

RESOLUTION NO. 10- 1915

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING A CONTRACT WITH THE FIRM OF WEST CONSTRUCTION, INC. TO BE THE GENERAL CONTRACTOR FOR THE CONSTRUCTION OF THE TOWN COMMUNITY CENTER AND AQUATIC FACILITY; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THE CONSTRUCTION CONTRACT BY AND BETWEEN THE TOWN AND WEST CONSTRUCTION, INC. TO BUILD THE COMMUNITY CENTER AND AQUATIC FACILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 9, 2009 the Town of Surfside received five (5) apparent responsive and responsible bids for the Revised Community Center Building as depicted in the Revised Bidding/Construction Documents of November 13, 2009 from West Construction, Inc., N & J Construction, Stiles Construction Co, The Weitz Company, LLC, and KVC Constructors to construct the Town of Surfside Community Center Project No. CC5355; and those bids were publicly opened and read;

WHEREAS, after reviewing all proposals submitted to the Town and the recommendation of the Selection Committee, the Town Manager recommended the selection of West Construction, Inc.; and

WHEREAS, on December 15, 2009, by Resolution 09-1913, the Town Commission ratified the selection of West Construction as the lowest most responsible, responsive bidder and authorized the Town Manager and Town Attorney to negotiate a Construction Contract by and between the Town and West Construction, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval. The Town Commission approves the contract attached hereto as Exhibit "A" between the Town of Surfside and West Construction, Inc. as the General Contractor for the Community Center.

Section 3. Authorization. The Town Manager is authorized to enter into the Construction Contract by and between the Town and West Construction, Inc. attached hereto as Exhibit "A" and do whatever is necessary to effectuate the terms of these agreements.

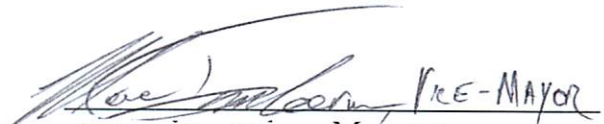
Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12 day of January, 2010

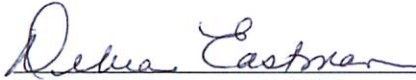
Motion by Commissioner Imberman, Second by Commissioner Calderon.

FINAL VOTE ON ADOPTION

Commissioner Elizabeth Calderon	<i>yes</i>
Commissioner Steven Levine	<i>yes</i>
Commissioner Howard Weinberg	<i>yes</i>
Vice Mayor Marc Imberman	<i>yes</i>
Mayor Charles Burkett	<i>yes</i>



MARC IMBERMAN, VICE MAYOR

ATTEST:



Debra E. Eastman, MMC
TOWN CLERK

**Approved as to form and legality for the use
and benefit of the Town of Surfside only:**



Lynn M. Dannheisser
Town Attorney

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into as of the ____ day of January, 2010 by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation ("Town"), having an address at 9293 Harding Avenue, Surfside, Florida 33154 and **WEST CONSTRUCTION, INC.**, a Florida corporation ("Contractor"), having an address at 318 South Dixie Highway, Suite 4-5, Lake Worth, Florida 33460.

R E C I T A L S

1. Town is the owner of certain real property consisting of approximately thirty five thousand two hundred (35,200) square feet located at 9301 Collins Avenue, Surfside, Florida on which it desires to have constructed the Project (as defined herein).

2. On December 15, 2009, the Town approved Resolution 2009-1913 selecting the Contractor for the provision of general contracting services for the Town of Surfside Community Center Project No. CC5355.

3. Town desires to engage Contractor, and Contractor agrees to provide general contracting Work, all as set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, do covenant and agree as follows:

1. PROJECT SUMMARY.

The following summary (the "Project Summary") provides the pertinent facts and certain general terms with regard to the construction of the Town of Surfside Community Center Project No. CC5355, which is the subject of this Agreement. Capitalized terms not defined in the text shall have the meanings ascribed to them in Article 2 of this Agreement.

1.1 Project Description. The "Project" is more particularly described in that certain Project Manual dated November 13, 2009 (the "Project Manual").

1.2 Project Representatives. For purposes of this Project, the following shall serve as the Town's Representative and the Contractor's Representative for the Project:

Town	Town Manager	Phone No:	(305) 861-4863
Contractor	Christopher Caprio	Phone No:	(561) 588-2027

1.3 Work. The Work of the Contractor shall generally include the permitting, construction and completion of the Work within the GMP and Contract Times and otherwise in

accordance with the terms and conditions of the Contract Documents. The Work shall be performed following the delivery of a Notice to Proceed by the Town to the Contractor, which shall be issued in accordance with the terms of this Agreement but in no event prior to the issuance of a building permit for the Work. The Contractor shall perform the Work in accordance with the terms and conditions of the Contract Documents. The parties acknowledge and agree that nothing in this Agreement shall be construed as to provide, grant, confer any rights unto Contractor and its Subconsultants and Subcontractors with respect to the provision of any other Work, except for the Work expressly set forth in the Contract Documents.

1.4 Schedule for Performance. The Contractor shall complete the Work pursuant to the schedules for each set forth in Exhibit "A" to this Agreement (the "Contract Times"). The Contract Times set forth in Exhibit "A" shall commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time after the issuance of a building permit for the Work.

1.5 Compensation. It is the intent and agreement of the parties that the Town shall pay the Contractor for Contractor's performance of its obligations hereunder a Contract Sum for the Work. It is also the intent and agreement of the parties that the Contract Sum for the Work shall not exceed a guaranteed maximum price ("GMP") established for the Work, subject to additions and deductions by Change Order as provided in this Agreement. The GMP for the Work is FOUR MILLION SEVENTY FOUR THOUSAND FIVE HUNDRED TWENTY FIVE AND 00/100 DOLLARS (\$4,074,525.00), which amount includes the Contractor's Fee. In the event additional labor, costs or expenses in excess of the GMP are necessary to complete the Work such amounts shall be the sole responsibility of Contractor; it being acknowledged and agreed that the GMP for the Work shall be the maximum amount the Town shall be required to pay for the Work. Notwithstanding the foregoing, during the course of the Work, if new statutes, codes, or regulations are enacted and/or existing statutes, codes, or regulations are amended (collectively, "Statutory Changes") and such Statutory Changes result in an increase or decrease to the Cost of the Work, the GMP for the Work shall be increased or decreased by a Change Order to reflect the actual increased or decreased cost of the Construction Work relative to such Statutory Changes. The foregoing shall not apply to (a) any changes in the Work necessary due to the failure of Contractor to comply with applicable statutes, codes or regulations in effect prior to the establishment of the GMP for the Work and (b) any Statutory Changes that do not result in an increase or decrease in the Cost of the Work. Payment to the Contractor shall be made in accordance with Section 8 below. Following the completion of the Work, the difference, if any, between the Contract Sum and the GMP for the Work, shall be defined as "Cost Savings." As additional consideration to Contractor and an incentive to complete the Project for less than the GMP, the parties agree to allocate any Cost Savings on the basis of twenty-five (25%) to Contractor and seventy-five percent (75%) to Town, subject to the limitations in Exhibit "I" hereof relating to deductibles for builder's risk insurance. Town shall pay Contractor its share of Cost Savings at the time of Final Payment for Work. Notwithstanding the foregoing, Contractor shall not be entitled to, or receive, any payments for Cost Savings for Work if Contractor fails to meet the Contract Times for that portion of the Work it being understood and agreed that time is of the essence with respect to Contract Times

2. DEFINITIONS.

For the purposes of this Agreement, the following terms are defined as:

2.1 "Addenda" and "Amendment" means a written modification to this Agreement and/or the Contract Documents executed by the Contractor and Town covering changes, additions, or reductions in the terms of this Agreement.

2.2 "Agreed Cost" is defined in Section 7.2.

2.3 "Bonds" is defined in Section 12.1.

2.4 "Change Order" is defined in Section 7.1

2.5 "Change Order Request" is defined in Section 7.2.

2.6 "Contract Documents" means this Agreement, the Plans and Specifications, the Project Manual and all exhibits and documents related thereto or contemplated thereby, as well as all Change Orders, Addenda and Amendments related to each with respect to the Project and all changes to said documents issued by Town after execution of this Agreement.

2.7 "Contract Sum" means the Cost of the Work plus the Contractor's Fee for the Work. The use of the term Contract Sum shall be applied to each separate Contract Sum as required by the context of this Agreement.

2.8 "Contract Times" is defined in Section 1.4.

2.9 "Contractor" means West Construction, Inc., a Florida corporation.

2.10 "Contractor's Estimate" is defined in Section 7.2.

2.11 "Contractor's Fee" is THREE HUNDRED EIGHTY EIGHT THOUSAND AND 00/100 DOLLARS (\$388,000.00) which is the fixed amount the Town shall pay Contractor to compensate Contractor for all costs, fees, and other compensation other than the Cost of the Work, and is specifically intended to include profit and overhead. The Contractor's Fee for the Work is included in the GMP for the Work as set forth in Section 1.5 above.

2.12 "Contractor's Representative" is defined in Section 1.2 and 29.2.

2.13 "Contractor's Stock" is defined in Section 8.11.4.

2.14 "Contractor's Representative" is defined in Section 30.2.

2.15 "Cost of the Work" is defined in Sections 8.11 and 8.12.

- 2.16 "Cost Savings" is defined in Section 1.5.
- 2.17 "County" means Miami-Dade County.
- 2.18 "Date of Termination" is defined in Section 36.1.
- 2.19 "Day" or "Days" or "day" or "days" means calendar days.
- 2.20 "Design Consultant" means the design professional/architect selected by the Town to prepare the Plans and Specification and interact with the Contractor.
- 2.21 "Direct Owner's Purchase Program" is defined in Section 3.15.
- 2.22 "Environmental Claims" is defined in Section 19.1.
- 2.23 "Environmental Laws" is defined in Section 19.4.
- 2.24 "Field Office" means a field office at the Project Location provided at the Project site by the Contractor. Expenses relating to the Field Office are included in the GMP for the Work.
- 2.25 "Final Completion" means that all Work required under the Contract Documents has been fully and properly completed, including punch list items, issuance of certificates of final occupancy and/or use, delivery of record drawings, electronic files, and manuals, and performance of all required training.
- 2.26 "Final Completion Date" is defined in Section 6.4.
- 2.27 "Final Payment" is defined in Section 8.6.
- 2.28 "Final Request" is defined in Section 8.6.
- 2.29 "GMP" or "Guaranteed Maximum Price" is defined in Section 1.5.
- 2.30 "Hazardous Substance" is defined in Section 19.4.
- 2.31 "Liquidated Damages" is defined in Section 6.6.
- 2.32 "Materials" means materials, supplies, apparatus, appliances, equipment, fixtures, machinery, tools and all other items furnished or delivered in connection with the Project.
- 2.33 "Notice to Proceed" means written notification by Town to the Contractor authorizing commencement of any phase of the Work as may be required by this Agreement in the form attached hereto as Exhibit "K."

2.34 “Plans and Specifications” means the plans and specifications prepared by the Design Consultant including architectural, structural, mechanical, electrical, plumbing, fire protection and engineering plans and specifications for the permitting and construction of the Project.

2.35 “Progress Schedule” is defined in Section 3.7.

2.36 “Progress Sets” is defined in Section 4.3.1.

2.37 “Project” means the Town of Surfside Community Center Project No. CC5355 as more particularly described in the Project Manual.

2.38 “Project Location” or “Project Site” means the property owned by the Town located at 9301 Collins Avenue, Surfside, Florida where the Project is to be constructed.

2.39 “Project Summary” is defined in Section 1.

2.40 “Schedule of Values” is defined in Section 8.2.

2.41 “Statutory Changes” is defined in Section 1.5.

2.42 “Subconsultant” means any person or entity, other than Contractor’s own employees, employed or retained by, or under contract with Contractor to perform any Work or for Construction Manger.

2.43 “Subconsultant Contract” means any contract in writing between the Contractor and a Subconsultant.

2.44 “Subcontractor” means any person or entity, other than the Contractor’s own employees, employed or retained by, or under contract with the Contractor to perform the Work or any portion thereof for Contractor.

2.45 “Subcontractor Contract” means any contract in writing between the Contractor and a Subcontractor.

2.46 “Substantial Completion” is defined in Section 6.4.

2.47 “Substantial Completion Date” is defined in Section 6.1.

2.48 “Town’s Representative” is defined in Section 1.2 and 29.1.

2.49 “Work” means all Work including, but not limited to, the permitting, bidding, engineering and construction as necessary to complete the Project pursuant to the terms and

conditions of the Contract Documents and all other obligations required of the Contractor under the terms of the Contract Documents.

3. GENERAL RESPONSIBILITIES.

3.1 The Contractor agrees that all Work shall comply with all applicable laws, statutes, codes, rules and regulations including, without limitation, those adopted by the Town and the Florida Building Code

3.2 The Contractor agrees that the Work under this Agreement shall be performed in conformance with the standards of care and quality adopted or accepted by nationally recognized construction contractor organizations, and/or other applicable professional organizations for similar applications and in accordance with the Florida Building Code.

