



V I L L A G E O F K E Y B I S C A Y N E

Office of the Village Manager



Village Council
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Gary R. Gross
Theodore Holloway
Michael E. Kelly

DATE: April 12, 2016
TO: Honorable Mayor and Members of the Village Council
FROM: John C. Gilbert, Village Manager
RE: Village Hall Parking Garage: Request for Proposals (RFP) for Design Build Services

Village Manager
John C. Gilbert

RECOMMENDATION

It is recommended that the Village Council review the attached draft Request for Proposals (RFP) for Design Build Services to construct a parking garage behind Village Hall and provide any comments and/or concerns by Tuesday, April 26, 2016.

BACKGROUND

The Design Build Process is a project delivery method used in the construction industry where one entity enters into a single contract with the owner to provide both design and construction services. Attached as Exhibit "A" is a detailed description of the process and the key features of this RFP.

The Village's Master Plan and Zoning and Land Development Regulations provide for a maximum height of 35 ft. measured from Base Flood Elevation (BFE) to the top of highest elevation of the roof slab. The existing parking lot contains 48 spaces. Depending on the design, the future garage may have three (3) to four (4) floors with approximately 47-53 spaces per floor. The RFP provides for a base design with the garage at grade. It also provides for an alternate design with one level below grade similar to the parking garage at the Community Center.

The attached RFP provides for various green components (EV charging stations, bicycle parking, and energy efficient lighting) in the base bid and an analysis if the roof deck could be finished as recreational space. At an additional cost, the RFP also includes the design and construction to achieve a guaranteed Green Garage Bronze Certification. Upon award of the contract, the Village Council shall determine whether or not to include the certification as a requirement.

The Village Manager will engage the services of a consultant to review and determine those proposals that meet the minimum requirements. It is anticipated this service will be provided by one of the three (3) professional engineering firms which will be selected by Council on April 26. The qualified proposals will then be evaluated by the Evaluation Committee composed of staff. The Evaluation Committee will short-list three (3) to five (5) firms depending on the number of proposals received.

The Evaluation Committee will utilize the following criteria and point values listed below (Section 1.13 of the RFP):

Evaluation Criteria		Maximum Points
1.	Qualifications, Experience & Similar Projects, Project Management Team	25
2.	Project Plan/Approach	25
3.	Proposed Price	50
TOTAL		100

The highest ranked firms will give presentations before the Village Council. The Village Council will then select the finalist.

Reviewed by Mr. Terence McKinley from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

Exhibit A

Village Hall Parking Garage RFP Features

- Project Delivery Method – Design-Build
 - Assures that the designer and constructor cooperate and coordinate their work.
 - Design-Builder is the construction contractor. The designer is a subconsultant to the Design-Builder.
 - Saves time by not having to advertise for both a designer and a constructor and completing the design before construction can begin.
 - Saves time by allowing some construction work (e.g. site work, foundations and underground utilities) to begin before the detailed design has been completed (fast-tracking).
- Contract Price is essentially two lump-sums – one for design services and one for construction services.
 - Provides for no retention to be withheld for professional design services.
 - Provides for reduced bonding cost – bonds on construction component only.
 - Does not preclude services from overlapping (fast-tracking).
- Proposed Pricing – Two Garage Structure Alternatives
 - One design and price for the lowest parking level to be at ground level. (Limits number of parking spaces because of height limitation and roof green space requirements.)
 - An alternative design and price for the lowest parking level to be below ground level. (Can produce more roof green space and increase number of parking spaces.)
- Bronze-Level “Green Garage” Certification Option
 - Provides an opportunity for a guaranteed “Green Garage” Bronze Certification by the Green Parking Council.
 - Some “green” features included in base bid alternatives (roof green space, EV charging stations, bicycle parking, energy-efficient lighting, etc.), but not enough for a Bronze Certification.
 - Proposers will propose additional price for design and construction sufficient “green” features to guarantee award of a Bronze Certificate.

VILLAGE OF KEY BISCAYNE
REQUEST FOR PROPOSALS (RFP)



RFP No. 16- [REDACTED]

Village Hall Parking Garage Design-Build

ISSUE DATE: [REDACTED], 2016

PROPOSAL OPENING DATE: [REDACTED], 2016

PROPOSAL OPENING TIME: 2:00 P.M.



ADVERTISEMENT FOR REQUEST FOR PROPOSALS (RFP)

VILLAGE OF KEY BISCAYNE

The Village of Key Biscayne will receive sealed proposals until **2:00pm** local time, [REDACTED], **2016**, at the Village Clerk's office, Village of Key Biscayne, 88 West McIntyre Street, Suite 220, Key Biscayne, FL 33149, at which time they will be opened and read aloud for the following project:

Village Hall Parking Garage Design-Build

The Village of Key Biscayne, Florida (Village) requests Proposals from qualified firms for the Village Hall Parking garage Design-Build Project. The nature, scope and definition of the Work desired or required by the Village may change from time to time, at the Village's discretion.

The Project consists of the design and construction of a new parking garage located south of the existing Village Hall at the north side of W. End Dr. between Fernwood Rd. and Village Green Way, Key Biscayne, Florida, including demolition of existing structures and features on the property and including integration into the existing Village Hall building.

Interested parties may obtain a full information package (Proposal Package) through the Onvia DemandStar portal or in person from the Village Clerk's office for a fee of \$35.00 per set, payable by cash or check, on or after [REDACTED], **2016**. Make checks payable to Village of Key Biscayne. Copies of the Proposal Package are non-returnable and non-refundable. **The Village will not send the package via courier.**

All proposals shall be submitted in accordance with the requirements of this RFP and the Specifications. The Village of Key Biscayne reserves the right to waive any informality in any proposal, and the Village Manager may reject any or all proposals, and re-advertise the Project.

Any or all questions or requests for interpretations or clarifications pertaining to the RFP must be directed via email to Mariana Dominguez-Hardie, Sr. Executive Assistant to the Director of Building, Zoning, Planning and Public Works, at mdominguez@keybiscayne.fl.gov by [REDACTED], **2016**.

All notices and any addenda issued by the Village with respect to the RFP will be sent via e-mail to those who purchase a paper copy and register in the Village Clerk's office. Proposers that obtain a copy of the RFP Documents through DemandStar and are not registered in the Village Clerk's office, are responsible for obtaining all notices and any addenda directly from the DemandStar portal.

A mandatory pre-proposal conference, followed by a site visit for interested proposers will be held at the Village of Key Biscayne, Village Hall, Building, Zoning and Planning Department, Conference Room (Suite 250) at 2:00 p.m. on [REDACTED], **2016**. **Attendance at this conference is mandatory in order to submit a proposal in response to this RFP and for the Project.**

Conchita H. Alvarez, MMC, Village Clerk

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- A. Proposal Form and Proposer's Certification
- B. Form of Contract
- C. Proposer's Qualifications Questionnaire
- D. Single Execution Affidavits

REQUEST FOR PROPOSALS (RFP)
Village Hall Parking Garage Design-Build Project

GENERAL INFORMATION

A. SCOPE OF SERVICES:

The Scope of Services for the Project consists of the design and construction of a parking garage located south of the existing Village Hall at the north side of W. End Dr. between Fernwood Rd. and Village Green Way, Key Biscayne, Florida.

The Project includes demolition of existing structures and features on the property. The Village will re-locate all of the existing trees and landscaping on the site. The architectural style of the parking garage shall match the existing Village Hall. The parking garage shall be fully integrated into Village Hall. The first floor shall be reserved for emergency vehicles and public works vehicles and equipment. One of the floors of the garage shall match the elevation of the second floor of Village Hall and be reserved for Village employees and visitors to the building. The remaining floor(s) are open to the general public. As stated in Section 1.13.3 Parking Garage, the base bid shall include a parking garage with the first floor at grade. An alternate design and bid shall be provided for one level that is partially or wholly below grade. The design for the base bid and the alternate design should determine the feasibility of including recreation space at the highest level of the garage. The maximum height of the structure is 35 ft. measured from Base Flood Elevation to the top of the highest elevation of the roof slab. The design may incorporate parking below the Base Flood Elevation.

B. PROPOSAL DUE DATE:

Sealed Proposals will be received at the Office of the Village Clerk, Village of Key Biscayne, 88 West McIntyre Street, Key Biscayne, FL 33149, until [REDACTED], 2016 (the "Submission Deadline"), at which time all Proposals will be publicly opened.

Proposals must be addressed and delivered to:

Office of the Village Clerk, Suite 220
c/o Village Hall Parking RFP
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, Florida 33149

C. PRE-PROPOSAL CONFERENCE AND SITE VISIT.

A MANDATORY pre-proposal conference, followed by a site visit, will be held at the Village of Key Biscayne, Village Hall, Building, Zoning and Planning Department, Conference Room (Suite 250) on [REDACTED], 2016 at 2:00 p.m.

Prior to submitting a Proposal, each Proposer is REQUIRED to visit the site and become familiar with the site and any conditions that may, in any manner, affect the Work to be performed by Contractor or affect the equipment, materials and labor required. Each Proposer shall be thoroughly informed regarding any requirements or conditions that may in any manner affect the Work to be performed under the Project. No allowances will be made because of lack of knowledge of any conditions or requirements. Any Proposal received from a Proposer that did not attend the Pre-Proposal Conference and Site Visit shall be deemed non-responsive.

D. DEMANDSTAR

All notices and any addenda issued by the Village with respect to the RFP will be sent via e-mail to those who purchase a paper copy and register in the Village Clerk's office. Proposers that obtain a copy of the RFP

Documents through DemandStar and are not registered in the Village Clerk's office, are responsible for obtaining all notices and any addenda directly from the DemandStar portal.

Any or all questions or requests for interpretations or clarifications pertaining to the RFP must be directed via email to Mariana Dominguez-Hardie, Sr. Executive Assistant to the Director of Building, Zoning, Planning and Public Works, at mdominguez@keybiscayne.fl.gov by [REDACTED], 2016.

E. In order to facilitate review of the proposals, each proposer must submit one (1) paper original, five (5) additional paper copies and one (1) digital copy, in the form of a CD in a sealed package, clearly marked on the outside "RFP #16-[REDACTED]", of the proposal in response to this RFP, on or before the Submission Deadline indicated herein.

THE RESPONSIBILITY FOR SUBMITTING A PROPOSAL TO THE OFFICE OF THE VILLAGE CLERK ON OR BEFORE THE SUBMISSION DEADLINE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. THE VILLAGE IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE. ANY PROPOSAL RECEIVED AFTER THE SUBMISSION DEADLINE STATED IN THIS RFP WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. FACSIMILE AND EMAILED PROPOSALS SHALL NOT BE CONSIDERED.

Hand-delivered Proposals may be delivered to the above address during the Village's regular business hours, Monday through Friday, excluding holidays observed by the Village, but not beyond the Submission Deadline. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required information appears on the outer label or envelope used by such service.

The Proposal must be signed in ink by an authorized officer of the Proposer who is legally authorized to bind the Proposer and enter into a contractual relationship in the name of the Proposer. The submittal of a Proposal by a Proposer will be considered by the Village as constituting an offer by the Proposer to perform the required Work, upon the terms and at the prices stated by the Proposer.

F. DEFINITIONS

For the purposes of this RFP, the following terms shall have the meaning set forth herein:

- | | |
|---|--|
| <i>Contract/Design-Build Agreement</i> | Shall refer to the Contract for Design-Build that may result from this Request for Proposals. A form of Contract is attached to this RFP as Exhibit "B". |
| <i>Contract Time</i> | The number of Calendar Days allowed for completion of the Contract work including authorized time extensions. |
| <i>Contract Price</i> | The Proposers proposed total price, including design and construction, to perform the Work as proposed and included on the Proposal Form. |
| <i>Council</i> | The Village Council of the Village of Key Biscayne, Florida. |
| <i>Design-Build Schedule</i> | Means the detailed, critical path schedule prepared by the Design-Builder in accordance with the requirements of the Contract Documents showing the Design-Builder's plan for performance of the Work within the Contract Time. |
| <i>Design-Build Team</i> | Means the team assembled and proposed by a Design-Build Entity to design and build the Project, consisting the Design-Build Entity and its proposed Architect of Record, Principal Engineers, Electrical Subcontractor, Mechanical Subcontractor and Other Subcontractors. |

<i>Design-Builder</i>	The licensed general contractor that is awarded the Project and has an approved, fully executed Design-Build Agreement with the Village for the Work specified in this RFP.
<i>Designer</i>	The licensed design professional firm or individual that completes the design of the project as a subconsultant to the Design-Builder and who shall be the designer-of-record.
<i>Delay</i>	Any unanticipated event, action, force or factor which extends the Contractor's time of performance of any work item under the Contract. The term "delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference" "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Contractor, or the Contractor's subcontractors, material men, suppliers or other agents. The term does not include time to perform "extra work".
<i>Equipment</i>	The machinery, equipment and necessary supplies for upkeep and maintenance thereof, and all other tools and apparatus necessary for the construction and acceptable completion of the Work.
<i>Extra Work</i>	Any "work" which is required from the Contractor to be performed and which is not otherwise covered or included in the Project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. Time to perform Extra Work does not constitute a "delay".
<i>May</i>	Indicates something that is not mandatory but permissible.
<i>Project, Work</i>	Shall refer to all matters, work and services that will be required to be done by the Successful Proposer in accordance with the Scope of Services and the terms and conditions of the Plans and Specifications of this RFP.
<i>Proposal (Bid, Bid Proposal)</i>	Shall refer to any offer(s) or proposal submitted in response to this Request for Proposal.
<i>Proposer</i>	Shall refer to an individual, firm, or corporation submitting a Proposal to become the Design-Builder and perform the proposed Work.
<i>Request for Proposal, RFP</i>	Shall mean this Request for Proposal including all Exhibits and Attachments as approved by the Village and addenda or amendments issued by the Village.
<i>Responsible Proposer</i>	A Proposer who has the capability in all respects to fully perform the Work requested in this RFP and the Contract requirements and the integrity and reliability that will assure good faith performance.
<i>Responsive Proposal</i>	A Proposal or reply submitted by a Proposer that conforms in all material respects to this RFP and the requirements herein.
<i>Shall/Must</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement will, if material, result in the rejection of a proposal as non-responsive.

