATIVE and/or OWNER considers it necessary or advisable that covered work be observed by OWNER'S REPRESENTATIVE and/or OWNER or inspected or tested by others, CONTRACTOR, at OWNER'S REPRESENTATIVE and/or OWNER'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as OWNER'S REPRESENTATIVE and/or OWNER 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, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys and other professional(s), and OWNER shall be entitled to an appropriate decrease in the contract price, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in the contract documents. If, however, such work is found to be defective, CONTRACTOR shall be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in the contract documents.

## **12.5 OWNER May Stop the Work:**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled Workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

## **12.6 Correction or Removal of Defective Work:**

If required by OWNER'S REPRESENTATIVE and/or OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by OWNER'S REPRESENTATIVE and/or OWNER, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

## **12.7 One Year Correction Period:**

If within one (1) year after the date of 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, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by written amendment.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **13.1 Schedule of Values:**

The schedule established as provided in Paragraph 2.4 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to OWNER'S REPRESENTATIVE and/or OWNER.

### **13.2 Application for Progress Payment:**

At least ten (10) days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to OWNER'S REPRESENTATIVE and/or OWNER for review an Application for Payment filled out and signed by 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. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these Construction Services General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### **13.3 CONTRACTOR'S Warranty of Title:**

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of final payment free and clear of all Liens.

### **13.4 Review of Applications for Progress Payments:**

OWNER'S REPRESENTATIVE and/or OWNER will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment, or return the Application to CONTRACTOR indicating in writing OWNER'S REPRESENTATIVE and/or OWNER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. OWNER shall make payment to CONTRACTOR within thirty (30) calendar days after approval by the OWNER'S REPRESENTATIVE and/or OWNER of CONTRACTOR'S requisition for payment.

### **13.5 Grounds for Refusal:**

OWNER'S REPRESENTATIVE and/or OWNER may refuse to recommend the whole or any part of any payment if, in OWNER'S REPRESENTATIVE and/or OWNER'S opinion, it would be incorrect to make such representation to OWNER. OWNER'S REPRESENTATIVE and/or OWNER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in OWNER'S REPRESENTATIVE'S opinion to protect OWNER from loss because:

- 13.5.1 The Work is defective, or completed Work has been damaged requiring correction or replacement.
- 13.5.2 The Contract Price has been reduced by Written Amendment or Change Order.
- 13.5.3 Of OWNER'S REPRESENTATIVE and/or OWNER'S actual knowledge of the occurrence of any of the events outlined elsewhere in the Contract Documents that represent grounds for refusal of payment in whole or part. OWNER may refuse to make payment of the full amount recommended by OWNER'S REPRESENTATIVE because claims have been made by OWNER on account of CONTRACTOR'S performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR written notice stating the reasons for such action within a reasonable time from receipt of OWNER'S REPRESENTATIVE and/or OWNER'S recommendation for payment on that matter.

### 13.6 Final Inspection:

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, OWNER'S REPRESENTATIVE and/or OWNER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

### 13.7 Final Application for Payment:

After CONTRACTOR has completed all such corrections to the satisfaction of OWNER'S REPRESENTATIVE and OWNER and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record Documents and other Documents - all as required by the Contract Documents, and after OWNER'S REPRESENTATIVE and/or OWNER has indicated that the Work is acceptable, 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 OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien. In addition, CONTRACTOR shall also submit with the final application for payment, the completed set of "As-Built" prints for review and approval. Final payment to CONTRACTOR shall not be made until said prints have been reviewed and approved by OWNER'S REPRESENTATIVE and/or OWNER. Prior to approval, if necessary, the prints may be returned to CONTRACTOR for changes or modifications and if in the opinion of OWNER'S REPRESENTATIVE and/or OWNER they do not represent correct or accurate "AS-BUILTS".