3.3 The Contractor shall be fully responsible for coordinating all the Work required under this Agreement regardless of whether performed by its own employees or a Subconsultant or Subcontractor so as to insure that the Work required are performed in an efficient, timely and economical manner. The Contractor shall be responsible to Town for the Work furnished to the Contractor by a Subconsultant or Subcontractor to the same extent as if the Contractor had furnished the service itself. All Subconsultant Contracts and Subcontractor Contracts shall be submitted to Town for approval in accordance with Section 9 below. The Contractor shall require in such Contracts that the Subconsultant or Subcontractor be bound to, and to assume toward, the Contractor all the obligations and responsibilities which the Contractor, by this Agreement, assumes toward Town. Failure by the Subconsultant or Subcontractor to comply with all of the Contractor's obligations and responsibilities set forth in this Agreement shall be a material breach of the Subconsultant's or Subcontractor's Contract. The Contractor also agrees to reasonably cooperate and reasonably coordinate with the Design Consultant or other consultants retained directly by Town.

3.4 The Contractor shall not specify or allow its Subconsultants or Subcontractors to specify any particular design, process or product that infringes upon any patent. The Contractor shall defend suits or claims for infringement of patent rights and indemnify and hold Town harmless from any loss, cost or expense, including attorneys' fees incurred, which results if the Contractor violates the requirements of this Section 3.4.

3.5 The Contractor shall construct or cause to be constructed the Project for Town at the Project Location with supporting improvements, facilities and equipment as described or reasonably inferable from the Contract Documents. The Contractor shall provide, furnish and install all Work and Materials except to the extent specifically indicated in the Contract Documents to be furnished by or the responsibility of others, as and when required for, or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in, the Project in accordance with the Contract Documents. Without limiting the foregoing, the Contractor's Work shall be in compliance with the Contract Documents. To the extent practicable, the Contractor shall utilize "value engineering" in connection with the Project.

3.6 The Contractor agrees and represents that it possesses the requisite skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all Materials shall be new and approved by or acceptable to Town, except as otherwise expressly provided for in the Contract Documents. The Contractor shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project.

3.7 The Contractor shall provide, in a digital format acceptable to the Town, a critical path schedule, or such other type of schedule as Town may approve, and periodic updating thereof and other necessary schedules (all of which are hereinafter collectively referred to as the "Progress Schedule") in the interest of completing the Project in the most expeditious and economical manner and in accordance with Section 1.4. Within twenty-one (21) calendar days after execution of this Agreement, the Contractor shall prepare and submit for Town's approval the Progress Schedule for the Work. The Progress Schedule shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Work, subject to approval by Town. The Progress Schedule shall encompass all of the trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. The parties acknowledge and agree that notwithstanding any theoretical delays or theoretical extensions of time for Substantial Completion (as defined in Section 6.4) as may be shown on the Progress Schedule, the Substantial Completion Date (as defined in Section 6.1) shall be governed by this Agreement and shall be extended only in accordance with the procedures set forth in this Agreement.

3.8 The Contractor shall provide competent supervision of all phases of the Work including the Work. The Contractor's Representative is set forth in Section 1.2. Any change in the Contractor's Representative must be approved by Town, such approval not to be unreasonably withheld. The Contractor's Representative shall represent the Contractor and communications given to the Contractor's Representative shall be as binding as if given to the Contractor.

3.9 The Town makes any warranties to the Contractor, express or implied, that the Plans and Specifications are free of errors or omissions. Rather, the Contractor shall carefully study and compare Plans and Specifications with information furnished by Town, and shall carefully inspect and verify field conditions, and shall at once report to the Town all errors, inconsistencies or omissions discovered. The Contractor shall not be liable for damages resulting from errors, inconsistencies or omissions in the information provided by the Town unless Contractor had actual knowledge of a recognized error, inconsistency or omission or knowingly failed to report it to the Town. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission without such notice, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The intent of the Plans and Specifications is to include all items necessary for the proper performance and completion of the Work.

3.10 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the Contractor shall be given to Town promptly before such conditions are disturbed. If the conditions differ materially from those indicated in the Contract Documents and were not known to the Contractor at the time this Agreement was executed, and cause a material increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, an equitable adjustment in the GMP or Contract Time, or both, will be made with the written approval of Town.

3.11 The Contractor shall prepare or cause to be prepared by its Subconsultants, as part of the Work, all shop drawings, samples, submittals and detail drawings not made a part of the Plans and Specifications, and Addenda which are required in the performance of the Contractor's obligations under this Agreement. All shop drawings, submittals, samples, and detail drawings shall be submitted to the Town. Although the Town will review all shop drawings, submittals, detail drawings, and samples, the Town shall not be responsible to the Contractor for any failure of the shop drawings, submittals, detail drawings or samples to comply with the Contract Documents or any governing codes, laws or ordinances. The Contractor shall maintain copies of all shop drawings, submittals and detail drawings, and maintain all samples at the Project and shall afford Town access to the documents at all times during regular working hours.

3.12 The Contractor shall maintain one record set of Contract Documents in good order and marked currently to record all changes made during construction and an accurate location of all portions of the Work sufficient to prepare accurate as-built Plans and Specifications. All of these, including the as-built Plans and Specifications, shall be delivered to the Town upon Final Completion of the Work for review and incorporation into the record set of documents.

3.13 The Contractor shall deliver to the Town all equipment data, along with its recommended spare parts list, maintenance manuals, manufacturers' warranties and operations manuals as may be required for Town's employees, agents or contractors to maintain and operate any equipment delivered as part of the Work.

3.14 Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered to Town. If Town or the Design Consultant desire to observe said inspections, tests or approvals required by the Contract Documents, Town shall notify the Contractor of that desire, and the Contractor shall notify the Town and Design Consultant of the dates and times of said inspections, tests or other approvals.

3.15 The Contractor shall pay all sales, consumer, use and other similar taxes for its Work including the Work or portions of each, which are legally required at any time during the Contractor's performance of the Work. The parties acknowledge and agree that Contractor may

implement a "Direct Owner's Purchase Program" in order to utilize the Town's sales tax exemption for the purchase of Materials and supplies for the Project. If the Contractor implements a Direct Owner's Purchase Program, the parties agree that the monies saved shall not (a) decrease the GMP for the Work, (b) result in any changes to the Substantial Completion Date; and/or (c) result in any liability to the Town. Without limiting the foregoing, Contractor hereby agrees to indemnify and hold the Town harmless from any liability, claims, costs, damages, fines, fees, and expenses of any kind whatsoever including, but not limited to, attorneys' fees and costs (at both the trial and appellate levels) caused, resulting or arising from, or related to the Contractor's Direct Owner's Purchase Program. If Contractor Implements a Direct Owner's Purchase Program and the State of Florida nevertheless denies such sales tax exemption, any resulting sales taxes, fines, costs, and expenses shall not be included in the Cost of the Work, and are the sole and absolute responsibility of Contractor.

3.16 The Contractor shall pay all royalties and license fees that are legally required at any time during the Contractor's performance of the Work. The Contractor shall defend all suits or claims for infringement of any patent rights and shall hold Town harmless from any loss, liability or expense on account thereof, including attorneys' fees (at both the trial and appellate levels) except that Town shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss, liability or expense unless the Contractor promptly gives such information in writing to Town and the Design Consultant.

3.17 The Contractor and any Subconsultants, or Subcontractors shall use their best efforts to cooperate with the Town and Design Consultant during the construction of the Project in order to minimize disruption of Work.

3.18 The Work shall be performed in accordance with the schedule for performance set forth in Exhibit "A". Time is of the essence with respect to the performance of the Work. The Contractor shall not, except for cause beyond the reasonable control of the Contractor, exceed time limits established by this Agreement. Any adjustments to the schedule must be approved in writing by Town and must be requested in writing by the Contractor within five (5) calendar days after the Contractor knew or should have known of the occurrence upon which the Contractor's request for adjustment is based.

3.19 The Contractor shall be responsible for preparing and filing the documents required for approval of governmental and/or governing authorities having jurisdiction over the Project to ensure that final approval and permits for the performance of the Work will be obtainable prior to the commencement of the Work. Such documents shall be submitted to Town for review and approval prior to filing with said authorities. The Contractor shall interface and coordinate with permitting agencies and shall participate in meetings with appropriate agencies and respond to and incorporate appropriate preliminary and final permit review comments.

3.20 The Contractor shall be provided surveys as required describing physical characteristics, legal limitations and utility locations for the Project Location. The surveys shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and information concerning available utility Work and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

3.21 The Contractor shall establish an organization and lines of authority in order to coordinate, monitor, and report the progress of the Work and shall furnish a competent staff for the administration, coordination, and supervision of the Work. All Work shall be performed by the Contractor's own staff or Subconsultants or Subcontractors approved as part of the Contractor's team, unless otherwise authorized in writing by Town. The employment of, contract with, or the use of the Work of any Subconsultant and/or Subcontractor shall be subject to Town's written approval in accordance with Section 9 below. No such approval shall be construed as an agreement between Town and any Subconsultant and/or Subcontractor.

3.22 The Contractor shall furnish to Town for review and approval, a description of key personnel to be used on the Project. Such description shall include a current resume of academic training and professional experience. Contractor represents to the best of its knowledge that the descriptions and resumes submitted to Town pursuant to this Agreement shall be true in all material respects. The Contractor shall not substitute any personnel without Town's prior written consent. Before any such substitution, Contractor shall submit to Town a detailed justification supported by the qualifications of any proposed replacement.

3.23 The Contractor shall verify existing site conditions and conduct field investigations, as reasonably necessary to assure all documentation is accurate. The Contractor shall provide logs of field investigations to the Town on a bi-weekly basis for review. Field verification logs shall consist of names of field investigators, date, time, area, findings, issues and results. The Contractor's responsibilities to field verify include, but are not limited to, developing as-built drawings from field surveys, site exploratory work, and any other means and methods necessary to ensure a complete verification of existing conditions.

4. CONTRACTOR'S WORK. The Contractor shall perform or cause to be performed the Work including all permitting, construction and completion of the Work as well as all performing all other obligations and complying with all terms and conditions of this Agreement relative to the Work. Throughout the course of construction, the Contractor shall maintain an up-to-date set of Plans and Specifications and reproducible drawings, which show and/or describe all clarifications, addenda, substitutions and approved Change Orders. Upon Final Completion, the Contractor shall provide Town with a set of record drawings and PDF electronic files, as directed by Town, showing the complete Project as built (incorporating data concerning as-built conditions) as well as specifications and other documents as may be required by Town.

5. DESIGN CONSULTANT'S RESPONSIBILITIES

5.1 The parties acknowledge and agree that the Town has engaged a Design Consultant to prepare the Plans and Specifications and to otherwise assist the Town in the administration of this Agreement. The Design Consultant shall act as an “owner’s representative” and shall have no authority to bind Town or direct Contractor except as expressly set forth herein. The Contractor shall reasonably cooperate with, and respond to, any reasonable requests or requirements of the Design Consultant.

5.2 The Design Consultant shall at all times have access to the Project Location and the Work wherever it is in preparation or progress.

5.3 If requested by Town, the Design Consultant shall prepare proposed Change Orders with supporting detailed cost documentation and data for Town’s approval and execution in accordance with the Contract Documents. If requested by Town, the Design Consultant shall evaluate the detailed cost estimate and scope of the Contractor’s proposals with respect to proposed Change Orders and substitutions proposed by a Contractor and make recommendations to Town. The Design Consultant has no authority to authorize changes in the Contract Documents of any kind or to modify any deadlines for completion of Work specified in the Contract Documents.

6. TIME FOR PERFORMANCE FOR CONSTRUCTION.

6.1 Within ten (10) calendar days from the delivery of a Notice to Proceed from Town to the Contractor, the Contractor shall commence performance of the Work and shall diligently proceed with the performance of the Work to completion, and agrees to complete the performance of the entire Work within the number of calendar days shown on Exhibit “A” following Contractor’s receipt of the Notice to Proceed. If the Contractor is delayed in the performance of the Work by fire or unavoidable casualties not the fault of the Contractor or causes beyond the Contractor’s control, then the “Substantial Completion Date” (defined as the date occurring the number of days equal to the Contract Time after Contractor’s receipt of the Notice to Proceed), shall be extended for a period equal to the length of such delay to the extent that such delay impacts an activity of the Contractor that is a critical path activity and only if within ten (10) calendar days after the Contractor knows or should have known of any such delay the Contractor delivers to Town, a written request for extension for such delay, and such request is approved by Town, which approval shall not be unreasonably withheld by Town. In case of a continuing cause of delay of a particular nature, the Contractor shall be required to make only one such request.