<i>Should</i>	Indicates something that is recommended but not mandatory. If the Proposer fails to provide recommended information, the Village may, at its sole option, ask the Proposer to provide the information or evaluate the proposal without the information. Failure to provide the information after demand may result in rejection.
<i>Sub-Contractor & Sub-Consultant</i>	Shall refer to any person, firm, entity, or organization, other than the employees of the Successful Proposer, who contracts with the Successful Proposer to furnish labor, or labor and materials, in connection with the Work to the Village, whether directly or indirectly, on behalf of the Successful Proposer.
<i>Submission Deadline</i>	Shall refer to the due date and time listed in this RFP for the submittal of Proposals to the Village.
<i>Successful Proposer</i>	Shall refer to the Proposer receiving an award of the Project as a result of this Request for Proposal but has not yet fully executed a Village-approved Contract.
<i>Village /Owner</i>	Shall refer to the Village of Key Biscayne, Florida or its designated representative, as applicable.

SECTION 1

INSTRUCTIONS TO PROPOSERS

SUBJECT: Village Hall Parking Garage Design-Build

**OPENING DATE
& TIME:** _____, 2016 at 2:00 p.m.

SUBMIT TO:
Village Hall Parking Garage RFP #16- _____
Office of the Village Clerk, Suite 220
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, Florida 33149

Proposals shall be clearly marked "**Village Hall Parking Garage**" on the outside of the envelope. The outside of the sealed envelope shall also show the name of the respondent.

1.1 INTENT.

The Village of Key Biscayne, Florida (Village) is inviting the submittal of proposals from qualified firms for the final design and construction of the Village Hall Parking Garage located south of the existing Village Hall at the north side of W. End Dr. between Fernwood Rd. and Village Green Way, Key Biscayne, Florida. The Village intends to award the Project to a qualified, responsible and responsive Proposer that conforms to the requirements of this RFP and is most advantageous to the Village and in its best interest. The Village reserves the right to execute a Contract with the Proposer submitting the Proposal considered to best serve the Village's interests.

1.2 SCHEDULE OF EVENTS.

The following schedule is anticipated for this RFP process, but is subject to change by the Village, in its sole discretion, at any time during the RFP procurement process.

No.	Event	Date	Time(EST)
1	Advertisement/Distribution of RFP	_____, 2016	2:00PM
2	Mandatory Pre-Proposal Conference and Site Visit Village Hall, 88 West McIntyre Street, Suite 250, Key Biscayne, Florida 33149	_____, 2016	2:00PM
3	Deadline to Submit Questions/ Requests for Clarification	_____, 2016	5:00PM
4	Village Issues Addenda and Responds to Questions)	_____, 2016	5:00PM
5	Deadline to Submit RFP – Submission Due Date	_____, 2016	2:00PM

6	Period to request additional information or clarification from Proposers. Village may interview Proposers.	_____, 2016	TBA
7	Award Proposal and Contract – Village Council Meeting	_____, 2016	7:00PM
8	Notice-to-Proceed – Contract Begins	_____, 2016	TBA

1.3 PROPOSERS.

A qualified Proposer must be a general contractor, licensed and registered in the State of Florida and/or Miami-Dade County, fully capable and experienced in the construction of building facilities of the nature described in this RFP and in the delivery of projects in a design-build format. A qualified Proposer must include on its project team a Designer, licensed and registered in the State of Florida and/or Miami-Dade County, fully capable and experienced in the design of building facilities of the nature described in this RFP and in the delivery of projects in a design-build format. Joint ventures or other special-purpose entities will not be considered.

1.4 TERM OF CONTRACT/CONTRACT TIME.

The Contract shall commence performance of the design portion of the Work on the date the Contract is fully executed. The Contract shall remain in effect through job completion. The Work shall be substantially completed in accordance with the following mandatory critical schedule milestones:

- A. Submittal of completed Design Development Documents, including, but not limited to, a site plan, elevations and floor plans, shall occur within 90 calendar days from the date the contract is fully executed;
- B. Issuance of a building permit(s) for the entire building within 180 calendar days from the date the Village Council approves the Design Development Documents;
- C. Issuance of a Certificate of Completion within 270 calendar days from the date a building permit is issued;
- D. Final Acceptance of the project by the Village within 60 calendar days from the date a Certificate of Completion is issued.

The Successful Proposer acknowledges and agrees that time is of the essence in the performance and delivery of the Work hereunder. Liquidated Damages associated with Contractor delays in achieving the milestones listed above are included in the Contract Form, attached as Exhibit “B” hereto.

1.5 INCENTIVE FOR EARLY COMPLETION

The Village desires to expedite the completion of this Project to minimize the inconveniences associated with parking at or near the Village Hall and reduce the time of construction. To achieve this goal, the Village is willing to pay an incentive to the Design-Builder for such early completion, as follows:

Contract Milestone	Incentive Target	Incentive Amount
Certificate of Completion (Contract Milestone 1.4C)	Early completion of Construction	<u><i>\$/To Be Determined</i></u> per calendar day less than 270 days, up to a maximum of <u><i>\$/To Be Determined</i></u>

Because of the presence of the Bid Alternate where the at-grade/below-grade configuration of the proposed garage structure is not determined prior to the bid, it is not practical to determine the Incentive Amount or

Incentive Limit until the Village selects the configuration. Such an amount and limit will be determined by the Village subsequent to selection of the garage configuration to be contracted. Details, conditions, rights and remedies associated with Design-Builder earning the incentive appear in the Supplemental Conditions at Article 3.17.

1.6 PROPOSAL FORMAT AND CONTENT; MINIMUM REQUIREMENTS AND QUALIFICATIONS.

Proposers shall submit their proposals using the Forms provided with this RFP, and attach and include all attachments or requirements set forth herein.

Proposals must be submitted on 8.5" x 11" sheets and include one (1) paper original, six (6) paper copies and one (1) digital copy on a CD of the following completed proposal forms and required information, tabbed or numbered accordingly, in the following order:

- A. Proposal Form/Proposer's Certification. All Proposers are required to submit the proposed Contract Price for their Proposal, utilizing the Proposal Form included in this RFP as Exhibit "A".
- B. Bid Security or Bond.
- C. Experience/Work References. Separate statements of the experience of the Proposer (general contractor) and Designer firms must demonstrate evidence of prior design-build construction experience in Florida on private or governmental projects. Indicate the firms' number of years of experience in the required services. Provide a list and description of similar projects satisfactorily completed within the past five (5) years, including demonstrating experience with public agencies, and provide contact name and information of the individual at the respective agency who was responsible for project coordination. Any project experience where the Proposer (general contractor) and Designer were involved in a design-build project together should be highlighted.
- D. Firms' Qualifications. Provide separate descriptions of the Proposer's (general contractor) and Designer firm's range of expertise, including the size, years in operation, organizational structure, project manager and key personnel assigned to the Project, demonstrating firm-wide experience and expertise in the area of design-build of similar projects. Proposers and Designers must have each successfully completed at least five (5) Design-Build projects of a similar size, scope and complexity within the past five (5) years. If Proposer and Designer have performed Design-Build projects together, please highlight.
- E. Qualifications Questionnaire. Completed Questionnaire must be submitted as specified within this RFP. Any attachment must be clearly identified. To be considered, the Proposer must respond to all parts of the Questionnaire in accordance with requirements of RFP. The Questionnaire is included in this RFP.
- F. Project Team/Managers. Provide an organizational chart of the Project team, including key personnel, the overall Project Manager, Design Project Manager, Construction Project Manager, Subconsultants and Subcontractors, who will be assigned and directly involved and responsible throughout the duration of the Project. Information shall include the names, title, resumes, qualifications, licenses, expertise and experience with similar projects.
- G. Licenses/Certifications. Provide copies of all professional and business licenses required for the Work, as required by all applicable federal, State, County and local agencies, including licenses for the firms and key personnel performing the Work.

- H. Plan/Approach to Work. Describe the Proposer's planned approach and concept for performance of the Work and completion of the Project, including a scope of services which demonstrates an understanding of the Project, integrating industry best practices and cost effectiveness. Noting that essentially all existing parking for the Village Hall is currently on the site of the Project with limited space available on surrounding streets, the Proposer should consider and explain in detail its approach to providing parking for construction workers during construction along with plans for construction staging, maintenance of traffic and Village operations and how deliveries will be handled. Explain why the firm's approach and plan would be the most effective and beneficial to the Village and ensure timely completion of the Work. Proposal submittal should include a critical-path schedule showing and explaining proposed "fast-tracking" methods, designations and allowances for design and permitting reviews, and a firm substantial completion date. Proposer's schedule must include the mandatory critical schedule milestones listed in Section 1.4, above, and may include other critical schedule milestones as determined by the Proposer.
- I. Financial. Proposers must provide a general description of the firm's financial condition, including annual gross receipts and annual payroll, and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Proposer's ability to complete the Project. Recognizing the substantial capital required to support this type of Contract, only Proposers with a history of profitability will be considered. Proposer shall provide the following: a letter from a financial institution stating a current line of credit; indicate current value of all work that the proposer entity has under contract and pending; business construction revenues for the past five (5) years; a current audited financial statement.
- J. Signed and Notarized Single Execution Affidavits (See Exhibit "D")
- K. Additional Information. Provide any additional information that highlights experience or expertise, which is relevant and directly applicable to this RFP.
- L. Insurance Certificates. Provide evidence/certificates of insurance of general liability, workers compensation, automobile liability insurance, and builder's risk insurance, as required in this RFP.
- M. Bond Capability. Provide evidence of or capability to provide payment and performance bonds as required in this RFP.

The Village-provided Proposal Forms shall be completed, signed, notarized and certified as to authorization, where indicated.

1.7 BONDS.

1.7.1 Bid Bond. All Proposals must be accompanied by a Bid Security or Bond in the amount of five percent (5%) of the total proposed price submitted, to be in the form of a Cashier's Check made payable to the Village or a bond written by a surety company authorized to do business in the State of Florida and in compliance with Section 287.0935, Florida Statutes. Bid Security or Bond shall be valid for one hundred eighty (180) days after the Submission Deadline. ("Proposal Guarantee Period") The Bid Security or Bond of all unsuccessful Proposers will be returned after Proposal award. No Proposer may withdraw its Proposal after the Submittal Deadline for the period stipulated as the Proposal Guaranty Period. Proposers shall give assurances that all Proposals offered will be held open and are not revocable for lack of consideration during the time stipulated herein. A personal check or company check of a Proposer shall not be deemed a valid Bid Security and will not be accepted. Proposers shall state in their Proposals that all bids offered will be held open and are not revocable for lack of consideration during the time stipulated herein. Failure by the Proposer to whom the Contract has been awarded, to execute and deliver the required documents and/or other

applicable forms, and to furnish the Performance and Payment Bonds, and to furnish satisfactory evidence of all insurance coverage within ten (10) calendar days after the award letter is presented for execution, may result in the annulment of the award and the forfeiture of the bid bond or security to the Village, which forfeiture shall be considered not as a penalty but in liquidation of damages sustained by the Village. Award may then be made to the next Proposer, or all remaining Proposals may be rejected, and the Contract may be re-advertised.

