

1 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
2 authorizes the Mayor to execute the Amendment to Contract between McKenzie Construction,
3 LLC, and the Village of Biscayne Park for restoration of the historic Village Hall Log Cabin.
4 The Amendment to Contract, in substantial form, is attached and incorporated by reference into
5 this resolution as exhibit 2.

6
7 **Section 3.** This Resolution shall become effective upon adoption.
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9 PASSED AND ADOPTED this 6th day of October, 2015.
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12 **The foregoing resolution upon being**
13 **put to a vote, the vote was as follows:**

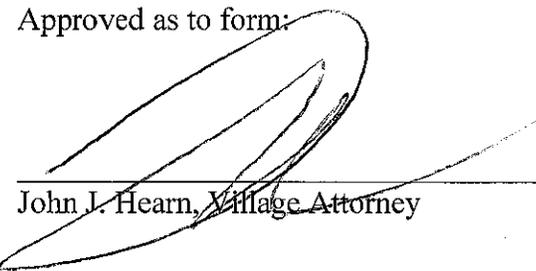
14 
15 _____
16 David Coviello, Mayor

17 Mayor Coviello: Yes
18 Vice Mayor Anderson: Yes
19 Commissioner Jonas: Yes
20 Commissioner Ross: Yes
21 Commissioner Watts: No

22 Attest:

23 
24 _____
25 Maria C. Camara, Village Clerk

26 Approved as to form:

27 
28 _____
29 John J. Hearn, Village Attorney
30
31

**AMENDMENT TO CONTRACT BETWEEN VILLAGE OF BISCAYNE PARK AND
MCKENZIE CONSTRUCTION, LLC**

WHEREAS, on May 19, 2015, the Village of Biscayne Park (hereinafter the "Village") and McKenzie Construction, LLC (hereinafter the "Contractor"), entered into a Contract for the restoration of the Log Cabin, which Contract is incorporated herein by reference as Exhibit "1" (hereinafter the "Contract"); and

WHEREAS, Paragraph 4.2 of the Contract states that Phase IV of the Contract will be presented as a change order to the Contract upon execution of the required grant agreement with the State of Florida Department of State Historical Resources; and

WHEREAS, the Village submitted its application to the State of Florida Department of State Historical Resources; however, funding was not made available to the Village through the State grant; and

WHEREAS, Village staff presented a proposed budget to the Village Commission at its first budget workshop on August 11, 2015 which contained a line item of \$135,000.00 for Phase IV of the restoration of the Log Cabin; and

WHEREAS, at its second budget workshop and final hearing of the 2015-16 budget on September 24, 2015, the Village Commission gave final approval for the Phase IV funding of the restoration of the log cabin; and

WHEREAS, both parties are desirous of amending the Contract in order to provide funding for Phase IV of the restoration of the Log Cabin;

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. Paragraph 2.1 of the Contract shall be amended to read as follows:

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 and the plans and specifications prepared by RJ Heisenbottle Architects for the Log Cabin Restoration based on the following work phases:

Phase I: Demolition of porch, removal of floors, installation of footers and a percentage of general condition costs.

Phase II: Structural work including roof, portion of electrical, portion of mechanical and a percentage of general condition costs.

Phase III: Restoration of floors, installation of windows and doors, remaining electrical, remaining mechanical, bathroom plumbing and fixtures and a percentage of general condition costs.

Phase IV: Restoration of porch, log restoration to include chinking and stain, shutters, lighting and a percentage of general condition costs. (~~Phase IV is conditioned upon historical resources grants and OWNER change order.~~)

Section 3. Paragraph 3.1 of the Contract shall be amended to read as follows:

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 (160)~~ one hundred ninety (190) 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 December ~~1,~~ 31, 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.

Section 4. Paragraph 4.2 of the Contract shall be amended to read as follows:

4.2 ~~Phase IV is solely contingent upon issuance of State of Florida Department of State Historical Resources funding for Special Categories Grant FSC160051 in the amount of \$100,000.00 with a \$50,000 match provided by the Village of Biscayne Park for a total amount of \$150,000.00 and further contingent upon Commission approval which may be for all or part of the Phase IV improvements. If the historical resources grant is not delivered or the OWNER decides not to move forward with Phase IV, no funds will be paid to CONTRACTOR for Phase IV. Phase IV will be presented as a change order to this contract upon execution of the required grant agreement with the State of Florida Department of State. The OWNER shall pay the CONTRACTOR One Hundred Thirty Five Thousand Dollars and no cents (\$135,000.00) for performance of the work specified in Section 2.1, Phase IV. The dais design will be reviewed by CONTRACTOR and presented to the Village Commission for final approval, subject to additions and deductions by Change Order as provided in the Contract Documents to the Contract Sum of One Hundred Thirty Five Thousand Dollars and no cents (\$135,000.00).~~

Section 5. All Other Conditions and Terms: All conditions and terms of the Contract between the Village of Biscayne Park and McKenzie Construction, LLC executed on May 19, 2015 not specifically amended herein remain in full force and effect. In the event of any conflict, this Amendment to Contract 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 to Contract the day and year first above written.