6.2 The Substantial Completion Date, the Contract Time and the GMP take into full consideration the effect of inclement weather during the construction period and such effect on both cost and time for completing the Work is accounted for in the GMP, and the Substantial Completion Date (as defined in Section 6.1). The Substantial Completion Date incorporates the Contractor’s expectation that it will experience the number of working days of weather delay shown on Exhibit “A” during construction of the Project. An extension of the Contract Time for weather delays may be claimed only for delays caused by adverse weather which

affects scheduled working hours on scheduled work days (but excluding any legal holiday unless previously scheduled) and only after the Contractor has previously been delayed by weather for at least the number of anticipated working days of weather delays shown on Exhibit "A," and then only to the extent of the actual number of days' delay in those activities which are critical path activities. The Contractor shall provide Town with written notice of all delays claimed due to weather, such written notice shall identify the critical path activity(ies) affected and shall be delivered within five (5) days of the delay. Town shall determine whether extension of the Contract Time is justified. Extension of time shall be the Contractor's sole remedy for any such delay.

6.3 Delays which affect those activities not identified on the Project's critical path shall not be considered for a Contract Time extension unless the delay shall have been caused by acts constituting intentional interference by Town or the Design Consultant, which shall include, but not be limited to, the failure of the Town's Representative to timely respond to approval requests of the Contractor's Representative with the Contractor's performance of the Work, and then, only to the extent that such acts continue after the Contractor has provided written notice to Town of such interference. Town's exercise of any of its rights under Article 7, regardless of the extent or number of such changes, or Town's exercise of any of its remedies of suspension of the Work, or requirement of correction or replacement of any defective Work, or its strict adherence to the Contract Documents shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

6.4 "Substantial Completion" shall be defined to include all work (exclusive of minor items of unfinished work which do not preclude beneficial use of the premises) required to complete the Work set forth in the Contract Documents. Substantial Completion shall be deemed to have occurred upon the submission of a Certificate of Substantial Completion (in the standard AIA form) to the Town by the architect of record and the issuance of a Temporary Certificate of Occupancy for the Project. The Contractor shall have forty-five (45) calendar days after the date of Substantial Completion (the "Final Completion Date") within which to complete all remaining Work required by the Contract Documents (the completion of all such Work, including any Work unfinished at the date of Substantial Completion, and the fulfillment of all requirements of the Contract Documents being referred to herein as "Final Completion"). Prior to the Contractor requesting the Town and Design Consultant to perform the Substantial Completion review, the Contractor shall inspect the Project and prepare a list of all deficient and unfinished work. The list shall be submitted to the Town for review. At Substantial Completion, a Final Punch List will be prepared and provided to the Contractor. The Final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by the Contractor as a waiver by Town of the Contractor's obligation to complete all the Work in complete compliance with Contract Documents. In the event the remaining Work is not completed or the Contractor has not demonstrated to Town that a "good faith" effort has been made within said forty-five (45) calendar days, Liquidated Damages, as defined and explained in Section 6.6 herein, will be charged against the Contractor. Time is of the essence in the performance of the Work.

6.5 The Town may direct the Contractor to expedite the Work by whatever means the Contractor may use, including, without limitation, increasing manpower or working overtime to bring the work back within the currently submitted and approved Progress Schedule. If the expediting of Work is required due to reasons within the control or responsibility of the Contractor, then the additional costs incurred shall not result in an increase to the GMP.

6.6 If the Contractor shall neglect, fail, or refuse to complete the Work by the Substantial Completion Date and the Final Completion Date, subject to any proper extension granted by Town, then the Contractor agrees to pay to Town, or to cause the Contractor's surety to pay to Town, the amounts specified on Exhibit "A", not as a penalty, but as liquidated damages for the damages ("Liquidated Damages") that would be suffered by Town as a result of delay for each and every calendar day that the Contractor shall have failed to complete the Work by the Substantial Completion Date or the Final Completion Date. The amounts are fixed and agreed upon by and between the Contractor and Town because of the difficulty of fixing and ascertaining the actual damages Town would in such event sustain, and the amount is agreed to be the amount of damages that Town would sustain. The amount may be retained by Town from current periodic pay estimates or from retainage, but if the amount owing and/or retained is insufficient to fully pay Town said Liquidated Damages, the Contractor agrees to pay, or cause the Contractor's surety to pay, said insufficiency to Town.

7. CHANGE ORDERS.

7.1 From time to time, Town may authorize changes in the Work, issue additional instructions, require additional Work or direct the omission of Work previously ordered. Only those changes in the Work that are approved on a Change Order in the form of Exhibit "B" and executed by an authorized representative of the Town ("Change Order"), shall be binding on the Town.

7.2 Town may order changes in the Work by initiating a change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Contractor shall prepare a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related thereto (the "Contractor's Estimate") of the changes in the GMP attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. If the Town and the Contractor agree on a cost ("Agreed Cost"), a Change Order shall be processed by the Town and/or Design Consultant and delivered to the Contractor for signature. Contractor shall not commence changes in the Work until it receives Town's written Notice to Proceed or the Change Order is executed. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the GMP, the Substantial Completion Date, subject to performance thereof and payment therefore pursuant to the terms of this Agreement and such Change Order. Work provided by unit price may be increased or decreased in quantity as directed by the Town approval, provided that the basis for

adjustment of the GMP shall be the unit prices agreed upon by the Town upon the date of this Agreement.

7.3 In the event the Town and the Contractor cannot agree on any adjustment in the GMP, extensions to the Contract Time, or adjustment to the Substantial Completion Date, the Contractor shall nevertheless proceed to perform the Work required by Town's Change Order Request upon receipt of Town's written Notice to Proceed. The Contractor shall keep separate records of all costs and time required to perform the Work required by the Change Order Request, and an equitable adjustment will be made upon agreement between the Contractor and Town. The Contractor shall submit its time and material costs that accrue as a result of the Change Order Request on a weekly basis. If the Town does not approve such submittals within seven (7) days following submission, the Contractor may cease the work related to such Change Order Request until the parties agree upon the terms and conditions of such Change Order Request.

7.4 In the event that changes in the Work are required on an emergency basis in order to protect the health and safety of the public, the Contractor shall proceed at the direction of the Town without a written Change Order from Town. The Contractor shall keep separate records of all costs and time required to perform the Work. After review and approval by the Town, the Contractor shall invoice Town in accordance on a time and materials basis. In the event that the work can be stopped without any further harm to the public but additional Work is necessary, the Contractor shall deliver the Contractor's Estimate to the Town as soon as practical and the requirements of Sections 7.2 or 7.3 shall be met before the Contractor resumes the changes to the Work.

7.5 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications, and Addenda set forth in Exhibit "A." No adjustment in the GMP or the Substantial Completion Date, shall be made unless (a) such refinement or detailing results in changes in the scope, quality, function and/or intent of the Plans and Specifications, and Addenda not reasonably inferable or anticipatable by a Contractor of the Contractor's experience and expertise, (b) the Contractor advises Town in writing within seven (7) calendar days of the Contractor's receipt of said refinements and details that an adjustment is required, and (c) Town agrees to the adjustment.

8. PAYMENTS.

8.1 In full consideration of the full and complete performance of the Work and all other obligations of the Contractor hereunder, Town shall pay to the Contractor the Contract Sum for the Work, subject to additions and deductions as provided in this Agreement.

8.2 On or before the first day of each month during the performance of the Work, or such other day of the month agreed to by the parties, the Contractor shall submit to the Town for its approval an original Request for Payment in the form attached as Exhibit "C". Submission of any original certificates, waivers of liens and claims, or other documents required in this Agreement to be submitted, is a condition precedent to Town's obligation to

pay Contractor hereunder. Fifteen (15) days prior to the first Request for Payment, the Contractor shall prepare, and submit to Town for its approval a schedule of values allocating the entire GMP among the various portions of the Work (the "Schedule of Values"). The Schedule of Values approved by Town shall be used as a basis for reviewing the Contractor's Request for Payment. The Request for Payment shall show a complete breakdown of (a) the Cost of the Work for all requested costs for permitting, engineering and construction of the Project components including all labor and Materials, (b) the actual portion of the Work completed and the amount due, (c) the share of the GMP allocated to that portion of the Work as set forth in Schedule of Values, (d) in the case of Work, the percentage of the Contractor's Fee attributable to the actual portion of the Construction Work completed, (e) an itemization of all disbursements to Subconsultants and Subcontractors, materialmen, vendors and miscellaneous suppliers and shall be accompanied by originals of vendors' original invoices, certified payrolls and payroll registers (when requested by the Town's Project Manager) or a schedule of values and labor burden, original payment requests of Subconsultants, Subcontractors, vendors and miscellaneous suppliers, and other original data and documentation satisfactory to the Town substantiating actual expenditures, and (f) such supporting evidence as may be required by Town including, but not limited to, the documents set forth in Section 8.9 below, all in a form and substance acceptable to the Town and the Town Attorney. The Request for Payment shall constitute a representation to the Town that (i) the Work have progressed to the point indicated, (ii) the quality of the Work is in accordance with the Plans and Specifications, and (iii) all monies previously reimbursed by the Town to the Contractor have been disbursed to the appropriate Subconsultants, Subcontractors, materialmen, vendors and miscellaneous suppliers based upon the prior Request for Payment. Provided that the Contractor submits all required documentation as required herein, Town shall tender all payments to the Contractor within thirty (30) calendar days of receipt of the Request for Payment less any retainage required by Section 8.5 below and minus amounts, if any, for which Town has withheld funds pursuant to its rights under any portion of the Contract Documents. Inadequately supported charges are subject to disallowance, however, Town will make payments of the balance of the Request for Payment when such amounts are approved. The Request for Payment shall also include the cost of Materials not incorporated in the Work, but delivered and suitably stored at the Project location or at some other location approved by Town.

8.3 The Town and/or Design Consultant shall review each such Request for Payment and may make such exceptions as the Town reasonably deem necessary or appropriate under the state of circumstances then existing. In no event shall Town be required to make payment for items to which Town reasonably takes exception.

8.4 Town shall make payment to the Contractor in the amount approved, subject to Section 8.2. The payment of any Request for Payment by Town, including the Final Request, does not constitute approval or acceptance by Town of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of Town's rights hereunder or at law or in equity.

8.5 The Contractor agrees that ten percent (10%) of the amount due for Work as set forth in each Request for Payment where such Work is performed under a Subconsultant Contract and/or Subcontractor Contract that authorizes Contractor to hold retainage shall be retained by Town until Final Payment (as defined in Section 8.6), except as may be otherwise required by Florida Statutes. For portions of the Work where the Contractor pays one hundred percent (100%) of labor and agreed upon burden or an invoice from a Subcontractor, Subconsultant, vendor, materialmen, or supplier, retainage shall not be required. The foregoing shall not apply to self-performed Work and the Contractor's Fee from which ten percent (10%) shall be retained by the Town until Final Payment, except as may be otherwise required by Florida Statutes. If the Contractor has furnished Bonds in accordance with Section 12.1, and the Contractor is performing satisfactorily when the Contractor obtains and delivers to the Town the Temporary Certificate of Occupancy or the Certificate of Occupancy, Town may elect to reduce the amount retained subject to the consent of Contractor's surety. All requests for retainage reductions must be made in writing prior to invoicing for same. The Contractor may also apply for a release of retainage for Subcontractors, vendors, materialmen, and suppliers for portions of the Work that have been one hundred percent (100%) complete for thirty (30) days or more. In this case, the Town has no obligation to release such retainage but may do so in its sole and absolute discretion. However, the Contractor shall remain liable for Subcontractor's work and for any unpaid laborers, vendors, materialmen, suppliers or Subcontractors in the event it is later discovered that said work is deficient or that any of said laborers, vendors, materialmen, suppliers, or Subcontractors did not receive payments due them on the Project.

8.6 Within thirty (30) days after Final Completion of the Work and acceptance thereof by Town or as soon thereafter as possible, the Contractor shall submit a final request for payment ("Final Request") which shall set forth all amounts due and remaining unpaid to the Contractor (including the unpaid portion of the retainage) and upon approval thereof by Town, Town shall pay to the Contractor the amount due under such Final Request ("Final Payment") within thirty (30) days of the satisfaction of requirements for Final Payment as set forth in Section 8.7 below.

8.7 The Final Request shall not be made until the Contractor delivers to the Town complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on the form Certificate of Subcontractor & Final Waiver of Liens and Claims attached hereto as Exhibit "D" and an affidavit that so far as the Contractor has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The Contractor may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to Town to defend and indemnify Town and any other property owner, person or entity Town may be required to indemnify against any lien or claim. In addition, and as a condition precedent to Town's obligations to make Final Payment, the Contractor shall execute and deliver to the Town (a) a Certificate of Contractor & Final Waiver of Liens and Claims of the Contractor on the form attached hereto as Exhibit "E," and (b) the written consent of Contractor's surety. Notwithstanding the foregoing, provided the Contractor's surety provides the Town with its unqualified consent to Final Payment, the following method for Final Payment shall be followed. Within thirty (30) days following the Town's approval of the Final Request, Town

shall pay the Contractor the amount due under such Final Request less (i) the remaining portion of the Contractor's Fee, (ii) any retainage of Contractor's Fee held by Town, and (iii) Cost Savings, if any. Following delivery by the Contractor to the Town of the original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers and vendors, as well as the documents set forth in subsections (a) and (b) above, the Town shall pay the Contractor the remaining amounts in the Final Request for items (i), (ii), and (iii) above.