1.7.2 Payment and Performance Bond. Proposers shall provide evidence or capavillage to provide the Payment and Performance Bonds required for the Project, in compliance with the General Conditions included in this RFP and the following requirements: Within ten (10) calendar days of Notice to Proceed and prior to commencing any work on the Project, the selected Design-Builder shall execute, record and furnish a certified copy of the recorded bonds to Village a Performance Bond and a Payment Bond in form and substance for a public construction work and in accordance with Section 255.05, Florida Statutes, each written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years, both in a minimum amount equal to the total construction cost portion of the total Contract Price. The Surety Company shall be acceptable to the Village and authorized to do business in the State of Florida. A Proposer that cannot provide evidence of the capavillage for bonding at the amount required herein may not be considered qualified to perform the Project pursuant to this RFP. Evidence of such must be provided by the Proposer pursuant to this RFP and shall remain the obligation of the Proposer.

1.8 VILLAGE'S RIGHTS.

The Village reserves the right to accept or reject any and/or all Proposals or parts of Proposals, to workshop or negotiate terms of any and all Proposals, to waive irregularities in Proposals, to cancel or discontinue this RFP process, and to request new Proposals for the required Work. The Village Council shall make the final determination and award of proposal(s).

All materials submitted in response to this Request for Proposals shall become the property of the Village and will be returned only at the option of the Village. The Village has the right to use any or all ideas presented in any response to the RFP, whether amended or not, and selection or rejection of Proposals does not affect this right.

1.9 PROPOSAL COSTS.

Proposers submitting Proposals do so entirely at their own cost and expense. There is no expressed or implied obligation by the Village to reimburse any individual or firm for any costs or expenses incurred in preparing or submitting Proposals, providing additional information when requested by the Village, or for participating in any selection interviews.

1.10 TAXES

Proposer should include any and all applicable taxes in bid prices.

1.11 LICENCES

By submitting a Proposal in response to this RFP, Proposer represents and warrants to the Village that it and each of its Subconsultants and Subcontractors holds all licenses, certifications and permits ("Licenses") required by applicable law and by any other governmental authority or agency to perform the Work. Proposer represents and warrants to the Village that the Licenses shall be in full force and effect on the date of performance of the Work and further represents that it holds and will hold all Licenses throughout the term of the Contract. Proposer shall provide the Village with copies of all Licenses that may be required for performance of the Work with its Proposal and during the term of the Contract upon request.

1.12 VALUE ENGINEERING

Value Engineering (VE) recommendations should be submitted in a separate sealed envelope along with Base Bid Proposal. VE recommendations will not be a factor in the Proposal evaluation process. Description and amount of VE items will be kept confidential until Contract is awarded by Village Council.

1.13 ADDENDA, CHANGES OR INTERPRETATIONS DURING PROPOSAL PROCESS.

Any written inquiry or request for interpretation or clarification must be directed via email to Mariana Dominguez-Hardie, Sr. Executive Assistant to the Director of Building, Zoning, Planning and Public Works, at mdominguez@keybiscayne.fl.gov no later than [REDACTED], 2016. All such interpretations or clarifications will be made in the form of an Addendum to this RFP issued by the Village sent via e-mail to those registered in the Village Clerk's office and posted to the Project page on the DemandStar website. Each prospective Proposer shall acknowledge receipt of such Addenda by including it in the Proposal Form. In case any Proposer fails to include such Addenda or Addendum, its Proposal will nevertheless be considered as though it had been received and acknowledged and the submission of his Proposal will constitute acknowledgement of the receipt of same. All Addenda shall be a part of this RFP and a part of the Agreement and each Proposer will be bound by such Addenda, whether or not received by him/her. It is the responsibility of each prospective Proposer to verify that it has received all Addenda issued before Proposals are submitted and opened.

1.14 "GREEN" COMPONENTS OF DESIGN AND CONSTRUCTION.

1.14.1 Base Design and Construction. As part of the base design and construction, the Village desires to have "green" components, such as energy efficient lighting; bicycle parking; golf cart parking; EV charging stations; water efficient landscaping, if feasible (see General Information, Section A. Scope of Services) including the green space on the roof; etc. included in the base price.

1.14.2 Green Garage Bronze Certification. The Village is interested in having the Project qualify for a Green Garage Bronze Certification as promulgated by the Green Parking Council affiliate of the International Parking Institute. The Village recognizes that achievement of such a Certification will involve additional design and construction costs. Therefore, the price components of the Proposal will include base prices for the design and construction and will also include, as an alternate, those additional prices for design and construction to achieve a guaranteed Green Garage Bronze Certification. When a Successful Proposer is selected by the Village Council, the Village Council will also determine whether a contract will be awarded with or without the guaranteed Green Garage Bronze Certification requirement.

1.14.3 Parking Garage. The base bid shall include a parking garage with the first floor at grade. An alternate design and bid shall be provided for one level that is partially or below grade. The design for the base bid and the alternate design should determine the feasibility of including recreation space at the highest level of the garage.

1.15 SELECTION PROCESS.

The Village will review Proposals for an initial determination on minimum qualifications, responsiveness and responsibility. The Village reserves the right to reject any or all Proposals, to waive any informality, irregularity or technicality in any Proposal, to re-advertise for Proposals, or take any other such actions that may be deemed to be in the best interests of the Village.

A Proposal Evaluation Committee, appointed by the Village Manager, will initially determine whether the Proposals are responsive and submitted by responsible Proposers meeting the minimum qualifications of this RFP. As part of their Proposal evaluation process, the Proposal Evaluation Committee may request additional information or clarification of Proposals and information submitted.

The Proposal Evaluation Committee will then score and rank the qualified, responsive and responsible Proposals in accordance with the criteria set forth below.

<u>Evaluation Criteria</u>	<u>maximum</u>
1. Qualifications, Experience & Similar Projects, Project Management Team (See Sections 1.5.C, D, E, F & G above)	25 Points
2. Project Plan/Approach (See Section 1.5.H above)	25 Points
3. Proposed Price	50 Points

Proposers will be ranked in descending order of total evaluation points. Depending on the number of proposals received, the Proposal Evaluation Committee will create a "shortlist" (not less than 3 or more than 5) of the top-ranked Proposers to make oral presentations by a Proposer's Design and Construction Project Managers to the Village Council for selection of a Successful Proposer. More detailed guidelines for the oral presentations will be provided at the time of announcement of the "shortlisted" Proposers.

1.16 AWARD OF CONTRACT.

The Village Council shall have the final authorization of the award of the Contract to the Successful Proposer along with a determination of whether or not to pursue a Green Garage Bronze Certification.

Neither this RFP nor the notice of award of the Design-Build Contract constitutes an agreement or contract with the Successful Proposer. An agreement or contract is not binding until a written agreement or contract (the "Contract") to be substantially in the form included in this RFP and attached hereto as Exhibit "B" has been approved as to form and sufficiency by the Village Attorney and executed by the Village (with Council approval) and the Successful Proposer.

1.17 PUBLIC RECORDS; CONFIDENTIALITY.

Proposers are hereby notified that all information submitted as part of or in support of Proposals submitted pursuant to this RFP are public records subject to public disclosure in accordance with Chapter 119, Florida Statutes, popularly known as the "Public Records Law". If there is any apparent conflict between Florida's Public Records Law and this RFP, Florida Law will govern and prevail.

All Proposals submitted in response to this RFP shall become the property of the Village. Unless the information submitted is proprietary, copyrighted, trademarked, or patented, the Village reserves the right to utilize any or all information, ideas, conceptions, or portions of any proposal in its best interest. Acceptance or rejection of any Proposal shall not nullify the Village's rights hereunder.

1.18 LOBBYIST REGISTRATION

Proposers must comply with all of the Village's lobbyist registration requirements as described in Village Ord. No. 2004-4, §2, 3-9-04. Please contact the Village Clerk at 305-365-5506 for additional information.

[END OF SECTION 1]

SECTION 2

GENERAL CONDITIONS

RECITALS

The documents included in the Request for Proposals and the Design-Builder's Proposal, incorporated herein, and designated as part of the Contract Documents are provided by the Village to establish the scope, level of quality and design intent, and the reporting procedures for the development and construction of the entire Project. The Design-Builder shall comply with the Contract Price, the Contract Time, the Preliminary Schedule or approved Contract Schedule as applicable, the Project Program, the performance specifications, the building massing, building heights and setbacks, public spaces, landscape design, and the general architectural character of the building described in the Criteria Documents. By incorporating the Design-Builder's Proposal as a part of this Contract, the Village does NOT accept any provision of the Design-Builder's Proposal that is not in conformance with the criteria of the Request for Proposals.

In consideration of the mutual agreements, covenants and conditions set forth below, and the Recitals set forth above, the adequacy of which is hereby acknowledged, Design-Builder and Village agree as follows:

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 APPLICABLE CODE REQUIREMENTS

The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over Village, Design-Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

1.1.2 APPLICATION FOR PAYMENT

The term "Application for Payment" means the submittal from Design-Builder wherein payment for certain portions of the completed Work is requested in accordance with Article 9 of the General Conditions.

1.1.3 ARCHITECT OF RECORD

The term "Architect of Record" means the Design Professional identified in the Design-Builder's Proposal that is licensed in the State of Florida and employed or commissioned by the Design-Builder to prepare design documents and construction documents.

1.1.4 BENEFICIAL OCCUPANCY

The term "Beneficial Occupancy" means the Village's occupancy or use of any part of the Work in accordance with Article 9 of the General Conditions.

1.1.5 CERTIFICATE FOR PAYMENT

The term "Certificate for Payment" means the form signed by Village's Representative attesting to the Design-Builder's right to receive payment for certain completed portions of the Work in accordance with Article 9 of the General Conditions.

1.1.6 NOT USED

1.1.7 CERTIFICATE OF SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.8 CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.9 CHANGE ORDER REQUEST

The term "Change Order Request" means a proposal for a Change Order submitted by the Design-Builder to the Village, either at the request of the Village, or at the Design-Builder's own initiative.

1.1.10 CLAIM

See Article 4.3 of the General Conditions.

1.1.11 NOT USED

1.1.12 CONSTRUCTION DOCUMENTS

The term "Construction Documents" means the plans and specifications prepared by the Design-Builder and approved by the Village. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the Village in writing.

1.1.13 CONSTRUCTION DOCUMENTS PHASE

The term "Construction Documents Phase" means the period of time set forth in the Agreement beginning with the issuance of the Village's approval of Design Development Documents.

1.1.14 CONSTRUCTION NOTICE TO PROCEED

The term "Construction Notice to Proceed" means the written notice given by the Village to the Design-Builder advising that the Site is available to the Design-Builder and directing the Design-Builder to commence the Construction Phase of the Project.

1.1.15 CONSTRUCTION PHASE

The term "Construction Phase" means the period of time set forth in the Agreement beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.

1.1.16 CONSTRUCTION WORK

The term "Construction Work" means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.17 CONTRACT

The term "Contract" shall have the meaning identified in Article 3 of the Agreement.

1.1.18 CONTRACT DOCUMENTS

The term "Contract Documents" means all documents listed in Article 3 of the Agreement.

1.1.19 CONTRACT MILESTONE

The term "Contract Milestone" means any requirement in the Contract Documents that reflects a planned point in time for the start or completion of a portion of the Work measured from i) the date of any of the Notices to Proceed or ii) the date of another Contract Milestone defined in the Contract Documents, as applicable.

1.1.20 CONTRACT SCHEDULE

The term "Contract Schedule" means the graphical representation of a practical plan, in accordance with the Specifications, to perform and complete the Work within the Contract Time. The detailed requirements for the Contract Schedule are stated in Article 3 of the General Conditions.

1.1.21 CONTRACT PRICE

The term "Contract Price" means the amount of compensation stated in the Agreement for the performance of the Work, as may be adjusted by Change Order.

1.1.22 CONTRACT TIME

The term "Contract Time" means the number of days set forth in the Agreement within which Design-Builder must achieve Final Completion of the Work, as may be adjusted by Change Orders.

1.1.23 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

1.1.24 CRITERIA DOCUMENTS

The term "Criteria Documents" means, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Scope of Work, Project Program, Performance Specifications and Drawings.

1.1.25 DAY

The term "day," as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.

1.1.26 DEFECTIVE WORK

The term "Defective Work" means Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of Village's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.27 DESIGN-BUILDER

The term "Design-Builder" means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

1.1.28 DESIGN-BUILDER FEE

See Article 7.3 of the General Conditions.

1.1.29 DESIGN DEVELOPMENT PHASE

The term "Design Development Phase" shall mean the period of time set forth in the Agreement beginning with the issuance of the Notice to Proceed.

1.1.30 DESIGN MATERIALS

The term "Design Materials" shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Village under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.1.31 DESIGN PROFESSIONAL

The term "Design Professional" shall mean individuals or entities that will provide Design-Builder with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.

1.1.32 DESIGN WORK

The term "Design Work" shall mean the portion of the Work consisting of the design services and design deliverables required to be provided in connection with the design of the Project as set forth in the Contract Documents.