### 13.8 Final Payment and Acceptance:

- 13.8.1 If, on the basis of OWNER'S REPRESENTATIVE and/or OWNER'S observation of the Work during construction and final inspection, and OWNER'S REPRESENTATIVE and/or OWNER'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, OWNER'S REPRESENTATIVE and/or OWNER is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, OWNER'S REPRESENTATIVE and/or OWNER will, within ten (10) days after receipt of the final Application for Payment, indicate in writing OWNER'S REPRESENTATIVE and/or OWNER'S

recommendation of payment and present the Application to OWNER for payment. Thereupon OWNER'S REPRESENTATIVE and/or OWNER will give written notice to OWNER and CONTRACTOR that the Work is acceptable. Otherwise, OWNER'S REPRESENTATIVE and/or OWNER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with OWNER'S REPRESENTATIVE and/or OWNER'S recommendation and notice of acceptability, the amount recommended by OWNER'S REPRESENTATIVE and/or OWNER will become due and will be paid by OWNER to CONTRACTOR.

13.8.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if OWNER'S REPRESENTATIVE and/or OWNER so confirms, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of OWNER'S REPRESENTATIVE and/or OWNER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to OWNER'S REPRESENTATIVE and/or OWNER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.8.3 Any moneys not paid by OWNER when claimed to be due to CONTRACTOR under this Contract shall not be subject to interest, including but not limited to pre-judgment interest.

### **13.9 CONTRACTOR'S Continuing Obligation:**

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 OWNER'S REPRESENTATIVE and/or OWNER, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by OWNER'S REPRESENTATIVE and/or OWNER, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

### **13.10 Waiver of Claims:**

The acceptance of final payment shall constitute a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled as of the date of final payment.

### **13.11 OWNER May Suspend Work:**

OWNER 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 CONTRACTOR and OWNER'S REPRESENTATIVE and/or OWNER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. 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 CONTRACTOR makes an approved claim therefor as provided in the Contract Documents.

### **13.12 OWNER May Terminate:**

Upon the occurrence of any one or more of the following events:

- 13.12.1 If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.
- 13.12.2 If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
- 13.12.3 If CONTRACTOR makes a general assignment for the benefit of creditors.
- 13.12.4 If a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under Contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors.
- 13.12.5 If CONTRACTOR admits in writing an inability to pay its debts generally as they become due.
- 13.12.6 If CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled Workers or suitable materials or equipment or

failure to adhere to the progress schedule as same may be revised from time to time).

- 13.12.7 If CONTRACTOR disregards laws or regulations of any public body having jurisdiction.
- 13.12.8 If CONTRACTOR disregards the authority of OWNER'S REPRESENTATIVE and/or OWNER.
- 13.12.9 If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

OWNER may, after giving CONTRACTOR and the surety seven (7) days written notice and to the extent permitted by laws and regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by OWNER'S REPRESENTATIVE and/or OWNER and incorporated in a Change Order, but when exercising any rights or remedies under this Paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

- 13.12.10 Where CONTRACTOR'S services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

### **13.13 Termination for Convenience of OWNER:**

Upon seven (7) days written notice delivered by certified mail to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, terminate the agreement for OWNER'S convenience whenever OWNER determines that such termination is in the best interests of OWNER. Where the agreement is terminated for the convenience of OWNER, the notice of termination to CONTRACTOR must state

that the Contract is being terminated for the convenience of the OWNER under the termination clause, the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, CONTRACTOR shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding Subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract, and refrain from placing further orders and subcontracts, except as they may be necessary, and complete any continued portions of the work.

#### **13.14 Termination by CONTRACTOR:**

If the Work should be stopped under an order of any court or other public authority for a period of more than ninety (90) days through no act or fault of CONTRACTOR or of anyone employed by him, or if OWNER'S REPRESENTATIVE and/or OWNER fails to review and approve or state in writing reasons for non-approval of any application for payment within thirty (30) days after it is submitted or if OWNER fails to pay CONTRACTOR within thirty (30) days after presentation by OWNER'S REPRESENTATIVE and/or OWNER of any sum determined to be due, then CONTRACTOR may, upon ten (10) days written notice to OWNER and OWNER'S REPRESENTATIVE stop Work or terminate this Contract and recover from OWNER, payment for all Work executed and any expense sustained. The provisions of this Paragraph shall not relieve CONTRACTOR of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

### **ARTICLE 14 - NOTICES & COMPUTATION OF TIME**

#### **14.1 Giving Notice:**

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

CONTRACTOR:

The business address of CONTRACTOR is: as stated in contract

OWNER: **Village of Biscayne Park**

The business address of OWNER is: Village Hall  
640 NE 114<sup>th</sup> Street  
Biscayne Park, FL 33161

#### **14.2 Computation of Time:**

When any period of time is referred to in the Contract Documents by days it will be calendar days and it will be computed to exclude the first and include the last day of such period. If the last day of the final amended contract time falls on a Saturday or Sunday or

on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. A calendar day of twenty-four (24) hours measured from midnight to the next midnight shall constitute a day.