8.8 Any provision hereof to the contrary notwithstanding, Town shall not be obligated to make full payment to the Contractor if any one or more of the following conditions exists:

- a. the Contractor is in default of any of its obligations under any of the Contract Documents or is in default of any other obligation owed by Contractor to Town under this Agreement or any other agreement or transaction between the Contractor and Town in connection with the Project; and/or
- b. any part of such payment is attributable to Work which is defective or not performed in accordance with the Contract Documents; and/or
- c. the Contractor has failed to make payments within ten (10) days of receipt of payment from Town to any Subcontractor or for Material or labor used in the Work for which Town has made payment to the Contractor; and/or
- d. if Town, in its good faith judgment, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents whereupon no additional payments will be due the Contractor hereunder unless and until the Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the GMP then remaining unpaid is determined by Town to be sufficient to so complete the Work.

Town, in its reasonable discretion, shall determine the value associated with such conditions and shall act to reduce Contractor's payment by the determined amount.

8.9 Contractor shall use the sums paid to it pursuant to this Article 8 solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the Work in accordance with the Plans, Specifications, Change Orders, and Addenda and payment of bills incurred by the Contractor in performance of the Work. With the submission of each Request for Payment the Contractor shall furnish to the Town a Certificate of Contractor & Partial Waiver of Lien on the form attached hereto as Exhibit "F" and a certified statement accounting for the disbursement of funds received from Town. Such statement shall itemize all disbursements to Subconsultants, Subcontractors, materialman, and vendors, and if required by Town, shall be accompanied by copies of subcontract payment vouchers, vendors' invoices,

payrolls and other data substantiating actual expenditures, as well as a Certificate of Subcontractor & Partial Waiver of Lien, from each Subcontractor, material man, or vendor, on the form attached hereto as Exhibit "G." As a condition precedent to the receipt of Final Payment, all such parties shall submit a full and final waiver and release of mechanic's lien rights for all sums due under their respective Subcontractor Contracts, purchase orders or other agreements. However, no provision hereof shall be construed to require Town to see to the proper disposition or application of the monies so advanced to the Contractor, except to the extent provided in Section 8.7.

8.10 Contractor shall promptly pay all bills for labor and material performed and furnished by its Subconsultants, Subcontractors, suppliers, vendors, and materialmen, in connection with the construction, furnishing and equipping of the Project and the performance of the Work.

8.11 The term "Cost of the Work" shall mean those actual costs necessarily incurred and paid or payable by the Contractor in connection with the proper performance of all the Work including the Work excluding those items set forth in Section 8.12, and shall include the following items:

8.11.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work at the Project location including actual effective FICA, state and federal unemployment taxes, group insurance, worker's compensation insurance, and benefits required by law or collective bargaining agreements, and for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions provided such costs are based on the actual wages and salaries of such employees. Any overtime premium or shift differential expense to be incurred by the Contractor shall require the Town's advance written approval if the incremental cost of the overtime premium or shift differential will be considered a part of Cost of the Work. Overtime premium will not be considered part of the Cost of the Work cost unless the individual has worked forty (40) hours during that same pay period (not to exceed one (1) week) on the Project or the individual worked on the weekend at the Town's request. Overtime wages paid to salaried personnel (if approved in advance in writing by the Town), will be limited to the actual rate of overtime paid to the individual. No payroll charges or other reimbursements for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime work. Payroll labor charges shall list individual employee names, employee numbers (i.e. social security numbers), titles/classifications, actual hourly base rates, and included benefits. Payroll labor charges shall be compiled on a weekly basis, substantiated by a certified payroll register. Although the Contractor will submit its billings for payroll and benefits on a percentage basis, prior to final payment the Contractor shall adjust its billing to reflect the lower of actual or effective payroll tax and insurance rates.

8.11.2 Salaries and actual benefits (as described in Section 8.11.1 above) of the Contractor's supervisory or administrative personnel stationed at the field office, or with Town's prior written agreement at the Contractor's home office, for the Work and employees engaged, at shops or on the road, in expediting the inspection, production or transportation of

the material or equipment for the Work. The number of employees in these classifications, and the rates of pay, shall be subject to prior written approval of Town. All associated labor charges must be detailed and substantiated by certified payrolls.

8.11.3 If approved in advance in writing by Town, reasonable transportation, traveling and lodging expenses of representatives of the Contractor incurred in the discharge of duties related to the Work.

8.11.4 The cost (including transportation, storage, operating and normal maintenance costs) of all materials, equipment, temporary structures which house equipment, materials, and supplies purchased or rented for use on the Project. For qualified tools and equipment to be rented by the Contractor from its own stock or the stock of its affiliates, subsidiaries or related parties (collectively, "Contractor's Stock"), the Contractor shall submit to Town a detailed listing of such tools and/or equipment, together with the applicable rental rates (on an hourly, daily, weekly and monthly basis), the estimated total rentals (based on the most economical rental period), the proposed use of the tools and/or equipment, the original purchase price and the date of purchase and the estimated current fair market value; provided, however, the parties acknowledge and agree that it is not anticipated that there will be any rentals from Contractor's Stock. No rental costs for tools and/or equipment rented from Contractor's Stock shall be included in the Cost of the Work unless Town is provided with the foregoing information and Town gives advance written approval of such rental. For equipment and/or tools rented from Contractor's Stock, the Contractor shall maintain daily equipment usage reports noting the hours and usage, as well as idle and standby time. Such equipment usage reports shall be used to determine whether hourly, daily, weekly or monthly rates shall apply, and Contractor's billings shall be based upon the most economical rates to Town. Rental rates for vehicles shall include insurance, and shall not exceed \$650 per month for vehicles three years of age. Rental rates for equipment shall not exceed the current market rental rates from local third party equipment rental companies.

The Contractor shall maintain and submit to Town on a monthly basis a detailed inventory of all rented equipment with a market value of \$500 or more used on the Project, including equipment owned by the Contractor, if any. For each piece of such rented equipment, such inventory shall contain: (a) the rental rate for the piece of equipment, (b) the anticipated duration of the rental period, and (c) the total anticipated rental to be paid for the equipment. Based on such inventory, the Town shall have the option to purchase such equipment with any increase between the anticipated rental rate and the purchase price added to the GMP for Work by Change Order.

Equipment rented or supplied by the Contractor must be initially rented or supplied in good working condition. Above normal maintenance, capital improvements, overhauls are not chargeable to Town. Daily, weekly or monthly rental rates are to be billed when it results in cost savings to Town. Town reserves the right to dispose of all such materials, equipment, temporary structures, tools and supplies which shall have been purchased, when no longer required for the Work.

8.11.5 Amounts due under all Subcontractor Contracts and Subconsultant Contracts made in accordance with the provisions of the Contract Documents. All Subcontractor Contracts and Subconsultant Contracts must be let in accordance with the Contract Documents. Any deviations must have prior written approval from Town.

8.11.6 The cost of telephone, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the Work at the Project location.

8.11.7 Premiums (Net) on bonds and insurance, if any, that the Contractor is obligated to secure and maintain under the terms of the Contract Documents and such other insurance and bonds as may be required, subject to the written approval of Town, including bonds for Subcontractor Contracts in excess of \$100,000. Deductibles paid by Contractor in connection with any claims made under insurance policies required by this Agreement. Premiums paid as part of the Cost of Work shall be net of trade discounts, volume discounts, dividends, and other adjustments.

8.11.8 The cost of obtaining and using all utility Work required for the Work.

8.11.9 The cost of all fees and assessments for the building permit and for other permits, licenses, and inspections which the Contractor is required by the Contract Documents to pay.

8.11.10 The cost of prompt removal of all of the Contractor's debris. All Subcontractor Contracts shall require the prompt removal of all debris created by Subcontractor activities and the Contractor shall exercise its best efforts to enforce such requirements or to effect an appropriate back charge to those Subcontractors who fail to meet their requirements in this regard.

8.11.11 The cost and expenses, actually sustained by the Contractor in connection with the Work, of protecting and repairing adjoining property, if required, (Town's prior approval for repairs must be obtained except in emergencies), and of settlements for same made with the written consent of Town, except to the extent that any such cost or expense is due to the failure of the Contractor to comply with the requirements of the Contract Documents with respect to insurance, or due to the failure of any officer of the Contractor or of any of its representatives having supervision or direction of the Work to exercise good faith or the highest standard of care normally exercised in the conduct of the business of a general Contractor experienced in the performance of work of magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in the Cost of the Work.

8.11.12 Federal, state, municipal, sales, use and other taxes, as applicable to the Project, all with respect to Work performed or materials furnished for the Work, it being understood that none of the foregoing includes federal, state or local income or franchise taxes.

8.11.13 All reasonable costs and expenditures necessary for the operation of the project job site office, including cost of field computer Work (quantity and rates are subject to Town's prior written approval), including job site terminal (ownership to Town), for purposes of field payroll preparation and control and such progress photos as required by Town; copies of all such photos to be dated, identified and furnished directly to Town.

8.11.14 The cost of secured off-site storage space or facilities, which have been approved by Town. For all materials listed off-site, Town shall be listed as owner with a Bill of Sale issued to Town for these items.

8.11.15 Any other expenses or charges incurred, with the prior written approval of Town, in the performance of the Work.

8.11.16 All cash and trade discounts, credits for early payment if funded by the Town, rebates, volume discounts, reduced payments or other benefits accruing to the Contractor in connection with the purchase or rental of materials, equipment, Work or other goods required under this Agreement shall accrue to Town.

8.11.17 Legal fees and expenses required for the prosecution of the Work provided the same are approved in writing by the Town prior to being incurred. The foregoing specifically excludes any legal fees and costs incurred in preparing and negotiating this Agreement and any Change Orders as well as any legal fees and costs relative to any matters between the Contractor and Town.

8.11.18 Costs of correction of the Work under Section 26.1 below, if the costs are not attributable to the fault or negligence of the Contractor and/or its Subcontractors, but this inclusion shall not imply any responsibility of the Contractor and/or its Subcontractors to correct any Work after expiration of the limitation period provided in Section 26.1 below.

8.12 The Cost of the Work shall not include the following:

8.12.1 The Work and related expenses, except as otherwise provided in Section 8.11.1 above, of any officers or general office supervisory personnel of the Contractor and of personnel in the Contractor's personnel, legal, advertising, data processing, scheduling, labor relations, insurance and tax departments and all other costs of doing business (including, but not limited to, copying, fax and computer charges), Work and related expenses required to maintain and operate the Contractor's general offices and any established branch offices, other than the field office for the Work.

8.12.2 The Work and related expenses of the Contractor's purchasing, secretarial, estimating and accounting departments and clerical staff at the Contractor's general offices or any established branch offices. These Work shall include all costs associated with computer equipment and related expenses, copying equipment, fax charges (either by page or machine costs), CADD equipment (unless approved in writing by Town prior to invoicing for same), signage, professional association costs (including, but not limited to, AGC/ABC Fees),

bonding charges (including, but not limited to, Fidelity Bonds on office and/or job site personnel), and/or other related expenses.

8.12.3 The use of capital including interest employed for the Work.

8.12.4 Amounts required to be paid by the Contractor for federal, state or local income or franchise taxes.

8.12.5 Except as set forth in Section 8.11.18 above, costs due to the negligence of the Contractor, any Subconsultant or Subcontractor or supplier employed by the Contractor 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 and equipment wrongfully supplied, or making good any damage to property.

8.12.6 Costs in excess of the sum of the GMP for Work.

8.12.7 Entertainment and meal expenses and charges of a personal nature.

8.12.8 Travel charges unless approved in advance of trip in writing by Town. If travel is authorized the charges are to be billed as a separate line item listing employee name, purpose of trip, dates traveled and the daily cost of individual items for which reimbursement is sought.

8.12.9 Bonuses, profit-sharing or other special labor charges unless approved in writing by Town prior to being incurred.