1.1.33 DRAWINGS

The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.34 EQUIPMENT MANUFACTURER

The term "Equipment Manufacturer" shall mean any Separate Contractor that fabricates and/or supplies any Village-provided equipment which is installed in the Project by the Design-Builder.

1.1.35 EXCUSABLE DELAY

The term "Excusable Delay" means a delay that entitles the Design-Builder to an adjustment of the Contract Time but not an adjustment of the Contract Price, pursuant to Articles 7 and 8 of the General Conditions.

1.1.36 EXTRA WORK

The term "Extra Work" means Work beyond or in addition to the Work required by the Contract Documents.

1.1.37 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.38 FINAL COMPLETION

The term "Final Completion" means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to Article 9.8 of the General Conditions.

1.1.39 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions.

1.1.40 GOVERNMENTAL APPROVALS

The term "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the Village and necessary for the completion of the Project.

1.1.41 HAZARDOUS MATERIAL

The term "Hazardous Material" means any substance or material identified as hazardous under any Florida or federal statute governing handling, disposal and/or cleanup of any such substance or material.

1.1.42 INDEMNIFIED PARTIES

The term "Indemnified Parties" means the Village, its agents, officers, representatives, consultants, and employees.

1.1.43 NOT USED

1.1.44 NOT USED

1.1.45 PROJECT

The term "Project" means the total design and construction of the Work under the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include design or construction work performed by Village or by Separate Contractors.

1.1.46 SEPARATE CONTRACTOR

The term "Separate Contractor" means a person, or firm, under separate contract with the Village performing other work related to the Project.

1.1.47 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.20 of the General Conditions.

1.1.48 SPECIFICATIONS

The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.49 SUBCONTRACTOR

The term "Subcontractor" means a person or firm that has a contract with Design-Builder or with a Subcontractor of the Design-Builder to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.50 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.51 SUPERINTENDENT

The term "Superintendent" means the person designated by Design-Builder to represent Design-Builder at the Project site, in accordance with Article 3 of the General Conditions.

1.1.52 TIER

The term "tier" means the contractual level of a Subcontractor or supplier or consultant with respect to Design-Builder. For example, a first-tier Subcontractor is under subcontract with Design-Builder, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so forth.

1.1.53 UNEXCUSABLE DELAY

The term "Unexcusable Delay" means a delay that does not entitle the Design-Builder to an adjustment of the Contract Time.

1.1.54 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.55 VILLAGE

The term "Village" or "the Village" means the Village of Key Biscayne, Florida, Owner of the Project.

1.1.56 VILLAGE'S BUILDING OFFICIAL

The term "Village's Building Official" means the individual the Village has designated to act in the capacity of the "Building Official". The Village's Building Official will determine whether the Work complies with Applicable Code Requirements and will determine whether and when it is appropriate to issue a Certificate of Occupancy.

1.1.57 VILLAGE'S REPRESENTATIVE

The term "Village's Representative" means the person or firm identified as such in the Agreement.

1.1.58 VILLAGE'S RESPONSIBLE ADMINISTRATOR

The term "Village's Responsible Administrator" means the person, or his or her authorized designee, who is authorized to execute the Agreement, Change Orders, Field Orders, and other applicable Contract Documents on behalf of the Village.

1.1.59 WORK

The term "Work" means all labor, materials, equipment, tools, and services, including Design Professional services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, provided or to be provided by Design-Builder to fulfill Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.2.1. The Contract Documents, and all copies thereof, furnished to, or provided by, Design-Builder are the property of the Village. The Village and Design-Builder explicitly agree that all materials and documents developed in the performance of this Contract are the property of the Village. The Village shall have the right to use all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, or in connection with the Project, including without limitation future additions, alterations, connections, repairs, information, reference, use or occupancy and the right to re-use details of the design on any other Village work, all without the Design-Builder's consent and at no additional cost to the Village.

1.2.2 Village will defend, indemnify and save harmless Design-Builder Professional, its officers, agents and employees from any costs or claims for damages arising from Village's use on other projects of the Contract Documents, the Drawings and Specifications, or the designs depicted in them, if any of the foregoing have been provided to the Village by the Design-Builder.

1.2.3 Notwithstanding Article 1.2.2 above, Village will not defend, indemnify or save harmless Design-Builder Professional, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that Village's use of the Contract Documents, the Drawings and Specifications, or the designs depicted in them is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

1.3 INTERPRETATION

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work by the Design-Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Builder shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:

- .1 The Agreement shall control over the Supplementary Conditions.
- .2 The Supplementary Conditions shall control over the General Conditions.
- .3 The General Conditions shall control over the Exhibits.
- .4 Where no order of precedence is stated, the more expensive of the requirements shown or specified shall be controlling.

1.3.3 The Village and Design-Builder acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Proposal Documents upon which the Design-Builder based its response(s) to the Request for Proposals. The Village and Design-Builder explicitly agree that documents having the higher quality requirements control over any conflicting requirements of other documents.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Design-Builder in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and *vice versa*. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

ARTICLE 2

VILLAGE'S RIGHTS AND RESPONSIBILITIES

2.1 FEE AND PERMIT REQUIREMENTS

2.1.1 Village is not subject to any requirement to obtain or pay for local building permits, inspection fees, plan checking fees, or certain utility fees. Except as otherwise provided in the Contract Documents, Village will obtain and pay for any utility permits, demolition permits, easements, and government approvals for the use or occupancy of permanent structures required in connection with the Work.

2.1.2 Design-Builder will be furnished, free of charge, such copies of the Contract Documents as Village deems reasonably necessary for execution of the Work.

2.2 ACCESS TO PROJECT SITE. Village will provide, as reasonably required by the Work, but in no event later than the date designated in the Construction Notice to Proceed, access to the lands and facilities upon which the construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by Design-Builder.

2.3 VILLAGE'S RIGHT TO STOP THE WORK. If Design-Builder fails to correct Defective Work as required by Article 12.2 of the General Conditions or fails to perform the Work in accordance with the Contract Documents, Village or Village's Representative may direct Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Design-Builder. Design-Builder shall not be entitled to any adjustment of Contract Time or Contract Price as a result of any such order. Village and Village's Representative have no duty or responsibility to Design-Builder or any other party to exercise the right to stop the Work.

2.4 VILLAGE'S RIGHT TO CARRY OUT THE WORK. If Design-Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written

notice from Village, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the Village may specify, to correct such failure, Village may, without prejudice to other remedies Village may have, correct such failure at Design-Builder's expense. In such case, Village will be entitled to deduct from payments then or thereafter due Design-Builder the cost of correcting such failure, including without limitation compensation for the additional services and expenses of Village's consultants made necessary thereby. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the additional amount to Village.

2.5 VILLAGE'S RIGHT TO REPLACE VILLAGE'S REPRESENTATIVE. Village may at any time and from time to time, without prior notice to or approval of Design-Builder, replace Village's Representative with a new Village's Representative. Upon receipt of notice from Village informing Design-Builder of such replacement and identifying the new Village's Representative, Design-Builder shall recognize such person or firm as Village's Representative for all purposes under the Contract Documents.

ARTICLE 3

DESIGN-BUILDER'S RIGHTS AND RESPONSIBILITIES

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER; SINGLE POINT RESPONSIBILITY OF DESIGN-BUILDER

3.1.1 In addition to the examination and reviews performed, and obligations assumed, incidental to making the representations set forth in the Agreement, Design-Builder shall carefully study and compare each of the Contract Documents with the others and with information furnished by Village, and shall promptly report in writing to Village's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Design-Builder.

3.1.2 Design-Builder is responsible for the design and construction of the Project and shall provide all services pursuant to this Contract in a manner consistent with the standard of care under Florida law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode). The Design-Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Design-Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design-Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Village's Representative.

3.1.3 If Design-Builder performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of Village's Representative, Design-Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.1.4 The Village does not assume any obligation to employ the Design-Builder's services or pay Design-Builder royalties of any type as to future programs that may result from the Work performed under this Contract.

3.1.5 Design-Builder shall be responsible for all plotting, printing, copying and distribution cost of any and all documents required in connection with the Work.

3.1.6 Design-Builder agrees that it has single point responsibility for the design and construction of this Project.

3.2 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Design-Builder shall supervise, coordinate, and direct the Work using Design-Builder's reasonable and diligent skill and attention. Design-Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, including, but without limitation, landscape and site work, utilities, and building systems.

3.2.2 Design-Builder shall be responsible to Village for acts and omissions of Design-Builder's agents, employees, and Subconsultants, Subcontractors, and their respective agents and employees.

3.2.3 Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of Village or Village's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than Design-Builder.

3.2.4 Design-Builder shall be responsible for inspection of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

3.2.5 To facilitate communications and the management of the design process, the Design-Builder shall establish and maintain a local office for the duration of the design process.

3.2.6 The Design-Builder is not required to produce the entire Construction Documents package in the local office; however, the Design-Builder shall provide the appropriate management and design staff in the local office to provide the Village with the current status of, and the capability to properly update, the design documents.

3.2.7 The Design-Builder is required to deliver to the Village, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

3.2.8 Design-Builder shall at all times participate in, and implement, environmental mitigation processes and ensure performance as required in the Contract Documents.

3.2.9 Design-Builder is responsible for preparation of the Construction Documents for the entire Project.

3.2.10 Design-Builder is responsible for construction of the entire Project as required by the Contract Documents.

3.2.11 Design-Builder shall at all times maintain good discipline and order among its employees and subcontractors. Design-Builder shall provide competent, fully qualified personnel to perform the Work.

3.3 LABOR AND MATERIALS. Unless otherwise provided in the Contract Documents, Design-Builder shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other things necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4 DESIGN-BUILDER'S WARRANTY. Design-Builder warrants to Village that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and

that all Work will conform with the requirements of the Contract Documents. If required by Village's Representative, Design-Builder shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the Village's Representative. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

3.5 TAXES. Design-Builder shall pay all sales, consumer, use, income, payroll and similar taxes for the Work or portions thereof provided by Design-Builder.

3.6 PERMITS, FEES, AND NOTICES. Except for the permits and approvals which are to be obtained by Village or the requirements with respect to which Village is not subject as provided in Article 2.1.1 of the General Conditions, Design-Builder shall secure, and pay for, all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Design-Builder shall deliver to Village all original licenses, permits, and approvals obtained by Design-Builder in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 NOT USED

3.8 SUPERINTENDENT

3.8.1 Design-Builder shall employ a competent Superintendent satisfactory to Village who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent Design-Builder and communications given to, and received from, Superintendent shall be binding on Design-Builder. Failure to maintain a Superintendent on the Project site at all times Work is in progress shall be considered a material breach of this Contract, entitling Village to terminate the Contract or, alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, Design-Builder fails to complete the Contract on time, Design-Builder will be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Construction Work at the Project site when Work is in progress. In addition, the Design-Builder will provide all Key Personnel shown in its Proposal for the time periods stipulated.

3.9 TOXIC MATERIALS. The Design-Builder is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design-Builder based on its experience and expertise on similar projects in urban areas.

3.10 HAZARDOUS MATERIALS

3.10.1 The Design-Builder agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, Hazardous Materials shall also include, but are not limited to, Underground storage tanks. Any Hazardous Materials that are encountered beyond those described in the Contract Documents or Proposal Documents, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The Village agrees that the Design-Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site. "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 699

3.10.2 The Village shall not be responsible for any Hazardous Material brought to the site by the Design-Builder.

3.10.3 If the Design-Builder: (i) introduces and/or discharges a Hazardous Material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Design-Builder shall hire a qualified remediation contractor at Design-Builder's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Design-Builder perform Work for which it is not qualified. Village, in its sole discretion, may require the Design-Builder to retain at Design-Builder's cost an independent testing laboratory.

3.10.4 If the Design-Builder encounters a Hazardous Material which may cause foreseeable injury or damage, Design-Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify Village (and promptly thereafter confirm such notice in writing).

3.10.5 Subject to Design-Builder's compliance with Article 3.19.4, the Village shall verify the presence or absence of the Hazardous Material reported by the Design-Builder, except as qualified under Section 3.19.2 and 3.19.4, and, in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of Florida or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the Village. The Contract Time and Sum shall be extended appropriately as provided in Articles 7 and 8.

3.10.6 The Village shall indemnify and hold harmless the Design-Builder from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was not shown on the Contract Documents or Information Available to Bidders; (ii) was not brought to the site by Design-Builder; and (iii) exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of Florida or federal hazardous waste. The indemnity obligation in this Article shall not apply to:

- .1 Claims, damages, losses or expenses arising from the breach of contract, negligence or willful misconduct of Design-Builder, its suppliers, its Subcontractors of all tiers and/or any persons or entities working under Design-Builder; and
- .2 Claims, damages, losses or expenses arising from a Hazardous Material subject to Article 3.19.2.