ATTEST:

VILLAGE OF BISCAYNE PARK,
FLORIDA



Maria Camara, Village Clerk



David Coviello, Mayor

APPROVED AS TO FORM:

[Signature]
John L. Heera, Village Attorney

MCKENZIE CONSTRUCTION, LLC

BY: [Signature]

Print Name: gavin mckenzie

Title: owner

State of FL
County of Miami Dade

On this, the 15th day of October, 2015, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by gavin mckenzie (name of authorized signer), owner (title of authorized signer), of MCKENZIE CONSTRUCTION, LLC on behalf of the corporation.

WITNESS my hand and official seal this 15th day of October, 2015.



[Signature]
Maria C. Camara

Notary Public, State of Maria C. Camara

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

personally known
(type of identification produced)

CONTRACT

THIS CONTRACT, made and entered into this 19th day of May, 2015, by and between:

VILLAGE OF BISCAYNE PARK

640 NE 114th Street

Biscayne Park, Florida 33161

(hereinafter referred to as "OWNER")

&

MCKENZIE CONSTRUCTION LLC

2247 NW 17th Avenue

Miami, Florida 33142

(hereinafter referred to as "CONTRACTOR")

W I T N E S S E T H:

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 and the plans and specifications prepared by RJ Heisenbottle Architects for the Log Cabin Restoration based on the following work phases:

Phase I: Demolition of porch, removal of floors, installation of footers and a percentage of general condition costs.

Phase II: Structural work including roof, portion of electrical, portion of mechanical and a percentage of general condition costs.

Phase III: Restoration of floors, installation of windows and doors, remaining electrical, remaining mechanical, bathroom plumbing and fixtures and a percentage of general condition costs.

Phase IV: Restoration of porch, log restoration to include chinking and stain, shutters, lighting and a percentage of general condition costs. (Phase IV is conditioned upon historical resources grants and OWNER change order.)

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 (160) 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 December 1, 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 specified in Section 2.1 Phase I, Phase II and Phase III, subject to additions and deductions

by Change Order as provided in the Contract Documents, the Contract Sum of Five Hundred Twenty Thousand Five Hundred Thirty-three dollars and no cents (\$520,533.00).

- 4.2 Phase IV is solely contingent upon issuance of State of Florida Department of State Historical Resources funding for Special Categories Grant FSC160051 in the amount of \$100,000.00 with a \$50,000 match provided by the Village of Biscayne Park for a total amount of \$150,000.00 and further contingent upon Commission approval which may be for all or part of the Phase IV improvements. If the historical resources grant is not delivered or the OWNER decides not to move forward with Phase IV, no funds will be paid to CONTRACTOR for Phase IV. Phase IV will be presented as a change order to this contract upon execution of the required grant agreement with the State of Florida Department of State.

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 at the OWNER's sole discretion.
- 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 Village reserves the right to issue separate Purchase Order for the procurement of material, supplies and equipment in connection with this project if it is beneficial to the Village. Contractor shall be responsible for all Owner-Furnished equipment from date Contractor receives and takes possession of equipment furnished by the Village until items are installed and project is completed. Contractor shall be responsible for the installation of any Owner-furnished equipment.

7.4 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 May 19th, 2015.

VILLAGE OF BISCAYNE PARK, FLORIDA



David Coviello, Mayor

ATTEST:



Maria C. Camara, Village Clerk

APPROVED AS TO FORM:

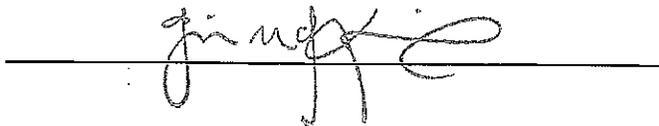


John H. Hearn
Village Attorney

CONTRACTOR

State of: Florida

County of: Miami-Dade



On this, the 27th day of MAY, 2015, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by Gavin McKeen (name of corporate officer), Managing Member (title), of McKeen Construction LLC (name of corporation), a Florida (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand and official seal

Miami-Dade Beth Balzebre
Notary Public, State of Florida



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

(Type of identification produced)

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.

WITNESSETH my hand and official seal of the VILLAGE OF BISCAYNE PARK, FL,

this 31st day of October, 2015.

Maria C. Camara, Village Clerk