8.12.10 Except as set forth in Section 8.11.7, any legal fees and accounting fees.

8.12.11 All losses resulting from lost, damaged, or stolen tools and/or equipment.

8.12.12 Any cost not specified in Section 8.11 above.

9. SUBCONTRACTOR AND SUBCONSULTANT CONTRACTS AND PURCHASE ORDERS.

9.1 Upon the earlier to occur of (a) thirty (30) calendar days after execution of the Agreement or (b) as soon as possible after the GMP for the Work is agreed upon by the parties, and in either case so as not to delay the Project, the Contractor shall prepare and submit for Town's approval the names of the persons or entities proposed by the Contractor to furnish materials, equipment, or Work for each portion of the Work. The Contractor shall contract solely in its own name and behalf, and not in the name or behalf of Town with the selected Subcontractor or Subconsultant. The Contractor's form of Subcontractor Contract and Subconsultant Contract shall be subject to approval of Town, and once approved may be utilized by Contractor without further approval by the Town provided that no substantial deviations are

made to the approved form of Subcontractor Contract and Subconsultant Contract. At a minimum, the Subcontractor Contract and Subconsultant Contract shall provide that the Subcontractor or Subconsultant, as applicable, shall perform its portion of the Work in accordance with all applicable provisions of this Agreement and the other Contract Documents, that Subcontractor or Subconsultant is bound to the Contractor to the same extent as the Contractor is bound to Town, shall provide for a ten percent (10%) retainage for labor and materials, shall provide for termination of the Subcontractor Contract and Subconsultant Contract by the Contractor in the same manner and method as provided in Article 37 of this Agreement, and shall further provide that, in the event this Agreement is terminated for any reason, that the Subcontractor or Subconsultant shall, at Town's option, perform its Subcontractor Contract or Subconsultant Contract for Town without additional or increased cost, provided the Subcontractor or Subconsultant is paid in accordance with its Subcontractor Contract or Subconsultant Contract. The Contractor shall sign and cause each Subcontractor and Subconsultant to sign an Assignment of Rights Agreement in the form attached hereto as Exhibit "H" (any cost for execution of said assignment will be borne by the Contractor and included in the GMP). Nothing contained herein shall, however, create any obligation on Town to assume any Subcontractor Contract or Subconsultant Contract or make any payment to any Subcontractor or Subconsultant unless Town chooses to request Subcontractor or Subconsultant to perform pursuant to this Section 9.1 or as otherwise provided in this Agreement, and nothing contained herein shall create any contractual relationship between Town and any Subcontractor or Subconsultant.

9.2 The Contractor shall not contract with any Subcontractor, Subconsultant, materialman, vendor, or supplier to whom Town has made reasonable objection or with whom the Town could not lawfully enter into a contract; provided, however, if such results in an increase or decrease cost to the Construction Work, the parties shall execute and deliver a Change Order increasing or decreasing the GMP for the Work based upon the actual amount of such increased or decreased cost to the Work.

9.3 All Subcontractor Contracts and Subconsultant Contracts shall, so far as practicable, contain unit prices and any other feasible formula for use in determination of the cost of changes in the Work.

10. INSURANCE.

10.1 The Contractor shall provide or cause to be provided insurance of the type and on the terms and conditions as specified in Exhibit "I" attached hereto. The cost of this insurance is included in the GMP. The failure of the Contractor to provide such insurance shall be considered a material breach of this Agreement. Insurance purchased by the Contractor shall be purchased from a carrier acceptable to Town.

10.2 Contractor shall maintain the coverages for insurance as required by Exhibit "I" as set forth in this Section 10.2 and thereafter during any and every period when Contractor and/or any of its Subcontractors are performing any work or furnishing any Work pursuant to the Contract Documents. Upon execution of this Agreement, Contractor shall provide or cause

to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, and the umbrella liability insurance policies. Immediately following the issuance of the Notice to Proceed for the Work, Contractor shall provide the builder's risk insurance policy; provided, however, no Work shall be performed unless and until the builder's risk insurance policy is provided to the Town in accordance with this Agreement.

11. INDEMNITY.

11.1 In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees to indemnify, protect, defend, and hold harmless the Town its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Work. The foregoing indemnity is limited to the maximum amount of the insurance coverage limits set forth in Exhibit "I" attached hereto (i.e., \$10,000,000), which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement.

11.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor and/or any Subcontractor or Subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.

11.3 In the event that any claims are brought or actions are filed against the Town with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Contractor agrees that the Town may select the attorneys to appear and defend such claims or actions on behalf of the Town. The Contractor further agrees to pay at the Contractor's expense the attorneys' fees and costs incurred by those attorneys selected by the Town to appear and defend such claims or actions on behalf of the Town. The Town, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the Town.

11.4 To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Contract Documents shall hereby be interpreted as the parties' intention for the indemnification clauses and Contract Documents to comply with Chapter 725, Florida Statutes, as may be amended.

12. BONDS.

12.1 Pursuant to and in accordance with Section 255.05, Florida Statutes, the Contractor shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work (collectively referred to herein as the "Bonds") each in an amount equal to one hundred percent (100%) of the GMP and each in the form attached hereto as Exhibits "J-1" and "J-2" or in other form satisfactory to Town. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the GMP. Within ten (10) days of issuance, Contractor shall record all bonds required by the Agreement in the Department of Public Records of Miami-Dade County.

12.2 Prior to performing any portion of the Work, the Contractor shall deliver to Town the Bonds required to be provided by Contractor as set forth in Section 12.1.

13. INDEPENDENT CONTRACTOR. In performing its obligations hereunder, the Contractor shall be deemed an independent Contractor at Risk and not an agent or employee of Town. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

14. INSPECTIONS AND AUDIT.

14.1 The Contractor represents that he has inspected the Project Location and has satisfied himself as to the condition thereof and that the GMP is just and reasonable compensation for all Work, including all foreseen or foreseeable risks, hazards, and difficulties in connection therewith.

14.2 Town and the Design Consultant at all times shall have access to the Work for inspection thereof, but shall not be obligated to conduct any such inspection. The Contractor shall provide proper and safe facilities for such access and inspection by Town and the Design Consultant. If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be performed.

14.3 No inspection performed or failed to be performed by Town, the Design Consultant, or both shall be a waiver of any of the Contractor's obligations or be construed as an approval or acceptance by Town of the Work or any part thereof.

14.4 To ascertain if the Scope of Work as detailed under this Agreement has been performed, Town shall have access to the Work and the right to audit all of the Contractor's major Subcontractors and major Subconsultants books, records, correspondence, instructions, drawings, receipts, payment records, vouchers and memoranda relating to the Work, and the Contractor and all major Subcontractors and major Subconsultants shall preserve all such

records and supporting documentation for a period of six (6) years after the Final Payment. The Contractor further grants to Town the authority to enter its premises for the purpose of inspection of such records and supporting documentation or, at the Contractor's option, Contractor may make such records and supporting documentation available to Town at a location satisfactory to Town. For purposes of this Agreement, a major Subcontractor or major Subconsultant is a Subcontractor or Subconsultant that performs more than ten percent (10%) of the Work.

14.5 Although the Contractor and the other parties are required to maintain its records, as set forth in 14.4, for a period of six (6) years from the date of Final Payment under this Agreement, Town will audit Contractor's and the other parties' records for purpose of adjustment to Contractor's payments under this Agreement, if at all, within three (3) years after Final Payment under this Agreement.

15. **AS-BUILT PLANS AND SPECIFICATIONS.** Concurrent with the Final Request for Payment, the Contractor shall furnish final as-built Plans and Specifications including surveys, to the Town in a format acceptable to the Town, showing the exact locations of all structures and water, sewer, gas, fuel, telephone, security, and electric lines and mains and of all easements for such utilities then existing. Such as-built Plans and Specifications and surveys shall be prepared by, as applicable, a licensed architect or surveyor who shall certify that the Work is installed and erected entirely upon the Project Location and within the building restriction lines, if any, and does not overhang or encroach upon any easement or right-of-way of others.

16. **NO LIENS.**

16.1 Contractor acknowledges and agrees that the Property is owned by the Town and is therefore excluded from the definition of "real property" upon which liens may be placed as set forth in Section 713.01(24), Florida Statutes. Contractor further acknowledges and agrees that the Work to be performed hereunder is for the construction of a public building and that the Contractor shall comply with the requirements of Section 255.05, Florida Statutes, including but not limited to, the provision of bonds and payment of claims. The Contractor hereby waives, releases, and relinquishes any right to claim or file a mechanic's or materialmen's lien against the Work or any portion thereof, the Project Location or the County including, but not limited to, any rights the Contractor may have under Chapter 713, Florida Statutes. This waiver and relinquishment of Contractor's rights to claim a mechanic's lien is made for good and valuable consideration and in recognition that Town would not enter into this Agreement without such waiver and relinquishment. The Contractor shall, if the Project is subject to the foregoing conditions, include a provision substantially similar to this Section 16.1 in each of its Subcontractor Contracts and purchase orders, requiring Subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Project Location and to look solely to the credit of the Contractor or its surety for payment of any sums due on the Project.

16.2 The Contractor shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work or the Town's property. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed and if the Contractor does not cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, Town shall have the right to pay all sums necessary to obtain such release and discharge and deduct all amounts so paid from the next payment due the Contractor under this Agreement. If any such lien is filed or otherwise imposed, at the request of Town, the Contractor shall cause such lien to be released and otherwise discharged. The Contractor hereby indemnifies and holds harmless Town and the County from all claims, losses, demands, causes of action, expenses including attorneys' fees, or suits of whatever nature arising out of any such lien.

17. TITLE TO WORK. Immediately upon delivery and payment by the Town to Contractor or supplier, as applicable, of Materials to the Project Location or the performance of any part of the Work, as between the Contractor and Town, title thereto shall vest in Town; provided, however, the vesting of such title shall not impose any obligations on Town or relieve the Contractor from any of its obligations hereunder.

18. WORK IN PROGRESS. The Contractor shall protect and prevent damage to all phases of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Contractor shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under insurance required by the Contract Documents) to the Work caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except to the extent such damage or loss is attributable to the negligence of the Town or anyone directly or indirectly employed by the Town, or by anyone for whose acts the Town may be liable, and not attributable to the fault or negligence of the Contractor.

19. HAZARDOUS SUBSTANCES.

19.1 The Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project Location any Hazardous Substance, as defined in Section 19.4, except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any watercourse or ground water, except in accordance with applicable Environmental Laws. In the event the Contractor engages in any of the activities prohibited in this Section 19.1, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Town and its officers, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section 19.1 (collectively "Environmental Claims"); provided, however, the Contractor shall not be responsible for any Environmental Claims arising from Hazardous Substances existing

at the Project Location as of the date of this Agreement except to the extent the Environmental Claims result from the acts or omissions of Contractor and/or Contractor's failure to comply with the requirements of Section 19.1 and 19.2.

19.2 In the event the Contractor encounters on the Project Location any Hazardous Substance, or what the Contractor reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in a manner violative of any applicable Environmental Laws, the Contractor shall immediately stop Work in the area affected and report the condition to Town in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of Town if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event the Contractor fails to stop the work upon encountering a Hazardous Substance at the Project, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Town and its officers, agents and employees from and against all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to, or resulting from the Contractor's failure to stop the Work.

19.3 An extension of time plus payment of reasonable itemized general conditions including demobilization costs shall be the Contractor's sole remedy for any delay arising out of the encountering and/or rendering harmless of any Hazardous Substance at the Project Site. Town and the Contractor may enter into an agreement for the Contractor to remediate and/or render harmless the Hazardous Substance, but the Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

19.4 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and The Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Chapters 161, 253, 373, 376 and 403, Florida Statutes, the rules and regulations of the Florida Department of Environmental Protection, or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Article 19 based on the law in effect at the time its Work are rendered and to comply with any amendments to those laws for all Work rendered after the effective date of any such amendments.

20. COMPLIANCE WITH LAWS.

20.1 The Contractor shall notify Town in writing of all conflicts between the Contract Documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of the Contractor or should have come to the Contractor's attention with the exercise of due care. If the Contractor performs any of the Work knowing, or when with the exercise of due care the Contractor should have known, it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give Town written notice thereof prior to performance, the Contractor shall bear all related costs, liabilities, and expenses arising from such noncompliance including reasonable attorney's fees and costs.

20.2 The Contractor, at its sole cost, shall obtain all necessary licenses, building and other permits, and similar authorizations from governmental authorities required or necessary to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions.

20.3 The Contractor agrees that all of the Contractor's Work and the Work shall comply with all applicable laws, statutes, ordinances, codes, executive orders, rules, regulations including without limitation, those adopted by the Town, all Environmental Laws as defined in Section 19.4, and the federal and State of Florida "Right to Know" laws related to Hazardous Substances in the workplace.

21. PERSONNEL.

21.1 All personnel used or employed by the Contractor in the performance of the Work shall to the best of Contractor's knowledge be qualified by training and experience to perform their assigned tasks. At the request of Town, the Contractor shall not use in the performance of the Work any personnel deemed by Town to be incompetent, careless or unqualified to perform the work assigned to him, or otherwise unsatisfactory to Town.

21.2 The Contractor agrees that in the performance of the Work called for by this Agreement, it will employ only such labor, and engage Subconsultants and Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workmen employed on the Project Location or on any other building, structure, or other improvement which the Contractor or any other Contractor may then be erecting or altering on behalf of Town. The Contractor agrees that it shall not employ any labor that will interfere with labor harmony at the Project location or with the introduction and storage of materials and the execution of work by other Subconsultants and Subcontractors. In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors, Town may, at its option and without demand, terminate this Agreement for default unless the Contractor shall remedy the strike or work stoppage or other disruption within ten (10) calendar days after the dispute arises.

21.3 Contractor shall furnish Town, on request, resumes of Contractor's key personnel involved in the day-to-day Work on the Project.