3.10.7 In addition to the requirements in Article 3.28, Design-Builder shall indemnify and hold harmless the Village from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was shown on the Contract Documents or Information Available to Bidders; (ii) was brought to the site by Design-Builder; and (iii) exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste. Nothing in this paragraph shall obligate the Design-Builder to indemnify Village in the event of the sole negligence of the Village, its officers, agents, or employees.

3.11 CONSTRUCTION DOCUMENTS

3.11.1 Construction Documents

- .1 Upon receipt of approval by the Village of Design Development Documents,, the Design-Builder shall instruct the Architect of Record to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The Village's review of the construction documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3.16 of the General Conditions relating to Schedule. Such review shall not relieve the Design-Builder from its responsibilities under this Contract. Such review shall not be deemed an approval or waiver by the Village of any deviation from, or of the Design-Builder's failure to

comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design-Builder and approved by the Village.

- .2 However, it is acknowledged by the parties hereto that inherent in a design-build concept, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Builder will limit the Construction Document packages for construction to a reasonable number approved in writing by the Village. Contract Schedule shall indicate the times for the Village to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
- .3 The Design-Builder shall submit completed packages of the Construction Documents for review by the Village or other authorities having jurisdiction at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Review meetings between the Design-Builder and the Village to review the Construction Document packages, shall be scheduled and held so as not to delay the Work. After reviewing the Construction Documents package for conformance to the Criteria Documents, the Village will issue a Construction Notice to Proceed to the Design-Builder.
- .4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the Village for review.

3.11.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

- .1 Shop drawings means drawings, submitted to Design-Builder by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (*e.g.*, form, fit, and attachment details) of materials or equipment.
- .2 Design-Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Builder's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
- .3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
- .4 The Design-Builder shall submit shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products.
- .5 Any variation in quality must be approved by the Village.

3.11.3 Field Engineering

- .1 The Design-Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of Florida.
- .2 The Design-Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

3.11.4 Geotechnical and Survey

- .1 The Design-Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.

3.12 MONTHLY REPORTS. The Design-Builder shall prepare and submit to the Village, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the Village. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Builder's projected progress for the forthcoming month.

3.13 OTHER REPORTS. The Design-Builder will cooperate with the Village in preparing, or causing to be prepared, all or part of, periodic project reports that may be required by other state or federal agencies.

3.14 NOTICES OF LABOR DISPUTE

3.14.1 If Design-Builder has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of the Work, Design-Builder shall immediately give notice including all relevant information to the Village.

3.14.2 Design-Builder agrees to insert the substance of this Article including this Article 3.14.2, in any subcontract to which a labor dispute may delay the timely performance of the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Design-Builder, as the case may be, of all relevant information concerning the dispute.

3.15 GUARANTEE

3.15.1 The Design-Builder unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. The Design-Builder shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the Village; ordinary wear and tear and abuse excepted.

3.15.2 The Design-Builder further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the Village, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design-Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the Village finds that the Design-Builder fails to perform any of the work under the guarantee, the Village may elect to have the work completed at the Design-Builder's expense and the Design-Builder will pay costs of the work upon demand. The Village will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Builder's refusal to pay the above costs.

3.15.3 Notwithstanding the foregoing Article 3.15.2, in the event of an emergency constituting an immediate hazard to health or safety of Village employees, property, or licensees, the Village may undertake, at the Design-Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design-Builder not being in accordance with the requirements of the Contract Documents.

3.16 SCHEDULES REQUIRED OF DESIGN-BUILDER

3.16.1 The Preliminary Schedule provided with the Request for Proposal provides the Design-Builder schedule information to illustrate all Contract Milestones and any anticipated overlap of Phases. The Design-

Builder shall develop its required CPM-type Contract Schedules for review and approval by Village based on and consistent with such Preliminary Schedule.

3.16.2 Design-Builder shall submit an initial Contract Schedule and updated Contract Schedules to Village's Representative in the form and within the time limits required by the Contract Documents, or, if no such time period is specified, within a reasonable period of time. Village's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Contract Documents, or if no such time period is specified, within a reasonable period of time. If Village's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to Design-Builder the basis for its objection.

3.16.3 The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time as reflected in the Preliminary Schedule may be acceptable if judged by Village's Representative to be practical. Schedules showing the Work completed beyond the Contract Time may be submitted under the following circumstances:

- .1 If accompanied by a Change Order Request seeking an adjustment of the Contract Time consistent the requirements of paragraph 8.4 for Adjustment of the Contract Time for Delay.; or
- .2 If the Contract Time has passed, or if it is a practical impossibility to complete the Work within the Contract Time, then the updated Contract Schedule or Fragnet Schedule shall show completion at the earliest practical date.

Village's Representative will timely review the updated Contract Schedule or Fragnet Schedule submitted by Design-Builder. If Village's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, Village's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. Village's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the updated Contract Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of Village's Representative to render a decision by the applicable deadline will be deemed a decision denying approval of the updated Contract Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by Village's Representative shall not change the Contract Time and is without prejudice to any right of the Village. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Design-Builder under the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.16.4 If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design-Builder shall not be entitled to extensions of the Contract Time for Excusable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.

3.16.5 Design-Builder shall prepare and keep current, to the reasonable satisfaction of Village's Representative, a schedule of submittals that is coordinated with the Contract Schedule.

3.16.6 The Contract Schedule and the updated Contract Schedules shall meet the following requirements:

- .1 Schedules must be suitable for monitoring progress of the Work.
- .2 Schedules must provide necessary data about the timing of Village decisions and Village furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning of the Work.

- .4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.

3.16.7 Village's Representative's review of the form and general content of the Contract Schedule and updated Contract Schedules is for the purpose of determining if the above-listed requirements have been satisfied.

3.16.8 Design-Builder shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases.

3.16.9 In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, Design-Builder shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to the Village's Representative upon request. Design-Builder shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, as appropriate, and shall monitor the progress of the Work and the delivery of equipment.

3.16.10 Design-Builder shall act as the expediter of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.16.11 Design-Builder shall cooperate with Village's Representative in the development of the Contract Schedule and updated Contract Schedules. Design-Builder shall plan and schedule all of its Work based on the assumption that the Village will exercise its option to commence Construction within 30 days of the completion of the Construction Documents unless otherwise directed in writing by the Village. After the Village exercises its option to commence Construction, the Design-Builder shall modify its Contract Schedule to reflect the actual date that the Village exercises its option to commence Construction.

3.16.12 Village's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve Design-Builder from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to Village's Representative or Village nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule. Failure of Village's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design-Builder that Design-Builder, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve Design-Builder from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time.

3.17 AS-BUILT DOCUMENTS. Design-Builder shall maintain one (1) set of As-built drawings and specifications, which shall be kept up-to-date during the Work of the Contract. All changes which are incorporated into the Work which differ from the documents as drawn and written and approved shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work; each revision shall be initialed and dated by Superintendent. Prior to the issuance of a Certificate of Final Completion, each drawing and the specification cover shall be signed by Design-Builder and dated, attesting to the completeness of the information noted therein. As-built Documents shall be turned over to the Village's Representative and shall become part of the Record Documents for the Project.

3.18 DOCUMENTS AND SAMPLES AT PROJECT SITE. Design-Builder shall maintain the following at the Project site:

- .1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.

- .2 The current accepted Contract Schedule.
- .3 Shop Drawings, Product Data, and Samples.
- .4 All other required submittals.

These documents shall be available to Village's Representative and shall be delivered to Village's Representative for submittal to Village upon the earlier of Final Completion or termination of the Contract.

3.19 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.19.1 Definitions:

- .1 *Shop Drawings* are drawings, diagrams, schedules, and other data specially prepared for the Work by Design-Builder or a Subcontractor to illustrate some portion of the Work.
- .2 *Product Data* are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Builder to illustrate or describe materials or equipment for some portion of the Work.
- .3 *Samples* are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.19.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.19.3 Design-Builder shall review, approve, and submit to Village's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Village or of Separate Contractors. Submittals made by Design-Builder that are not required by the Contract Documents may be returned without action by Village's Representative.

3.19.4 Design-Builder shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by Village's Representative and no exceptions have been taken by Village's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.

3.19.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design-Builder represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

3.19.6 If Design-Builder discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Design-Builder shall notify Village's Representative and receive instruction before proceeding with the affected Work. Design-Builder shall be responsible to correct to the satisfaction of Village, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.19.7 Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Village's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless Design-Builder has specifically informed Village's Representative in writing of such deviation at the time of submittal and Village's Representative has given written approval of the specific deviation. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings,

Product Data, Samples, or similar submittals by Village's Representative's review, acceptance, comment, or approval thereof.

3.19.8 Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by Village's Representative on previous submittals.

3.19.9 Village will review first resubmittal of Shop Drawing at its cost. Village reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

3.20 USE OF SITE AND CLEAN UP

3.20.1 Design-Builder shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Design-Builder shall not unreasonably encumber the Project site with materials or equipment.

3.20.2 Design-Builder shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Design-Builder. Design-Builder shall remove all excess dirt, waste material, and rubbish caused by the Design-Builder; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

3.20.3 Personnel of Design-Builder and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.21 CUTTING, FITTING, AND PATCHING

3.21.1 Design-Builder shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.21.2 Design-Builder shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Design-Builder shall not cut or alter the work of any Separate Contractor without the prior consent of Village's Representative.

3.22 ACCESS TO WORK BY VILLAGE. Village, Village's Representative, their consultants, and other persons authorized by Village will at all times have access to the Work wherever it is in preparation or progress. Design-Builder shall provide safe and proper facilities for such access and for inspection.

3.23 ROYALTIES AND PATENTS. Design-Builder shall pay all royalties and license fees required for the performance of the Work. Design-Builder shall defend suits or claims resulting from Design-Builder's or any Subcontractor's infringement of patent rights and shall indemnify, defend and hold harmless Village and Village's Representative from losses on account thereof.

3.24 DIFFERING SITE CONDITIONS

3.24.1 If Design-Builder encounters any of the following conditions at the site, Design-Builder shall immediately notify the Village's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

- .1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.24.2 Design-Builder shall be entitled to an adjustment to the Contract Sum and/or Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if Design-Builder fulfills the following conditions:

- .1 Design-Builder fully complies with Article 3.24.1 above; and
- .2 Design-Builder fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.24.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8 of the General Conditions.

3.25 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

3.25.1 Except and only to the extent provided otherwise in Articles 3.24, and Articles 7 and 8 of the General Conditions, by signing the Agreement, Design-Builder agrees:

- .1 To bear the risk of concealed, unforeseen or unknown conditions and events, if any, which may be encountered in performing the Contract; and
- .2 That Design-Builder's Price Proposal Form for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed, unforeseen or unknown conditions and events, Design-Builder understands that, except and only to the extent provided otherwise in Articles 3.24, 7 and 8 of the General Conditions, concealed, unforeseen or unknown conditions shall not excuse Design-Builder from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Design-Builder to an adjustment of the Contract Sum.

3.25.2 If, as the result of concealed, unforeseen or unknown conditions or events, the Village issues a Change Order or Field Order that changes design details from those details depicted in the Criteria Documents, Design-Builder shall be entitled, subject to compliance with all the provisions of the Contract, including those set forth in Articles 4, 7 and 8 of the General Conditions, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Article 3.25.2, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen or unknown conditions or events.

3.25.3 Design-Builder shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under this Article 3.25.3, fully comply with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.26 INFORMATION AVAILABLE TO BIDDERS

3.26.1 Any information provided pursuant to REQUEST FOR PROPOSALS is subject to the following provisions:

- .1 The information is made available for the convenience of Proposers and is not a part of the Contract.
- .2 The Design-Builder may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.

- .3 Other components of the information, including but not limited to recommendations, may not be relied upon by Design-Builder. Village shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Design-Builder.

3.27 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.27.1 Design-Builder shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to Village's acceptance of the Project as fully completed except that Design-Builder shall not be liable for earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of Design-Builder, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

3.27.2 Design-Builder shall promptly repair and replace any Work or materials damaged or destroyed for which the Design-Builder is liable under Article 3.27.1 above.

3.28 INDEMNIFICATION

3.28.1 Design-Builder shall indemnify, defend and hold harmless Village, Village's consultants, Village's Representative, Village's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating to the following:

- .1 The failure of Design-Builder to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by Design-Builder given in accordance with or contained in the Contract Documents.
- .3 Any claim of damage or loss by any Subcontractor against Village arising out of any alleged act or omission of Design-Builder or any other Subcontractor, or anyone directly or indirectly employed by Design-Builder or any Subcontractor.
- .4 Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by Design-Builder as required per Article 3.10.7.