## **ARTICLE 15 – MISCELLANEOUS**

- 15.1** Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this Paragraph 15.1 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.
- 15.2** The duties and obligations imposed by these Construction Services General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR and all of the rights and remedies available to OWNER and OWNER'S REPRESENTATIVE thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.
- 15.3** CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without OWNER'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless OWNER shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the OWNER may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.
- 15.4** OWNER reserves the right to audit the records (pertaining to this project) of CONTRACTOR at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by OWNER. If required by OWNER, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by OWNER. CONTRACTOR shall allow OWNER to inspect, examine and review the records of CONTRACTOR at any and all times during normal business hours during the term of the Contract.

## **ARTICLE 16 - BONDS AND INSURANCE**

### **16.1 Construction, Payment and Performance Bonds:**

Within fifteen (15) calendar days after issuance of Notice of Award, but in any event prior to commencing Work, CONTRACTOR shall execute and furnish to OWNER a

performance bond and a payment bond, each written by a corporate surety authorized to do business in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR, Section 223.10, Section 223.11). Further, the surety company shall provide OWNER with evidence satisfactory to OWNER, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858:

Financial Stability A  
Financial Size VIII

Two (2) separate bonds are required and both must be approved by the Village Commission. The penal sum stated in each bond shall be the amount equal to the total amount payable under the Contract. The performance bond shall be conditioned that CONTRACTOR perform the Contract in the time and manner prescribed in the Contract. The payment bond shall be conditioned that CONTRACTOR promptly make payments to all persons who supply CONTRACTOR with labor, materials and supplies used directly or indirectly by CONTRACTOR in the prosecution of the Work provided for in the Contract and shall provide that the surety shall pay the same in the amount not exceeding the sum provided in such bonds, together with interest at the maximum rate allowed by law; and that they shall indemnify and save and hold harmless OWNER to the extent of any and all payments in connection with the carrying out of said Contract which OWNER may be required to make under the law.

#### **16.2 Bonds, Reduction After Final Payment:**

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to twenty five percent (25%) of the Contract Price, or an additional bond shall be conditioned that CONTRACTOR shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the OWNER except in Contracts which are concerned solely with demolition Work, in which case the twenty five percent (25%) shall not be applicable.

#### **16.3 Duty to Substitute Surety:**

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, CONTRACTOR shall

within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.

## 16.4 INSURANCE

16.4.1 Bidders must submit copies of their current certificate(s) of insurance together with the Bid. Failure to do so may cause rejection of the Bid.

**16.4.2 PRIOR TO AWARD OF THE CONTRACT, THE SUCCESSFUL BIDDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE VILLAGE OF BISCAYNE PARK IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE SUCCESSFUL BIDDER UNDER THE CONTRACT.** Insurance Companies selected must be acceptable to the VILLAGE. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to VILLAGE by certified mail.

16.4.3 The Successful Bidder shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability:

(a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employer's Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Successful Bidder shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

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

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

(c) Comprehensive General Liability with the following minimum limits of liability:

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

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

1. Premises and Operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
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; and
6. Personal Injury coverage with employment contractual exclusions removed and deleted.

16.4.4 CONTRACTOR shall maintain the Products/Completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish OWNER with evidence of continuation of such insurance at final payment.

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

Financial Stability B+ to A+

16.4.6 The Successful Bidder shall require each of its sub-contractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than \$1,000,000.00 for each category), and the Successful Bidder shall provide verification thereof to VILLAGE upon request of VILLAGE.