22. SAFETY AND PROTECTION.

22.1 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

22.1.1 all persons on Project Site or who may be affected by the construction;

22.1.2 all Work and Materials and equipment to be incorporated therein, whether in storage on or off the Project Site; and

22.1.3 other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

22.2 Contractor shall comply with applicable laws and regulations of any public body having jurisdiction for safety or persons or property 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 adjacent property and 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 property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, materialman, supplier, vendor, or any other individual or entity directly or indirectly employed by any 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 safety and for protection of the construction shall continue until such time as all the Work is completed and Town has issued a notice to Contractor that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion in Section 6.2).

22.3 **Safety Representative.** Contractor shall designate a qualified and experienced safety representative at the Project Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

22.4 **Hazard Communication Programs.** Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws or regulations.

22.5 **Emergencies.** In emergencies affecting the safety or protection of persons or the construction or property at the Project Site or adjacent thereto, Contractor, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage,

injury or loss. Contractor shall give Town prompt written notice if Contractor believes that any significant changes in the construction or variation from the Contract Documents have been caused thereby. If a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order will be issued to document the consequences of such action.

23. USE OF SITE AND OTHER AREAS.

23.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas permitted by the Town and other land and area permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber any such land or area's 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 any adjacent land or areas, resulting from the performance of the construction. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceedings or at law. Contractor shall, to the fullest extent permitted by law and regulations, indemnify and hold harmless the Town, Town's consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against Town, or any other party indemnified hereunder to the extent caused by or based on Contractor's, or its Subconsultant's or Subcontractor's performance of the construction.

23.2 During the performance of the Work, Contractor shall keep the Project Site free from accumulations of waste materials, rubbish and other debris resulting from the construction. 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, temporary construction and machinery and surplus materials. Contractor shall leave the Project Site clean and ready for occupancy by Town at Substantial Completion. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

23.3 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.

24. CONTRACTOR'S WARRANTIES. The Contractor represents and warrants to the Town:

24.1 That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Agreement; that it is able to furnish the Materials and Work; that it is experienced in and competent to perform the Work contemplated

by this Agreement; and that it is qualified to do the Work herein and is authorized to do business in the state in which the Project is located.

24.2 That the Contractor holds a general contractor's license, and any other permits and licenses necessary to perform the Work, as required by law.

24.3 That the Work shall be constructed in a good and workmanlike manner, free from defects, and in strict compliance with the Contract Documents.

25. DEFECTS.

25.1 The Contractor shall at its sole cost (a) replace any parts of the Work that fail to conform with the requirements of this Agreement that appear during progress of the Work on the Project; (b) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Final Completion of the Work hereunder or within such longer period of time as may be set forth in the Plans and Specifications, and Addenda or other Contract Documents or as may be required by law; and (c) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by Town or any other party) that are injured or damaged by any such parts of the work that do not conform to the requirements of this Agreement or are due to defects in the work. The provisions of this Article 25 apply to work performed by Subcontractors as well as work performed directly by employees of the Contractor. In addition to the Contractor's responsibility to make repairs or redo work under this Article 25, the Contractor shall also be responsible to Town for any damages suffered by Town as a result of said defects, provided however the Contractor will not be liable for any consequential damages suffered by the Town. The Contractor shall commence any work required under this Article 25 promptly after notice from Town and shall diligently complete such work in a good and workmanlike manner in compliance with the terms of this Agreement applicable to the work generally.

25.2 If Town and the Contractor deem it inexpedient to require the correction of Work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the GMP shall be made by agreement between the Contractor and Town. If Town and the Contractor fail to reach a settlement or the Contractor fails to perform and is not protected by surety (or the surety fails to perform), Town retains the right to perform the Work after seven (7) days written notice to the Contractor and/or surety. Town may withhold the cost of said Work as deemed just and reasonable from monies, if any, due the Contractor. If no monies are held by Town, reimbursement shall be made to Town within thirty (30) days by the Contractor.

25.3 The Contractor's express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies Town may have under this Agreement, at law, or in equity for defective Work.

25.4 If Town elects to perform the work described in this Article 26, this shall not void or otherwise impair the Bonds required by this Agreement. If Town elects to enforce the Bonds, the surety shall cause the work to be commenced within seven (7) days after notice from Town and diligently completed thereafter in a good and workmanlike manner in accordance with the terms of this Agreement applicable to the Work generally.

26. **SIGNAGE.** Except for safety signage required by applicable laws which shall be installed in compliance with applicable laws, all construction signage, including, but not limited to that appearing on cranes and other construction equipment located at the Project Location, shall be subject to the prior written approval of Town. The Contractor recognizes that all signage (except safety signage required by applicable laws) may be disallowed, in Town's sole discretion, and that existing signage or advertising on construction equipment, field offices, trailers, construction fences, etc., may be required to be masked or deleted, all at no cost or expense to Town. Notwithstanding the foregoing, the parties intend to erect a Project sign identifying the Town, Contractor and key participants in the Project. Such Project sign shall be installed in compliance with the Town's sign ordinance.

27. **PRESS RELEASES.** The Contractor shall coordinate any public announcement or publicity releases relating to the Project through the Town's Public Affairs Officer. The Contractor shall also require Subconsultants, Subcontractors, materialmen, suppliers, and vendors to comply with this requirement.

28. **OWNERSHIP OF CONTRACT DOCUMENTS.** All Plans, Specifications, Detail Drawings and other Drawings prepared in connection with the Project, upon payment by Town to Contractor therefore, shall be and remain the property of Town and are not to be used by the Contractor on any other project and shall be relinquished to Town at Final Completion or sooner if otherwise required by this Agreement, provided, however, that the Contractor may maintain one record set of As-Built drawings. In the event this Agreement is terminated prior to Final completion of the Work, the Contractor shall immediately provide electronic copies, in a format acceptable to the Town, of all documents prepared in connection therewith. Such documents shall be provided to Town with an authorization in a form and substance acceptable to Town from the applicable Subconsultants authorizing the Town to use the documents for the Project.

29. **REPRESENTATIVES.**

29.1 The name of the party who is to be the "Town's Representative" is shown in the Project Summary unless and until Town notifies the Contractor in writing that another individual shall be Town's representative. Town's Representative is authorized to recommend approval of Change Orders and increases in the GMP, but Change Orders and increases in the GMP shall be binding on Town only if signed by the Town Manager.

29.2 The name of the party who is to be the "Contractor's Representative" is shown in the Project Summary. Unless a corporate officer of the Contractor advises Town, in writing, of any limitations on the authority of Contractor's Representative, Contractor's Representative

shall have full authority to execute any and all instruments requiring the Contractor's signature and to act on behalf of the Contractor with respect to all matters arising out of this Agreement.

30. ASSIGNMENT. The Contractor shall not assign this Agreement or sublet it as a whole or in part without the written consent of Town, which consent may be withheld or conditioned by the Town in its sole discretion; nor shall the Contractor assign any monies due or to become due to it hereunder, without the previous written consent of Town, which consent may be withheld or conditioned by the Town in its sole discretion. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

31. NONDISCRIMINATION. The Contractor agrees that it will not knowingly violate any applicable laws or regulations prohibiting discrimination in employment in the performance of its work under this Agreement.

32. WAIVER. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by, or tentative approval or acceptance by Town, or the failure of Town to perform any inspection hereunder, shall not constitute a final acceptance of the Work or any part thereof and shall not release the Contractor from any of its obligations hereunder.

33 CONSTRUCTION OF TERMS; CONFLICTS.

33.1 Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.

33.2 The Contract Documents shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity and/or more expensive work shall govern; the terms of this Agreement shall prevail; and anything shown on the Plans and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Plans shall have the same effect as if shown or mentioned respectively in both.

34. CAPTIONS. The captions used for the Sections in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Agreement or any Section hereof.

35. ENTIRE AGREEMENT; SEVERABILITY; AMENDMENTS. The Contract Documents constitute the entire agreement between the parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements with respect thereto not incorporated in such Contract Documents are hereby canceled. This Agreement can be modified or amended only by a document duly executed on behalf of the parties hereto. In the event any provision of the Contract Documents shall be determined to be illegal, invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall be enforced to the fullest extent permitted by law.

36. TERMINATION.

36.1 Town shall have the right at any time, on not less than seven (7) days prior written notice to the Contractor, to terminate this Agreement without cause and/or for Town's convenience including, but not limited to termination in the event that (a) the Project is abandoned by Town; and/or the Town Commission terminates, suspends or modifies the Project. Upon receipt by the Contractor of such notice of termination (the "Date of Termination"), the Contractor shall immediately discontinue the Work and remove its equipment and employees from the Project location. In the event of termination under this Section 36.1, the Contractor shall have the right, as its sole and exclusive remedy, to recover from Town payment of the Contract Sum for Work performed up to the Date of Termination (less any payment made to the Contractor by Town). In addition, without terminating this Agreement as a whole, Town may, for convenience, terminate a portion of this Agreement (by reducing, in such manner as Town deems appropriate, the scope of the Work to be performed by the Contractor). In which event such termination of a portion of this Agreement shall be treated as a reduction in the scope of the Work, to which an equitable reduction shall be made to Contract Sum.

36.2 In addition to Town's right to terminate this Agreement for default under the terms of Section 21.2 and elsewhere in this Agreement, if the Contractor shall fail to commence the Work in accordance with the provisions of this Agreement, fail to perform the Work or portions thereof to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, fail to use an adequate quantity or quality of personnel, equipment, or material to complete the Work within the Contract Time, fail to perform any of its obligations under the Contract Documents, be adjudged a bankrupt, make a general assignment for the benefit of its creditors, permit a receiver to be appointed on account of its insolvency, otherwise insolvent, or fail to make prompt payments to its Subcontractors, materialmen or laborers, Town shall provide the Contractor with written notice thereof, stating the nature of the default complained of. If Contractor does not cure such default within seven (7) days after receipt of such notice (or such longer period agreed to by the parties if the nature of the default is such that it cannot be cured within seven [7] days and Contractor has commenced and is diligently proceeding to cure within the original seven [7] day period), the Town shall have the right, on forty-eight (48) hours written notice thereof to the Contractor to terminate this Agreement.

In the event of termination under this Section 36.2, Town shall notify the Contractor's surety, and the Contractor's surety shall take over and perform this Agreement. The Contractor's surety shall continue to perform, on at least an interim basis, until such time as it makes other satisfactory arrangements for completion pursuant to the Bond obligations. If the Contractor's surety does not commence performance with adequate quantity and quality of personnel, equipment, and material to maintain the Contract Time, within five (5) days from the date of receipt of such notice of termination, Town may, without further notice to the Contractor or its surety, take possession of and use, without any rental obligation to the Contractor or any third party, all or any part of the Contractor's Materials and other property of every kind used by the Contractor in the performance of the Work and use such property in the completion of the Work, and complete the Work with its own forces or by engaging the Work of other parties therefore. Any such act by Town shall not be deemed a waiver of any other right or remedy of Town under this Agreement, the Bonds or otherwise. If after exercising any such remedy the cost to Town of the performance of the balance of the Work is in excess of that part of the GMP which has not previously been paid to the Contractor hereunder, the Contractor and the Contractor's surety shall be liable for and shall reimburse Town for such excess costs and all delay and damages suffered by Town as a result thereof. If after termination of this Agreement under this Section 36.2, it is determined that the Contractor was not in default or that sufficient cause to terminate under Section 36.2 did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Town under Section 36.1, and that the Contractor agreed to Town's use of its materials and other property, in which case the Contractor shall be entitled to be paid a reasonable sum for Town's use of the Contractor's Materials and/or other property of the Contractor

36.3 If Town fails to perform any of its obligations hereunder, the Contractor shall have the right to give Town written notice thereof, stating the nature of the default complained of. If Town does not cure such default within fifteen (15) days after receipt of such notice (or such longer period agreed to by the parties if the nature of the default is such that it cannot be cured within fifteen [15] days and Town has commenced and is diligently proceeding to cure within the original fifteen [15] day period), the Contractor shall have the right, on forty-eight (48) hours written notice thereof to Town to terminate this Agreement. The Contractor shall have the right to terminate this Agreement upon thirty (30) days written notice if the Work is suspended for a period of ninety (90) consecutive days or more due to causes not the fault of the Contractor.

36.4 Town may, if the Contractor neglects to perform the Work properly or to perform any provision of the Contract Documents, or does, or omits to do, anything whereby safety or proper construction may be endangered or whereby damage or injury may result to person or property, after forty-eight (48) hours written notice to the Contractor, without prejudice to any other remedy Town may have, make good all Work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Sum due or which may thereafter become due the Contractor, but no action taken by Town hereunder shall affect any of the other rights or remedies of Town granted by this Agreement or by law relieve the Contractor or the Contractor's surety from any consequences or liabilities arising from such acts or omissions.

36.5 The rights and remedies of Town under this Section 37 shall be non-exclusive, and shall be in addition to all the other remedies available to Town at law or in equity.