3.28.2 The Village shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and Design-Builder shall fully indemnify, defend and hold harmless Village and protect the Village from and against the same as provided in paragraph 3.28.1 above. In addition to the liability imposed by law upon the Design-Builder for damage or injury (including death) to persons or property by reason of the negligence of the Design-Builder, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Design-Builder shall defend, indemnify, hold harmless, release and forever discharge the Village, its officers, employees, and agents from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of the Design-Builder, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the Design-Builder, its officers, agents, employees, or any of its Subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by this Contract. Design-Builder agrees that this indemnity and hold harmless shall apply even in the event of negligence of Village, its officers, agents, or employees, regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply (i) in the event of the sole negligence of Village, its officers, agents, or employees; or (ii) to the extent that the Village shall indemnify and hold harmless the Design-Builder for Hazardous Materials pursuant to Article 3.10.6.

3.28.3 In claims against any person or entity indemnified under this Article 3.28 that are made by an employee of Design-Builder or any Subcontractor, a person indirectly employed by Design-Builder or any Subcontractor, or anyone for whose acts Design-Builder or any Subcontractor may be liable, the indemnification obligation under this Article 3.28 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.28.4 The indemnification obligations under this Article 3.28 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

3.28.5 Design-Builder shall indemnify Village from and against losses resulting from any claim of damage made by any Separate Contractor against Village arising out of any alleged acts or omissions of Design-Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.28.6 Design-Builder shall indemnify Separate Contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of Design-Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.28.7 Design-Builder shall indemnify, defend, and hold harmless Village and its Regents, officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee arising out of the performance of services or Design-Builder's other obligations under this Contract, but only in proportion to and to the extent such losses are caused by or result from (1) the negligent acts or omissions of Design-Builder, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design-Builder is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Contract; or (3) willful misconduct by Indemnitor.

3.28.8 The indemnification obligations under this Article 3.28 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by Village except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Contract; or (c) willful misconduct.

3.28.9 Design-Builder shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitee of the Design Materials or Construction Documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Contract.

3.28.10 Nothing in this Contract, including the provisions of this Article 3, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY VILLAGE'S REPRESENTATIVE

4.1.1 Village's Representative will provide limited administration of the Contract as provided in the Contract Documents and will be the representative of Village. Village's Representative will have authority to act on behalf of Village only to the extent provided in the Contract Documents.

The Village shall designate, from time to time, one or more representatives authorized to act on the Village's behalf with respect to the Project, together with the scope of his/her respective authority. Functions for which this Contract provides will be performed by the Village may be delegated by the Village only by written notice to the Design-Builder from the Village. The Design-Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Contract. Directions and decisions made by Village's Representative within his/her respective authority shall be binding on the Village.

4.1.2 During the term of this Contract, Village's Representative shall have the right to review Design-Builder's Design Professionals' Work at such intervals as deemed appropriate by Village's Representative. However, no actions taken during such review or site visit by Village's Representative shall relieve Design-Builder of any of its obligations of single-point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend the Contract Completion Date beyond the Contract Time.

4.1.3 Village's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. These actions are solely the Design-Builder's responsibility.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, Village and Design-Builder shall communicate through Village's Representative. Except when direct communication has been specifically authorized in writing by Village's Representative, communications by Design-Builder with Village's consultants and Village's Representative's consultants shall be through Village's Representative. Communications by Village and Village's Representative with Subcontractors will be through Design-Builder. Communications by Design-Builder and Subcontractors with Separate Contractors shall be through Village's Representative. Design-Builder shall not rely on oral or other non-written communications.

4.1.5 Based on Village's Representative's Project site visits, review of Design Work, and evaluations of Design-Builder's Applications For Payment, Village's Representative will recommend amounts, if any, due Design-Builder and will issue Certificates For Payment in such amounts.

4.1.6 Village's Representative will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. Village's Representative will have the authority to stop the Work, or any portion thereof. Whenever Village's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, Village's Representative will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of the Village's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise or to not exercise such authority will give rise to a duty or responsibility of Village or Village's Representative to Design-Builder, or any person or entity claiming under, or through, Design-Builder.

4.1.7 Village's Representative will have the authority to conduct inspections as provided in the Contract Documents, to take Beneficial Occupancy and to determine the dates of Substantial Completion and Final Completion; will receive for review and approval any records, written warranties, and related documents

required by the Contract Documents and assembled by Design-Builder; and will issue a final Certificate For Payment upon Design-Builder's compliance with the requirements of the Contract Documents.

4.1.8 Village's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Design-Builder. Should Design-Builder discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, Design-Builder shall notify Village's Representative in writing and request interpretation, or clarification. Village's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Design-Builder proceed with the Work affected before receipt of a response from Village's Representative, any portion of the Work which is not done in accordance with Village's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Design-Builder shall be responsible for all resultant losses.

4.2 DESIGN-BUILDER CHANGE ORDER REQUESTS

4.2.1 Design-Builder may request changes to the Contract Price and/or Contract Time for Extra Work, materially differing site conditions, or delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

- .1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2 below; and
- .2 If requested, timely submission of additional informational requested by the Village's Representative pursuant to Article 4.2.3.3 below.

4.2.3 Change Order Request:

4.2.3.1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Design-Builder discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by Village's Representative for submission of the Change Order Request, provided that if:

- .1 The Change Order Request includes compensation sought by a Subcontractor; AND
- .2 The Design-Builder requests in writing to the Village's Representative, within the 7-day time period, additional time to permit Design-Builder to conduct an appropriate review of the Subcontractor Change Order Request, then the time period for submission of the actual Change Order Request shall be extended by the number of days specified in writing by the Village's Representative.

4.2.3.2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Price, Contract Time, and/or other monetary relief. If the Design-Builder requests an adjustment to the Contract Price or other monetary relief, the Design-Builder shall submit the following with the Change Order Request:

- .1 A completed Cost Proposal in the form reasonably acceptable to the Village and meeting the requirements of Article 7 of the General Conditions; OR
- .2 A partial Cost Proposal and a declaration of what required information is not then known to Design-Builder. If Design-Builder failed to submit a completed Cost Proposal with the Change Order Request, Design-Builder shall submit a completed Cost Proposal meeting the

requirements of Article 7 within 7 days of the date the Design-Builder submitted the Change Order Request unless additional time is allowed by the Village's Representative.

4.2.3.3 Upon request of Village's Representative, Design-Builder shall submit such additional information as may be requested by Village's Representative for the purpose of evaluating the Change Order Request. Such additional information may include:

- .1 If Design-Builder seeks an adjustment of the Contract Price or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the Village's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the Village's Representative and/or representatives of the Village's Representative.
- .2 If Design-Builder seeks an adjustment of the Contract Time, written documentation, including a Time Impact Analysis, demonstrating Design-Builder's entitlement to a time extension under Article 8.4, which shall be submitted within 15 days of the date requested unless the Village's Representative requires an earlier submission. If requested, Design-Builder may submit a Fragnet in support of its request for a time extension. The Village may, but is not obligated to, grant a time extension on the basis of a Fragnet alone which, by its nature, is not a complete schedule analysis. If deemed appropriate by Village Representative, Design-Builder shall submit a more detailed schedule analysis in support of its request for a time extension.
- .3 Any other information requested by the Village's Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the Village's Representative.

4.2.4 Village's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. In the event the Change Order Request is submitted pursuant to Article 8.4.1, the Village's Representative shall promptly review and accept or reject it within thirty (30) days. A final decision is any decision on a Change Order Request which states that it is final. If Village's Representative issues a final decision denying a Change Order Request in whole or in part, Design-Builder may contest the decision by filing a timely Claim under the procedures specified in Article 4.3 of the General Conditions.

4.2.5 Design-Builder may file a written demand for a final decision by Village's Representative on all or part of any Change Order Request as to which the Village's Representative has not previously issued a final decision pursuant to Article 4.2.4 of the General Conditions; such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within 30 days of receipt of the demand, Village's Representative will issue a final decision on the Change Order Request. The Village's Representative's failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by Design-Builder seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between Village and Design-Builder arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

- .1 Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

- .2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.
- .3 Claims by Village, except as set forth in Article 4.7.4 of the General Conditions.
- .4 Claims respecting stop notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Design-Builder's Change Order Request pursuant to Article 4.2.4 of the General Conditions.

4.3.3 A Claim must include the following:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.
- .3 A certification, executed by Design-Builder, that the claim is filed in good faith. The certification must be made on a Claim Certification form reasonably acceptable to the Village.
- .4 A certification, executed by each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor's portion of the claim is filed in good faith. The certification must be made on a Claim Certification form reasonably acceptable to the Village.
- .5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.4 of the General Conditions.
- .6 If a Cost Proposal or declaration was required by Article 4.2.3 of the General Conditions, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3 of the General Conditions.
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:
 - .1 If the Claim involves Extra Work, an estimate of the costs must of the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. The cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a month during any periods costs are incurred. A cost record will be considered current if submitted within 30 days of the date the cost reflected in the record is incurred. At the request of the Village's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for i) labor including names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other

pertinent information; and iii) itemization of machinery and equipment including make, model, hours of use, dates of use and equipment rental rates of any rented equipment.

- .2 Design-Builder shall be responsible for all errors and omissions contained within the Construction Documents.
- .3 If the Claim involves an extension of the Contract Time, written documentation demonstrating the Design-Builder's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by Design-Builder shall be first submitted to Village's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by Village's Representative, Design-Builder shall not cause any delay, cessation, or termination in or of Design-Builder's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 Design-Builder shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 of the General Conditions, to Village's Representative as soon as possible but not later than 30 days after the date the Claim arises under Article 4.3.2 of the General Conditions, provided that after written notification to the Village's Representative within such time period, the time period for submission of the Claim shall be extended by the number of days specified in writing by the Village's Representative where the Claim includes compensation sought by a Subcontractor and the Design-Builder requests an extension of time to permit it to discharge its responsibilities to conduct an appropriate review of the Subcontractor claim.

4.4.4 Design-Builder agrees that strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to Design-Builder's right to arbitrate or litigate a Claim. Design-Builder specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4 of the General Conditions. The failure of Design-Builder to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4 of the General Conditions constitutes a failure by Design-Builder to exhaust its administrative remedies with the Village, thereby denying any court or arbitration panel of jurisdiction to adjudicate the Claim.

4.5 DECISION OF VILLAGE'S REPRESENTATIVE ON CLAIMS

4.5.1 Village's Representative will timely review Claims submitted by Design-Builder. If Village's Representative determines that additional supporting data are necessary to fully evaluate a Claim, Village's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. Village's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid 30-day period shall be 60 days. Failure of Village's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline. The decision of Village's Representative will be final and binding unless appealed in accordance with Articles 4.5.2, 4.5.3, and 4.5.4 of the General Conditions.

The Village's Representative's decision on a Claim or dispute will include a statement substantially as follows:

“This is a decision under Article 4.5 of the General Conditions of your contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting claims specified in Article 4 of the General Conditions of your contract, you may have the right to litigate this decision. If you fail to take appropriate action within 30 days of the date of this decision, the decision shall become final and binding and not subject to further appeal.”

4.5.2 If either Design-Builder or Village disputes Village's Representative's decision on a Claim, such party (the "Disputing Party") must either provide a written notice of its election to arbitrate or provide written notice of its election to litigate the Claim within 30 days after the decision of Village's Representative or, if no decision has been issued, within 30 days from the date of the applicable deadline in Article 4.5.1 of the General Conditions for Village's Representative to render a decision.

4.5.3 If a notice of election to litigate is not given by either party within 30 days after the decision of Village's Representative, Village's Representative's decision on the Claim will be final and binding and not subject to appeal or challenge.

4.5.4 Not Used.

4.5.5 Any litigation shall be filed in the state court for the county in which the contract was to be performed.

4.5.6 The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation.

4.6 NOT USED

4.7 NOT USED.

4.8 WAIVER

4.8.1 A waiver of, or failure by, Village or Village's Representative to enforce any requirement in this Article 4, including, without limitation, the requirements in Articles 4.2, 4.3, 4.4, and 4.5 in connection with any Claim shall not constitute a waiver of, and shall not preclude the Village or Village's Representative from enforcing, such requirements in connection with any other Claims.

4.8.2 The Design-Builder agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon Village unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5

SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Design-Builder shall submit to the Village's Representative after selecting Subcontractors, an updated Expanded List of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The Expanded List of Subcontractors shall be provided no later than thirty (30) days after the date which Village provides Letter of Design Review. If the Project is to proceed on a fast track/phased basis as identified in the exhibits, then a Letter of Design Review will be issued by the Village for each such design submittal associated with a particular phase and identified in the exhibits. Failure to identify Subcontractors within the time period(s) above shall commit the Design-Builder to carrying out the Construction Work with its own forces.