16.4.7 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against VILLAGE with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

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

- 16.4.9 The clauses "other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which VILLAGE is named as an additional named insured shall not apply to VILLAGE. VILLAGE shall provide written notice of occurrence within fifteen (15) working days of VILLAGE's actual notice of such an event.
- 16.4.10 The Successful Bidder shall not commence work under the Contract until after he has obtained all of the minimum insurance herein described.
- 6.4.11 The Successful Bidder agrees to perform the work under the Contract as an independent contractor, and not as a sub-contractor, agent or employee of VILLAGE.
- 16.4.12 Violation of the terms of this paragraph and its sub-parts shall constitute a breach of the Contract and VILLAGE, at its sole discretion, may cancel the Contract and all rights, title and interest of the Successful Bidder shall thereupon cease and terminate.

**16.5 OWNER'S Liability and Insurance:**

OWNER shall not be responsible for purchasing and maintaining any insurance to protect the interests of CONTRACTOR, subcontractors or others on the Work. OWNER specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.

**AMENDMENT TO CONTRACT BETWEEN  
THE VILLAGE OF BISCAYNE PARK AND  
BEJAR CONSTRUCTION, INC.**

WHEREAS, On December 9, 2014, the Village of Biscayne Park (hereinafter the "Village") and Bejar Construction, Inc. (hereinafter the "Contractor") entered into a Contract for the construction of the Public Safety and Administration Annex, which Contract is incorporated herein by reference as Exhibit "1" (hereinafter the "Contract"); and

WHEREAS, Paragraph 3.1 of the Contract states that the work shall be completed no later than June 30, 2015; and

WHEREAS, both parties are desirous of extending the term of the Contract; and

NOW THEREFORE, in consideration of the premises hereof, the mutual promises and agreements contained herein, and the payments to be made to Contractor for services rendered to the Village hereunder, the parties hereby agree as follows:

**Section 1.** The above recitals are acknowledged and incorporated herein.

**Section 2.** The Agreement shall be extended for a period of thirty (30) days, up to and including July 30, 2015.

**Section 3.** All Other Conditions and Terms: All conditions and terms of the Contract between the Village of Biscayne Park and Bejar Construction, Inc. executed on December 9, 2014 not specifically amended herein remain in full force and effect. In the event of any conflict, this Amendment will supersede all other terms. In the event of ambiguity, the most conservative interpretation consistent with the public interest is intended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

ATTEST:

VILLAGE OF BISCAYNE PARK,  
FLORIDA

\_\_\_\_\_  
Maria Camara, Village Clerk

\_\_\_\_\_  
David Coviello, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
John J. Hearn, Village Attorney  
BEJAR CONSTRUCTION, INC.

BY: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by \_\_\_\_\_ (name of authorized signer), \_\_\_\_\_ (title of authorized signer), of BEJAR CONSTRUCTION, INC. on behalf of the corporation.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of

\_\_\_\_\_  
Printed, typed or stamped name of Notary Public exactly as commissioned  
Personally known to me, or  
Produced identification:

\_\_\_\_\_  
*(type of identification produced)*

Rick Scott  
GOVERNOR



Jesse Panuccio  
EXECUTIVE DIRECTOR

June 24, 2015

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Ms. Heidi Shafran, Village Manager  
Village of Biscayne Park  
640 NE 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

Dear Ms. Shafran,

Please be advised that contract #HL018 did not receive continuation funding through the General Appropriations Act for FY2015/2016. Therefore, pursuant to the terms of the referenced agreement and state law, all tasks should be completed by June 30, 2015. Please invoice DEO as soon as possible for work that has been completed to date.

If you have: 1) begun a task prior to June 30, 2015, 2) incurred liabilities related to that task, and 3) will complete the task prior to September 15, 2015, the certified forward period will typically allow for reimbursement for any work on that task. In order to qualify for the certified forward period, tasks must be completed and invoiced by no later than September 15, 2015. Please be advised that no task started after June 30 can be paid or reimbursed under any circumstances.

Thank you for your attention to this matter. If you have any questions, please contact me as soon as possible.

Sincerely,

Jeannie Russell, FCCM  
Contract Manager

JMR

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399  
866.FLA.2345 | 850.245.7105 | 850.921.3223 Fax  
[www.floridajobs.org](http://www.floridajobs.org) | [www.twitter.com/FLDEO](https://www.twitter.com/FLDEO) | [www.facebook.com/FLDEO](https://www.facebook.com/FLDEO)