37. DISPUTE RESOLUTION.

37.1 This Agreement shall be governed by the laws of the State of Florida and the applicable laws of the United States of America. Any proceeding seeking to enforce any provision of, or based on any rights arising out of, this Agreement may be brought against any of the parties in the courts of the State of Florida, County of Miami-Dade, or if it has or can acquire jurisdiction in the United States District Court of the Southern District of Florida and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action. **THE PARTIES HEREBY WAIVE ANY RIGHTS TO A JURY TRIAL OR PROCEEDING AND WAIVE ANY OBJECTION TO VENUE, PROVIDED, HOWEVER, THAT SUCH VENUE SHALL BE CONSISTENT WITH THE REQUIREMENTS OF SECTION 47.025, FLORIDA STATUTES.**

37.2 Pending resolution of any dispute arising under this Agreement, other than termination hereof, the Contractor shall diligently proceed with performance of this Agreement and Town shall continue to make payments in accordance with the Contract Documents, except for performance and payment related to the disputed matter.

38. NOTICES. All notices to be given hereunder shall be in writing, and shall be given, served, or made by facsimile transmission followed by one of the following methods: (a) depositing the same in the United States Mail addressed to the party to be notified, postpaid and first class mail, (b) by nationally recognized overnight courier service such as Federal Express or United Parcel Service, or (c) by delivering the same in person to such party. Notices of an alleged default and/or any termination of this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, postpaid, to the recipient party. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties hereto shall be sent to or made to the addresses shown in Section 41 below. By giving the other party at least fifteen (15) days written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as its address for the purposes hereof any other address in the United States of America.

39. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

40. ADDRESSES. All invoices, contracts, copies of notices and other correspondence should be addressed to Town and the Contractor as follows:

If to Town:

Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Fax No.: (305) 993-5097

With a copy to:

Town Attorney
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Fax No.: (305) 993-1065

If to Contractor:

West Construction, Inc.
318 South Dixie Highway, Suite 4-5
Lake Worth, Florida 33460
Attn: Christopher Caprio
Fax No. (561) 582-9419

With a copy to:

Fax No. (____) _____

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above set forth:

CONTRACTOR:

WEST CONSTRUCTION, INC.
a Florida corporation

By: _____
Name: _____
Title: _____

Dated: January ____, 2010

TOWN:

TOWN OF SURFSIDE,
a Florida municipal corporation

By: _____
Name: _____
Title: _____

Dated: January ____, 2010

ATTEST:

By: _____
Town Clerk

Approved as to form and legal sufficiency:

.

By: _____
Town Attorney

EXHIBIT "A"

CONTRACT TIMES

A. Substantial Completion. The Contractor agrees to achieve Substantial Completion within three hundred (300) calendar days from the commencement date set forth pursuant to a Notice to Proceed from the Town's Project Representative to Contractor's Project Representative, which means that the Substantial Completion Date shall not be more than three hundred (300) calendar days from the commencement date. The three hundred (300) calendar days incorporates the Contractor's expectation that it will experience eighteen (18) working days of weather delay during construction of the Project. An extension of the Contract Time for weather delays may only be claimed in accordance with Section 6.2 of the Agreement. Pursuant to Section 6.4 of the Agreement, Final Completion shall occur within forty-five (45) calendar days following Substantial Completion. Time is of the essence in the performance of the Work.

B. Liquidated Damages. Pursuant to Section 6.6 of the Agreement, if the Contractor shall neglect, fail, or refuse to complete the Work by the Substantial Completion Date and the Final Completion Date, subject to any proper extension granted by Town, then the Contractor shall pay to Town, or to cause the Contractor's surety to pay to Town, Liquidated Damages in the amount of (a) Five Hundred and 00/100 Dollars (\$500.00) per diem commencing upon the first day following expiration of the Substantial Completion Date and continuing until the actual date of Substantial Completion, and (b) One Thousand and 00/100 Dollars (\$1,000.00) per diem commencing upon the first day following expiration of the Final Completion Date and continuing until the actual date of Final Completion.

EXHIBIT "B"
CHANGE ORDER

CHANGE ORDER

TO: Town of Surfside

PROJECT: Town of Surfside Community Center Project No. CC5355

CONTRACTOR: _____

DATE: _____

This Change Order will authorize the following change to the Agreement:

The Work as set forth in the Agreement is hereby amended to include the items set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under this Agreement. The Contractor acknowledges and agrees that (a) the Guaranteed Maximum Price of \$_____ under the Agreement will be [unchanged] [changed] by this Change Order, and (b) the schedule for performance of Work will be [unchanged] [changed] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Agreement shall remain in full force and effect and shall cover the performance of, and payment for, any work authorized hereunder. Any defined terms not defined in this Change Order shall have the meanings set forth in the Agreement.

By signing below the parties indicate acceptance of this Change Order as set forth herein.

**TOWN OF SURFSIDE,
a Florida municipal corporation**

By: _____

Name: _____

Title: _____

By: _____

Town Manager

EXHIBIT "C"

REQUEST FOR PAYMENT FORM

REQUEST FOR PAYMENT

PROJECT TITLE: Town of Surfside Community Center

CONSTRUCTION AGREEMENT DATED:

PROJECT NO: CC5355

Invoice #: _____

Date: _____

Application is made for payment as shown below, in connection with the Construction Agreement (additional sheets are attached to provide a complete breakdown of the requested payment):

- | | | |
|----|--|-------------------|
| 1. | Guaranteed Maximum Price | \$ _____ |
| 2. | Net Change by Change Orders | \$ _____ |
| 3. | Guaranteed Maximum Price to date (Line 1 + 2) | \$ _____ |
| 4. | Total Completed and Stored to date (see continuation sheet) | \$ _____ |
| 5. | Retainage to date (see continuation sheet) | \$ _____ |
| 6. | Total Earned less Retainage (Line 4 less Line 5 total) | \$ _____ |
| 7. | Less Previous Requests for Payment
(line 6 from previous Request) | \$ _____
_____ |
| 8. | Current Payment Due | \$ _____ |
| 9. | Balance to Finish (Line 1 less Line 4) | \$ _____ |

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Request for Payment has been completed in strict accordance with the contract Documents, that all amounts have been paid by the Contractor for work for which previous Requests for Payment were issued and payment received from the Town and that the current payment requested herein represents a just estimate of reimbursements to the contractors, subcontractors, materialmen, vendors, and

suppliers for Work performed and material delivered. The Contractor further certifies that there are no known mechanic's or materialmen's liens outstanding at the date of this request, that all due and payable bills with respect to the Work and materials have been paid to date or are included in the amount requested herein and that, except for such bills not paid but so included, there is no known basis for the filing of any mechanic's or materialmen's liens on the Work, and that waivers from all contractors, subcontractors, materialmen, vendors and suppliers have been obtained in such form required by the Construction Agreement.

By: _____
Name: _____
Title: _____

EXHIBIT "D"
CERTIFICATE OF SUBCONTRACTOR &
FINAL WAIVER OF LIEN

**CERTIFICATE OF SUBCONTRACTOR &
FINAL WAIVER OF LIEN**

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified below as the Subcontractor, which entity has executed the attached Release and Waiver, and I hereby certify that said Subcontractor has paid all employees, contractors and materialmen in full for all labor and materials supplied by them to, for or under the Subcontractor in connection with the attached described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of the Subcontractor, I hereby further covenant, warrant and represent that should any claim or lien be filed against the Town of Surfside, a Florida municipal corporation (the "Town"), the Project, the real property upon which the Project is located or against the Contractor for material or labor supplied by, to, for or under the Subcontractor in connection with the Subcontractor's participation in the construction of the Project, the Subcontractor will immediately pay and satisfy such claim or lien or furnish a sufficient bond, pursuant to Chapter 713, Florida Statutes, for the release of such lien, and obtain settlement of any such liens and furnish the Town and the Contractor a signed instrument fully releasing any such liens. The Subcontractor further agrees to fully indemnify and hold harmless the Town, its agents and employees, and the Contractor, its sureties, agents and employees, for any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under the Subcontractor.

I further certify on behalf of and in the name of the Subcontractor that the Subcontractor has complied with all federal, state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of the Subcontractor's obligations in connection with the Project.

THAT the undersigned Subcontractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including

the date of this release, and in connection with that certain project (the "Project") known as Town of Surfside Community Center Project No. CC5355, which Project is owned by the Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or Work supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Subcontractor does hereby acknowledge and represent that:

1. Through the date hereof, the undersigned has received total payments in the amount of \$_____ for labor and/or materials supplied to or for the Project; and
2. The undersigned Subcontractor hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof.

This instrument has been executed as of the _____ day of _____, 20__.

SUBCONTRACTOR:

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

This instrument was acknowledged before me this _____ day of _____ 20__ by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

(name typed)
My Commission Expires: _____

EXHIBIT "E"

**CERTIFICATE OF CONTRACTOR &
FINAL WAIVER OF LIEN**

**CERTIFICATE OF CONTRACTOR &
FINAL WAIVER OF LIEN**

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified herein as the Contractor, which entity has executed the attached Release and Waiver, and I hereby certify that said Contractor has paid all employees, subcontractors and materialmen in full for all labor and materials supplied by them to, for or under the Contractor in connection with the above described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of the Contractor, I hereby further covenant, warrant and represent that should any claim or lien be filed against the Town of Surfside, a Florida municipal corporation (the "Town"), the Project, the real property upon which the Project is located or any other property owned by the Town of Surfside for material or labor supplied by, to, for or under the Contractor in connection with the Contractor's participation in the construction of the Project, the Contractor will immediately pay and satisfy such claim or lien or furnish a sufficient bond, for the release of such lien, and obtain settlement of any such liens and furnish the Town a signed instrument fully releasing any such liens. The Contractor further agrees to fully indemnify and hold harmless the Town, its agents and employees, from any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under the Contractor.

I further certify on behalf of and in the name of the Contractor that the Contractor has complied with all federal state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of the Contractor's obligations in connection with the Project.

THAT the undersigned Contractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as Town of Surfside Community Center Project No. CC5355, which Project is owned by the

Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or Work supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Contractor does hereby acknowledge and represent that:

1. Through the date hereof, the undersigned has received total payments in the amount of \$ _____ for labor and/or materials supplied to or for the Project; and
2. The undersigned Contractor hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof.

This instrument has been executed as of the ____ day of _____, 20__.

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

This instrument was acknowledged before me this _____ day of _____ 20__ by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

(name typed)

My Commission expires: _____

EXHIBIT "F"

**CERTIFICATE OF CONTRACTOR &
PARTIAL WAIVER OF LIEN**

**CERTIFICATE OF CONTRACTOR &
PARTIAL WAIVER OF LIEN**

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified herein as the Contractor, which entity has executed the attached Release and Waiver, and I hereby certify that said Contractor has paid all employees, subcontractors and materialmen in full for all labor and materials supplied by them to, for or under the Contractor in connection with the above described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of the Contractor, I hereby further covenant, warrant and represent that should any claim or lien be filed against the Town of Surfside, a Florida municipal corporation (the "Town"), the Project, the real property upon which the Project is located or any other property owned by the Town of Surfside for material or labor supplied by, to, for or under the Contractor in connection with the Contractor's participation in the construction of the Project, the Contractor will immediately pay and satisfy such claim or lien or furnish a sufficient bond, for the release of such lien, and obtain settlement of any such liens and furnish the Town a signed instrument fully releasing any such liens. The Contractor further agrees to fully indemnify and hold harmless the Town, its agents and employees, from any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under the Contractor.

I further certify on behalf of and in the name of the Contractor that the Contractor has complied with all federal state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of the Contractor's obligations in connection with the Project.

THAT the undersigned Contractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as the Town of Surfside Community Center Project No. CC5355, which Project is owned by the

Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or Work supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Contractor does hereby acknowledge and represent that:

3. Through the date hereof, the undersigned has received total payments in the amount of \$_____ for labor and/or materials supplied to or for the Project; and
4. The undersigned Contractor hereby acknowledges receipt of payment in full of all sums agreed and required to be paid to the undersigned in connection with the Project for all labor and/or materials supplied by the undersigned to or for the Project prior to, through and including the date hereof, it being understood that retainage in the amount \$_____ of is being withheld pursuant to the terms of the Agreement.

This instrument has been executed as of the ___ day of _____, 20__.

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

This instrument was acknowledged before me this _____ day of _____ 20__ by
_____ who [] is personally know to me
or [] produced _____ as identification.

Notary Public: _____

(name typed)

My Commission expires: _____

EXHIBIT "G"

**CERTIFICATE OF SUBCONTRACTOR &
PARTIAL WAIVER OF LIEN**

**CERTIFICATE OF SUBCONTRACTOR &
PARTIAL WAIVER OF LIEN**

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

The undersigned, being duly sworn, on oath deposes and says under penalty of perjury:

I am the _____ of the corporation or other entity identified below as the Subcontractor, which entity has executed the attached Release and Waiver, and I hereby certify that said Subcontractor has paid all employees, contractors and materialmen in full for all labor and materials supplied by them to, for or under the Subcontractor in connection with the attached described Project through and including the date of this instrument, except for such persons listed on the attached sheet in the amount indicated opposite their names, who shall be paid in full within ten (10) days after the date hereof.