5.1.2 The Village has the right to request all documentation that supports the Design-Builder's selection of a Subcontractor. The Village shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within the Village's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if Village or Village's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

5.1.3 The Subcontractors listed by Design-Builder shall only be substituted with the written consent of the Village.

5.1.4 Any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor pursuant to above Article 5.1.3 or as required by the Village or Village's Representative pursuant to above Article 5.1.2, shall be borne solely by Design-Builder. Design-Builder shall not be entitled to any increase in Contract Sum or an extension of Contract Time due to such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for Design-Builder by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design-Builder by the terms of the Contract Documents, to assume toward Design-Builder all the obligations and responsibilities which Design-Builder assumes towards Village by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of Village under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Design-Builder shall cause each such subcontract to expressly include the following requirements:

- .1 Subcontractor waives all rights that Subcontractor may have against Village for damages caused by fire or other perils covered by Builder's Risk Property Insurance carried by Design-Builder or Village, except for such rights Subcontractor may have to the proceeds of such insurance held by Village under Article 11 of the General Conditions.
- .2 Village, and entities and agencies designated by Village, will have access to and the right to audit and the right to copy, at Village's cost, all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.
- .3 Subcontractor recognizes the rights of Village under Article 5.3 of the General Conditions, Contingent Assignment of Subcontracts, and agrees, upon notice from Village that Village has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by Village, to execute a written agreement confirming that Subcontractor is bound to Village under the terms of the subcontract.
- .4 Design-Builder is responsible for reviewing and coordinating the Work of and among his subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.2.2 Upon the request of Village, Design-Builder shall promptly furnish to Village a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and Village, except when, and only to the extent that, Village elects to accept the assignment of the subcontract with such Subcontractor pursuant to Article 5.3 of the General Conditions, Contingent Assignment of Subcontracts.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Design-Builder hereby assigns to Village all its interest in first-tier subcontracts now or hereafter entered into by Design-Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Village in writing and only as to those subcontracts which Village designates in writing. Village may accept said assignment at any time during the course of the Work and prior to Final Completion

in the event of a suspension or termination of Design-Builder's rights under the Contract Documents. Such assignment is part of the consideration to Village for entering into the Contract with Design-Builder and may not be withdrawn prior to Final Completion.

ARTICLE 6

CONSTRUCTION BY VILLAGE OR BY SEPARATE CONTRACTORS

6.1 VILLAGE'S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS

6.1.1 Village reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. Design-Builder shall cooperate with Village's forces and Separate Contractors.

6.1.2 Village will provide coordination of the activities of Village's forces and of each Separate Contractor with the Work of Design-Builder. Design-Builder shall participate with Village and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Design-Builder shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Design-Builder shall afford Village and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Design-Builder shall connect, schedule, and coordinate its construction and operations with the construction and operations of Village and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by Village or Separate Contractors, Design-Builder shall inspect such other design or construction or operations before proceeding with that portion of the Work. Design-Builder shall promptly report to Village's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work. Unless otherwise directed by Village's Representative, Design-Builder shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Design-Builder to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by Village or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.3 VILLAGE'S RIGHT TO CLEAN UP. If a dispute arises between Design-Builder and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, Village may clean up and allocate the cost between those firms it deems to be responsible.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Village may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to Village.

7.1.2 Design-Builder may request a Change Order under the procedures specified in Article 4.2 of the General Conditions.

7.1.3 A Field Order may be issued by Village, does not require the agreement of Design-Builder, and shall be valid with or without the signature of Design-Builder.

7.1.4 Design-Builder shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

7.2 CHANGES DEFINITIONS

7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both Village and Design-Builder, and states their agreement, as applicable, to any of the following:

- .1 A change in the Work.
- .2 The amount of an adjustment of the Contract Price.
- .3 The amount of an adjustment of the Contract Time.
- .4 A modification to any other Contract term or condition.

7.2.2 A Unilateral Change Order may also be issued by Village, without Design-Builder's signature, where Village determines that a change in the Work requires an adjustment of the Contract Price or Contract Time as Village believes to be properly due Design-Builder, even though no agreement has been reached between Village and Design-Builder with regard to such change in the Work.

7.2.3 A Field Order is a Contract Document issued by the Village that orders the Design-Builder to perform Work. A Field Order may, but need not, constitute a change in the Work and may, but need not, entitle Design-Builder to an adjustment of the Contract Price or Contract Time.

7.3 CHANGE ORDER PROCEDURES

7.3.1 Design-Builder shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8 of the General Conditions. Design-Builder's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of Design-Builder to provide Cost Proposals is not Extra Work, and shall not entitle the Design-Builder to an adjustment of the Contract Price or Contract Time.
- .2 The failure of Design-Builder to timely provide a Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3.1 is a material breach of the Contract. Design-Builder shall be responsible for any delay in implementing a change for which Design-Builder failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 of the General Conditions and this Article 7.3.1.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or to be incurred by Design-Builder and each Subcontractor regardless of tier involved, to the extent not otherwise disallowed under Article 7.3.3, and shall be limited to the following (to the extent the Design-Builder demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

- .1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.
- .3 Overtime wages or salaries, specifically authorized in writing by Village's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.
- .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by Village's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.
- .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by Village's Representative. Such costs shall be charged at the lowest price available to the Design-Builder but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to Village and Design-Builder shall make provisions so that they may be obtained.
- .6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.
- .7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by Village's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at <http://www.dot.ca.gov/hq/construc/equipmnt.html>. Design-Builder shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
- .8 Additional costs of royalties and permits due to the performance of the Extra Work.
- .9 Cost for revisions in the Design Development Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by Village. Revisions made necessary by adjustments in Village's program or project budget such costs to be computed at the hourly rates specified in the Design Professional Rate Schedule in the Exhibits.
- .10 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .9 above.

Village and Design-Builder may agree upon rates to be charged for any of the items listed in this Article 7.3.2. Such agreed upon rates shall be subject to audit pursuant to Article 15.7 of the General Conditions. Design-Builder shall promptly refund to Village any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.3.3 Cost of Extra Work shall not include any of the following:

- .1 Supervision
- .2 Superintendent(s).
- .3 Assistant Superintendent(s).
- .4 Project Engineer(s).
- .5 Project Manager(s).
- .6 Scheduler(s).
- .7 Estimator(s).
- .8 Small tools (Replacement value does not exceed \$300).
- .9 Office expenses including staff, materials and supplies.
- .10 On-site or off-site trailer and storage rental and expenses.
- .11 Site fencing.
- .12 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.
- .13 Data processing personnel and equipment.
- .14 Federal, state, or local business income and franchise taxes.
- .15 Overhead and Profit.
- .16 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above.
- .17 Costs in Article 7.3.2.9 in excess of the hourly rates included in the Design Professional Rate Schedule.

7.3.4 The term "Design-Builder Fee" shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Design-Builder for its own Work and the Work of all Subcontractors, for all costs and expenses not included in the Cost of Extra Work, whether or not such costs and expenses are specifically referred to in Article 7.3.3 above. The Design-Builder Fee shall not be compounded.

The Design-Builder Fee shall be computed as follows when the change impacts the Construction Work, or for the portion of the change that is related to Construction Work:

- .1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the Design-Builder with its own forces.
- .2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the Design-Builder. Total combined Design-Builder and Subcontractor fee shall not exceed 20%.
- .3 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the Design-Builder. Total combined Design-Builder, Subcontractor and all sub-subcontractor fee shall not exceed 25%.
- .4 Notwithstanding the foregoing, the Design-Builder Fee for additional Design Work under 7.3.2.9 of the General Conditions shall be 5% of the cost of such additional Design Work performed by a Design Professional. The cost of such additional Design Work shall be computed using the hourly rates in the Exhibits. The fee for the Design Professional

Subcontractors shall be the overhead/profit rate specified in the Design Professional Rate Schedule.

7.3.5 Compensation for Extra Work shall be computed on the basis of one or more of the following:

- .1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices to the quantities of the items involved.
- .2 Where the Work involved is not covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices agreed upon by Village and Design-Builder.
- .3 Where the Work involved requires revisions to the Design Development Documents or the Construction Documents when such revisions are inconsistent with approvals or instructions previously given by Village, including revisions made necessary by adjustments in Village's program or project budget, by application of the hourly rates reflected in the Design Professional Rate Schedule.
- .4 Where Articles 7.3.5.1, 7.3.5.2 and 7.3.5.3 above are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 of the General Conditions.
- .5 If Village and Design-Builder cannot agree upon a lump sum, by Cost of Extra Work plus Design-Builder Fee applicable to such Extra Work.

7.3.6 As a condition to Design-Builder's right to an adjustment of the Contract Price, pursuant to Article 7.3.5.5 above, Design-Builder must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by Village's Representative on a daily basis.

7.3.7 For Work to be deleted by Change Order, the reduction of the Contract Price shall be computed on the basis of one or more of the following:

- .1 Unit Prices stated in the Contract Documents.
- .2 Unit Prices agreed upon by Village and Design-Builder.
- .3 Where Unit Prices are not applicable, a lump sum agreed upon by Village and Design-Builder, based upon the actual costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Articles 7.3.2 and 7.3.3 above and supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Design-Builder Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design-Builder Fee will be allowed only on the difference between the two amounts.

7.3.9 The Contract Price will not be adjusted for an Excusable Delay. An extension of the contract time shall be the design-builder's sole remedy for an excusable delay.

7.4 FIELD ORDERS

7.4.1 Field Orders issued by the Village's Representative shall be subject to the following:

- .1 A Field Order may state that it does or does not constitute a change in the Work.

- .2 If the Field Order states that it does not constitute a change in the Work and the Design-Builder asserts that the Field Order constitutes a change in the Work, in order to obtain an adjustment of the Contract Sum or Contract Time for the Work encompassed by the Field Order, Design-Builder must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of Design-Builder's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time arising from performance of the Work described in the Field Order.
- .3 If the Field Order states that it does constitute a change in the Work, the Work described in the Field Order shall be considered Extra Work and the Design-Builder shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to Design-Builder's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8 of the General Conditions.
- .4 In addition, if the Field Order states that it does constitute a change in the Work, the Field Order may or may not contain Village's estimate of adjustment of Contract Sum and/or Contract Time. If the Field Order contains an estimate of adjustment of Contract Sum or Contract Time, the Field Order is subject to the following:
 - .1 The Design-Builder shall not exceed the Village's estimate of adjustment to Contract Sum or Contract Time without written authorization by Village's Representative.
 - .2 If the Design-Builder asserts that the change in the Work encompassed by the Field Order may entitle Design-Builder to an adjustment of Contract Sum or Contract Time in excess of the Village's estimate, in order not to be bound by Village's estimate Design-Builder must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of Design-Builder's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time, in excess of the Village's estimate, arising from performance of the Work described in the Field Order.

7.4.2 Upon receipt of a Field Order, Design-Builder shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the Design-Builder concerning whether the Work is extra.

7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK. Village has the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Bid Form.

7.6 WAIVER

7.6.1 A waiver of, or failure by, Village or Village's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Articles 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.3.11, or 7.3.12 in connection with any adjustment of the Contract Sum, will not constitute a waiver of, and will not preclude the Village, or Village's Representative, from enforcing such requirements in connection with any other adjustments of the Contract Sum.

7.6.2 The Design-Builder agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by Village or its agents shall be binding upon Village unless and until such approval is ratified by execution of a written change order.

ARTICLE 8

CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK. The date of commencement of the Phase of the Work shall be set forth in the applicable Notice To Proceed. The date of commencement of the Work shall not be postponed by the failure of Design-Builder, Subcontractors, or of persons or firms for whom Design-Builder is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Agreement:

- .1 Design-Builder represents to Village that the Contract Time is reasonable for performing the Work and that Design-Builder is able to perform the Work within the Contract Time.
- .2 Design-Builder agrees that Village is purchasing the right to have the Design-Builder present on the Project site for the full duration of the Contract Time applicable to the Construction Phase, even if Design-Builder could finish the Contract in less than the Contract Time.

8.2.2 Design-Builder shall not, except by agreement or instruction of Village in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 of the General Conditions to be furnished by Design-Builder. The dates of commencement and Final Completion of the Work shall not be changed by the effective date of such insurance.

8.2.3 Design-Builder shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If Village's Representative determines and notifies Design-Builder that Design-Builder's progress is such that Design-Builder will not achieve Final Completion of the Work within the Contract Time, Design-Builder shall immediately and at no additional cost to Village, take all measures necessary, including working such overtime, additional shifts, Saturdays, or holidays as may be required to ensure that Design-Builder will achieve Final completion of the Work within the Contract Time. Upon receipt of such notice from Village's representative, Design-Builder shall immediately notify Village's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time. Design-Builder shall reimburse Village for any extra costs or expenses (including the reasonable value of any services provided by Village's employees) incurred by Village as the result of such measures.