On behalf of and in the name of the Subcontractor, I hereby further covenant, warrant and represent that should any claim or lien be filed against the Town of Surfside, a Florida municipal corporation (the "Town"), the Project, the real property upon which the Project is located or against the Contractor for material or labor supplied by, to, for or under the Subcontractor in connection with the Subcontractor's participation in the construction of the Project, the Subcontractor will immediately pay and satisfy such claim or lien or furnish a sufficient bond, pursuant to Chapter 713, Florida Statutes, for the release of such lien, and obtain settlement of any such liens and furnish the Town and the Contractor a signed instrument fully releasing any such liens. The Subcontractor further agrees to fully indemnify and hold harmless the Town, its agents and employees, and the Contractor, its sureties, agents and employees, for any loss, cost or damage, including but not limited to attorneys' fees, which they may incur by reason of any such claim or lien by, through or under the Subcontractor.

I further certify on behalf of and in the name of the Subcontractor that the Subcontractor has complied with all federal, state and local tax laws, including social security laws, and unemployment compensation laws and workers' compensation laws, insofar as same are applicable to the performance of the Subcontractor's obligations in connection with the Project.

THAT the undersigned Subcontractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as

EXHIBIT "H"
ASSIGNMENT

ASSIGNMENT

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

**ASSIGNMENT OF RIGHTS UNDER
SUBCONTRACTOR CONTRACT/SUBCONSULTANT CONTRACT**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, _____ whose mailing address is _____ (the "Contractor"), does hereby TRANSFER, ASSIGN and CONVEY unto the TOWN OF SURFSIDE, a Florida municipal corporation, whose mailing address is 9293 Harding Avenue, Suefside, Florida 33154 (the "Town"), all of the rights, interests, benefits and privileges of the Contractor under (a) that certain Subcontractor Contract/Subconsultant Contract (the "Subcontract") dated _____ 20____, by and between the Contractor, and _____ ("the Subcontractor"), a copy of said Subcontract is attached hereto as Exhibit "A" and made a part hereof, providing for a portion of the labor and/or materials that the Contractor is obligated to provide the Town under that certain Construction Management at Risk Agreement (the "Agreement") dated _____, 20____, for the construction of a project and related improvements known as the Town of Surfside Community Center Project No. CC5355 in Surfside, Florida (the "Project"), and (b) any and all payment and performance bonds issued in conjunction with the Subcontract. However, the Town does not hereby assume any of the Contractor's liabilities, duties or obligations under the Subcontract.

The foregoing Assignment constitutes a part of the security given to the Town by the Contractor to secure the Contractor's performance of the Agreement. Notwithstanding anything in this instrument to the contrary, the Town shall not exercise any rights under this instrument unless an event of default or other termination shall have occurred under the provisions of the Agreement. The Town shall have the right, but not the duty, in the event of a default and/or termination pursuant to the terms of the Agreement, to exercise all of its rights, interests, benefits and privileges under the Subcontract.

Subcontractor hereby agrees with the Town as follows:

That Subcontractor hereby consents to the foregoing assignment and agrees to notify the

Town in writing at the same time Subcontractor notifies the Contractor of the occurrence of any failure of payment under the provisions of the Subcontract or of the occurrence of any other default by the Contractor under the provisions of the Subcontract.

That if the Town notifies the Subcontractor in writing that an event of default by the Contractor, or other termination, has occurred under the Agreement, the Subcontractor shall, at the Town's request, waive the Contractor's default and continue performance on the Town's behalf under the Subcontract in accordance with the terms thereof, provided that the Subcontractor shall be paid in accordance with the Subcontract for the following as and when they are due under the Subcontract:

- (a) all Work, work, labor and materials rendered on the Contractor's behalf prior to the Town's request;
- (b) all Work, work, labor and materials rendered on the Town's behalf following the Town's request; and
- (c) the amount of retainage, if any, withheld by the Town from payments to the Contractor made by the Town prior to the Town's request.

That in the event any of Subcontract proceeds are disbursed by the Town directly to the Subcontractor, the Subcontractor will receive any such advances and will hold the same as a trust and for the purpose of paying the costs of the labor performed and equipment and supplies used in connection with the Project, and the Subcontractor will apply the same only to payment of such costs and for no other purpose.

That upon the Town's request, the Subcontractor shall furnish to the Town a current list of all persons or firms with whom the Subcontractor has entered into subcontracts or other agreements relating to the performance of work or furnishing of materials in connection with the Project which have a value of \$1,000 or more, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by the Subcontractor. The Contractor hereby consents to the furnishing to the Town of such list and statement.

Subcontractor consents to the Town assigning the Town's rights hereunder to anyone whom the Town may choose to complete the Contractor's obligations, including without limitation, the Contractor's surety.

That the Town has no obligation to exercise its rights under this Assignment and furthermore has no obligation to pay Subcontractor unless the Town exercises its rights as set forth herein.

That this Assignment does not create third party beneficiary rights under the Agreement in favor of anyone, including Subcontractor.

IN WITNESS WHEREOF, this instrument shall be effective as of the date of the Subcontract.

CONTRACTOR:

SUBCONTRACTOR:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

This instrument was acknowledged before me this _____ day of _____ 20__ by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

 (name typed)

My Commission Expires: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

This instrument was acknowledged before me this _____ day of _____ 20__ by _____ who [] is personally know to me or [] produced _____ as identification.

Notary Public: _____

 (name typed)

My Commission Expires: ____

EXHIBIT "I"

INSURANCE REQUIREMENTS

Contractor shall provide or cause to be provided the following insurance and shall also ensure that the following insurance language shall be included in the Subconsultant Contracts and Subcontractor Contracts. Prior to commencement of Work certificates of insurance shall be provided evidencing Contractor's and its Subconsultant's and Subcontractor's compliance with these insurance requirements; provided, however, builder's risk insurance shall not be required unless and until the Work commences. Without limiting any of the other obligations or liabilities of Contractor and the Subconsultants and Subcontractors, Contractor, Subconsultants, and Subcontractor shall provide, pay for, and maintain in force until all of the Work is completed and accepted by the Town (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein.

1. Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence with respect to Contractor, and One Million Dollars (\$1,000,000) per occurrence with respect to Subconsultants only.
2. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.
 - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
3. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to Contractor, and Two Million Dollars (\$2,000,000) with per occurrence respect to Subcontractors, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Work Office, and must include:
 - (a) Premises and/or Operations;
 - (b) Independent Contractors;
 - (c) Products and/or Completed Operations for contracts over Fifty Thousand Dollars (\$50,000.00) contractor shall maintain in force until at least three (3) years after completion of all work required

under the Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage;

- (d) Explosion, Collapse and Underground Coverages;
 - (e) Broad Form Property Damage;
 - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;
 - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
 - (h) Town and Contractor are to be expressly included as “Additional Insureds” with respect to liability arising out of operations performed for Town and Contractor by or on behalf of Contractor and Subcontractors or acts or omissions of Town or Contractor in connection with general supervision of such operation.
4. Umbrella Liability, general aggregate of Ten Million Dollars (\$10,000,000) with respect to Contractor only.
5. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Work Office, and must include:
- (a) Owned Vehicles.
 - (b) Hired and Non-Owned Vehicles.
6. Builder’s Risk Insurance for the construction of above ground buildings and/or structures is required. The coverage shall be “All Risk” form for One Hundred Percent of the completed value, including Town and Contractor as named insureds, with a deductible of not more than Fifty Thousand Dollars (\$50,000) each claim.
- (a) Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any “occupancy clause” or similar warranty or representation that the building(s), addition(s)

or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's Risk Coverage will continue to apply until the Substantial Completion Date.

- (b) When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the Town. The Contractor shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days' prior written notice to Town except in the case of non-payment by the Contractor for which ten (10) days' prior written notice will be provided to Town; (ii) be effective for a period from the date of this Agreement through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Agreement through at least five (5) years after completion of the Work provided hereunder and builder's risk insurance which shall be effective through Substantial Completion; (iii) with respect to the professional liability insurance provided (or caused to be provided) by Contractor, this policy shall name the Town as an additional insured to provide for third party vicarious liability claims, and shall be amended to allow the Town to make a claim against the policy for errors, omissions or other liabilities covered by the policy as a result of the performance of the Work by the other insureds; and (iv) in the event the Town and Contractor are unable to reach a GMP for the Work pursuant to Section 4.2 of the Agreement, the applicable Subconsultants shall only be required to furnish professional liability insurance which meets the requirements of Section 1 of this Exhibit I and the additional requirements of subparagraph (iii) of this paragraph shall not apply. Insurance shall be provided to the Town at the times required by Section 10.2 of this Agreement at which time the Contractor shall deliver to Town a certificate of insurance naming Town as an additional insured as required hereunder for each policy of required insurance for Comprehensive General Liability, Business Automobile Liability, Umbrella Liability and Builder's Risk. Except for professional liability insurance, the minimum coverages and time periods specified above are not intended, and shall not be construed, to limit any liability of the Contractor to Town under this Agreement. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). Contractor is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by this Agreement. The cost of deductibles paid by Contractor shall be included in the Cost of the Work.

EXHIBIT "J-1"
PERFORMANCE BOND

PERFORMANCE BOND

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

KNOW ALL MEN BY THESE PRESENTS: That _____, as Principal, and _____, authorized, licensed and admitted to do business under the laws of the State of Florida to act as surety on bonds, as Surety, are held and firmly bound unto the Town of Surfside, a Florida municipal corporation (the "Town"), as obligee, in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into that certain Construction Agreement with the Town, dated the ____ day of 2009, for the construction of Town of Surfside Community Center Project No. CC5355 (the "Agreement"), which Agreement is by reference made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION, IS SUCH THAT, if the said Principal shall faithfully perform the Agreement and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, warranties and agreements in and by the Agreement agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of the Agreement, then this obligation shall be void; otherwise to remain in full force and effect,

Whenever Principal shall be, and declared by the Town to be in default under the Agreement, the Town having performed the Town's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Agreement in accordance with the terms and conditions; or
- (2) Obtain a bid or bids for completion of the Agreement in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Town elects, upon determination by the Town and the Surety jointly of the lowest responsible bidder,

arrange for a contract between such bidder and Surety for completion of the Agreement in accordance with the terms and conditions, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this contract or contracts of completion arranged under this Paragraph) sufficient funds to pay the cost of completion less the balance of the Agreement price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amounts set forth in the first paragraph hereof. The term "balance of the Agreement price" as used in this Paragraph, shall mean the total amount payable by the Town to Contractor under the Agreement and amendments thereto, less the amount paid by the Town to Contractor and less amounts withheld by the Town pursuant to its rights under the Agreement.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder and further agrees to all of the terms contained in the Agreement.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, 2009.

PRINCIPAL

SURETY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "J-2"
PAYMENT BOND

LABOR AND MATERIAL PAYMENT BOND

TO: Town of Surfside

CONTRACTOR:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONSTRUCTION AGREEMENT DATED:

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

KNOW ALL MEN BY THESE PRESENTS: That _____, as Principal, and _____, authorized, licensed and admitted to do business under the laws of the State of Florida to act as surety on bonds, as Surety, are held and firmly bound unto the Town of Surfside, a Florida municipal corporation (the "Town"), as obligee, in the sum of _____ Dollars (\$_____) for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally:

WHEREAS, the Principal has entered into that certain Construction Agreement with the Town, dated the ____ day of 2009, for the construction of Town of Surfside Community Center Project No. CC5355 (the "Agreement"), which Agreement is by reference made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS THAT PRINCIPAL:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the Agreement; and
2. Pays the Town all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that the Town sustains because of default by Principal hereunder;

Then this bond is void; otherwise, it remains in full force.

Any changes, extensions of time, alterations or additions in or under the Agreement, contract documents, plans, specifications and/or drawings, or the work to be performed thereunder, and compliance or noncompliance with formalities connected with the Agreement or with the changes do not affect Surety's obligations under this Bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions in or under the Agreement, contract documents, plans, specifications and/or drawings, or the work to be performed thereunder.

This Bond is filed in accordance with Section 713.23, Florida Statutes, and/or Section 255.05, Florida Statutes, whichever or both as may be applicable.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 2009.

PRINCIPAL

SURETY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "K"
NOTICE TO PROCEED

NOTICE TO PROCEED

Dated _____, 200__

TO:

ADDRESS:

PROJECT: Town of Surfside Community Center Project No. CC5355

CONTRACT: Construction Agreement dated _____

You are hereby notified that the Contract Times with respect to the Work under the above Construction Agreement will commence to run on _____, 20____. By that date, you are to start performing your obligations under the Contract Documents with respect to the Work. In accordance with the Agreement, the following are certain dates relative to the Work:

[Insert Substantial Completion Date for the Work].

Before you may start any Work at the site, Section 10.2 of the Agreement requires you and all Subcontractors and Subconstulants, as applicable, each deliver to the Town, who shall be listed as an additional insured, certain Certificates of Insurance that each is required to secure and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must

(if necessary, add other requirements)

TOWN OF SURFSIDE,
a Florida municipal corporation

By: _____
Town's Project Representative