8.3 DELAY. Except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, by signing the Agreement, Design-Builder agrees:

- .1 To bear the risk of delays to the Work; and
- .2 That Design-Builder's Proposal for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of delays to the Work, Design-Builder understands that, except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, the occurrence of events that delay the Work shall not excuse Design-Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design-Builder to an adjustment of the Contract Price.

8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

8.4.1 Subject to Article 8.4.2 below, the Contract Time will be extended for each day of delay for which Design-Builder demonstrates that all of the following four conditions have been met; a time extension will not be granted for any day of delay for which Design-Builder fails to demonstrate compliance with the four conditions:

- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work to a date that is beyond the Contract Time.
- .2 Condition Number Two: Within 7 days of the date the Design-Builder discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the Design-Builder has not yet been delayed when the Design-Builder discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the Design-Builder submits a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.
- .3 Condition Number Three: The delay is not caused by:
 - .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.24 of the General Conditions; or
 - .2 The financial inability, misconduct or default of the Design-Builder, a Subcontractor or supplier; or
 - .3 The unavailability of materials or parts; or
 - .4 An error or omission in the Contract Documents caused by Design-Builder or Design-Builder's Design Consultants.
- .4 Condition Number Four: The delay is caused by:
 - .1 Fire; or
 - .2 Strikes, boycotts, or like obstructive actions by labor organizations; or
 - .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
 - .4 A materially differing site condition pursuant to Article 3.24 of the General Conditions; or
 - .5 An error or omission in the Contract Documents caused by the Village; or
 - .6 The Village's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design-Builder; or
 - .7 The Village's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design-Builder; or
 - .8 The failure of the Village (including the Village acting through its consultants, Design Professionals, Separate Contractors or the Village's Representative) to perform any Contract obligation unless such failure is due to Design-Builder's default or misconduct; or
 - .9 "Exceptionally Adverse Weather", but only for such days of exceptionally adverse weather or on-site conditions caused by adverse weather that are in excess of the number of days historically expected to occur in reasonable proximity to the Project location and during the period of construction performance. The burden of proving that adverse weather

conditions actually experienced are exceptional is on the Design-Builder. In order for a day to be considered a day of exceptionally adverse weather for the purpose of determining whether Design-Builder is entitled to an adjustment in Contract Time, both of the following conditions must be met:

- .1 The day must be a day in which, as a result of exceptionally adverse weather, critical path work is performed by Design-Builder; and
- .2 The day must be identified in the Contract Schedule as a scheduled work day.

8.4.2 If and only if a delay meets all four conditions prescribed in Article 8.4.1 above, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:

- .1 When two or more delays (each of which meet all four conditions prescribed in Article 8.4.1 above) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this Article 8.4.2, such concurrent critical delays shall be treated as a single delay for each such day.
- .2 Design-Builder shall be entitled to a time extension for a day of delay that meets all four requirements of Article 8.4.1 above if the delay is concurrent with a delay that does not meet all four conditions of Article 8.4.1 above.

8.4.3 If for any reason one or more of the four conditions prescribed in Article 8.4.1 above is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Article 8.4.2 above.

8.5 NO DAMAGES FOR DELAY

8.5.1 THE VILLAGE SHALL NOT BE LIABLE TO THE DESIGN-BUILDER AND/OR ANY SUBCONTRACTOR OR SUBCONSULTANT FOR CLAIMS OR DAMAGES OF ANY NATURE CAUSED BY OR ARISING OUT OF DELAYS. THE SOLE REMEDY AGAINST THE VILLAGE FOR DELAYS SHALL BE THE ALLOWANCE OF ADDITIONAL TIME FOR COMPLETION OF THE WORK, THE AMOUNT OF WHICH SHALL BE SUBJECT TO THE CLAIMS PROCEDURE SET FORTH HEREIN.

8.6 WAIVER

8.6.1 A waiver of, or failure by, Village or Village's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Article 8.4 above, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the Village or Village's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 Design-Builder agrees and understands that no oral approval, either express or implied, of any time extension by Village or its agents shall be binding upon Village unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN. Within 10 days after receipt of the Construction Notice to Proceed, Design-Builder shall submit to Village's Representative a Cost Breakdown of the Contract Price. The Cost Breakdown shall itemize as separate line items the cost of each work activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Price. The Cost Breakdown, when approved by the Village's Representative, shall become the basis for determining the cost of Work performed for Design-Builder's Applications for Payment.

9.2 PROGRESS PAYMENT

9.2.1 During Construction of the Work, Village agrees to pay monthly to Design-Builder, subject to Article 9.4.3 of the General Conditions, an amount equal to 90% of the sum of the following:

- .1 Cost of the Construction Work in permanent place as of the date of the Design-Builder's Application For Payment.
- .2 Cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 of the General Conditions.
- .3 Less amounts previously paid.

9.2.2 During the Design Work, the Village shall pay Design-Builder monthly a uniform amount prorated, based on the Contract Time and Contract Price associated with either Design Development or Construction Documents Phase. No retention shall be held for this Work.

9.2.3 Village may, but is not required to, pay Design-Builder more frequently than monthly.

9.2.4 After Substantial Completion and subject to Article 9.4.3 of the General Conditions, Village will make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, Design-Builder shall submit to Village's Representative an itemized Application For Payment, for the cost of the Work in permanent place, as approved by Village's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid. The Application For Payment shall be prepared as follows:

- .1 Use a form mutually agreeable to the Village and Design-Builder.
- .2 Itemize in accordance with the Schedule of Values or by Change Order, as applicable.
- .3 Include such data substantiating Design-Builder's right to payment as Village's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5 of the General Conditions, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.
- .4 Itemize retention.

9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts Design-Builder does not intend to pay because of a dispute or other reason.

9.3.3 If required by Village, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and conditional releases upon progress payment or final payment and (2) unconditional waivers and releases of claims and stop notices in a form mutually agreeable to the Village and the Design-Builder, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to the preceding Application For Payment.

9.3.4 Design-Builder warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from Village, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Design-Builder, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.3.5 At the sole discretion of Village, Village's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to Village's Representative. In such case, Design-Builder shall furnish evidence satisfactory to Village's Representative (1) of the cost of such materials; and (2) that such materials are under the exclusive control of Design-Builder. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Design-Builder from sole responsibility for the care and protection of such materials; nor relieve Design-Builder from risk of loss to such materials from any cause whatsoever; nor relieve Design-Builder from its obligation to complete the Work in accordance with the Contract; nor act as a waiver of the right of Village to require fulfillment of all terms of the Contract. Nothing contained within this Article 9.3.5 shall be deemed to obligate Village to agree to payment for any non-incorporated materials or any part thereof, payment being in the sole and absolute discretion of Village.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 If Design-Builder has submitted an Application For Payment in accordance with Article 9.3 above, Village's Representative shall, not later than 5 working days after the date of receipt of the Application For Payment, issue to Village, with a copy to Design-Builder, a Certificate For Payment for such amount as Village's Representative determines to be properly due.

9.4.2 If any such Application For Payment is determined not to be in accordance with Article 9.3 above, Village will inform Design-Builder as soon as practicable, but not later than 5 working days after receipt. Thereafter, Design-Builder shall have 3 days to revise and resubmit such Application For Payment; otherwise Village's Representative may issue a Certificate For Payment in the amount that Village's Representative determines to be properly due without regard to such Application For Payment.

9.4.3 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any of the following:

- .1 Defective Work not remedied.
- .2 Third-party claims against Design-Builder or Village arising from the acts or omissions of Design-Builder or Subcontractors.
- .3 Stop notices.
- .4 Failure of Design-Builder to make timely payments due Subcontractors.

- .5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to Village or Separate Contractor for which Design-Builder is responsible.
- .7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover Village's damages for the anticipated delay.
- .8 Failure of Design-Builder to maintain and update as-built documents.
- .9 Failure of Design-Builder to submit schedules or their updates as required by the Contract Documents.
- .10 Failure to provide conditional or unconditional releases from any Subcontractor or supplier, if such waiver(s) have been requested by Village's Representative.
- .11 Performance of Work by Design-Builder without properly processed Shop Drawings.
- .12 Liquidated damages assessed in accordance with the Agreement.
- .13 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
- .14 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.
- .15 Any other failure of Design-Builder to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Article 9.4.3 of the General Conditions, Village will pay Design-Builder the amount set forth in the Certificate For Payment no later than 30 days after the issuance of the Certificate For Payment.

9.4.5 Neither Village nor Village's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.6 Neither a Certificate For Payment nor a progress payment made by Village will constitute acceptance of Defective Work.

9.5 NOT USED.

9.6 BENEFICIAL OCCUPANCY

9.6.1 Village reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to Design-Builder. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- .1 Village's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, Village will issue a Certificate of Beneficial Occupancy on Village's form.
- .2 Beneficial Occupancy by Village shall not be construed by Design-Builder as an acceptance by Village of that portion of the Construction Work which is to be occupied.

- .3 Beneficial Occupancy by Village shall not constitute a waiver of existing claims of Village or Design-Builder against each other.
- .4 Design-Builder shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Design-Builder while the equipment is so operated. Design-Builder shall submit to Village an itemized list of each piece of equipment so operated with the date operation commences. The Guarantee to Repair Periods, as defined in Article 12.2, will commence upon the occupancy date stated in the Certificate of Beneficial Occupancy except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which Village has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the Village has taken Beneficial Occupancy for that portion of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project.
- .5 Village will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
- .6 Village will pay all utility costs which arise out of the Beneficial Occupancy.
- .7 Design-Builder shall not be responsible for providing security in areas beneficially occupied.
- .8 Village will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Design-Builder's remaining Work.
- .9 Design-Builder shall not be required to repair damage caused by Village in its Beneficial Occupancy.
- .10 Except as provided in this Article 9.6, there shall be no added cost to Village due to Beneficial Occupancy.
- .11 Design-Builder shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 COMPLETION

9.7.1 "Completion" means the stage in the progress of the Construction Work, as determined by Village's Representative, when the Construction Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair Village's ability to occupy and fully utilize the Construction Work for its intended purpose and a Certificate of Occupancy or equivalent has been issued by the Village's Building Official.

9.7.2 When Design-Builder gives notice to Village's Representative that the Construction Work is substantially complete, unless Village's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Completion, Village's Representative will inspect the Construction Work. If the Village's Representative determines that the Work is not substantially completed the Village's Representative will prepare and give to Design-Builder a comprehensive list of items to be completed or corrected before establishing Completion. Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Design-Builder to complete all Construction Work in accordance with the Contract Documents. Upon notification that the items on the list are completed or corrected, as applicable, the Village's Representative will make an additional inspection to determine whether the Construction Work is substantially complete. Costs for additional inspection by Village's Representative shall be deducted from any monies due and payable to Design-Builder.

9.7.3 When Village's Representative determines that the Construction Work is substantially complete, Village's Representative will arrange for inspection by Village's Building Official and other officials, as appropriate, for the purpose of issuing a Temporary Certificate of Occupancy. After a Temporary Certificate of Occupancy has been issued by the Village's Building Official, the Village's Representative will prepare a Certificate of Completion on Village's form, which, when signed by Village, shall establish the date of Completion and the responsibilities of Village and Design-Builder for security, maintenance, utilities, insurance, and damage to the Construction Work. The Village's Representative will prepare and furnish to the Design-Builder a comprehensive "punch list" of items to be completed or corrected prior to Final Acceptance.

9.7.4 Unless otherwise provided in the Certificate of Completion, the Warranty Period for the Work covered by the Certificate of Completion, shall commence on the date of Completion of the Construction Work except that Completion shall not commence the Warranty Period for any equipment or systems that:

- .1 Are not operational (equipment or systems shall not be considered operational if they cannot be used the intended service); or
- .2 Are not accepted by the Village.

The Warranty Period for equipment or systems which become fully operational and accepted subsequent to Completion will begin on the date of their written acceptance by Village.

9.8 FINAL ACCEPTANCE, FINAL PAYMENT, AND RELEASE OF RETENTION

9.8.1 Upon receipt of notice from Design-Builder that the Work is ready for final inspection, Village's Representative will make such inspection. Final Acceptance shall be when Village's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy or equivalent has been issued by the Village's Building Official. Village will file a Notice of Completion within 15 days after Final Acceptance. After receipt of the final Application For Payment, if Village's Representative determines that Final Acceptance has occurred, Village's Representative will issue the final Certificate For Payment.

9.8.2 Final payment and retention shall be released to Design-Builder, as set forth in Article 9.8.3, after:

- .1 Design-Builder submits the final Application For Payment and all submittals required in accordance with Article 9.3;
- .2 Design-Builder submits all guarantees and warranties procured by Design-Builder from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;
- .3 Design-Builder submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and
- .4 Village's Representative issues the final Certificate For Payment.

At its sole discretion, after Final Acceptance, Village may waive the requirement that Design-Builder submit a final Application For Payment before making final payment and/or release of retention to Design-Builder.

9.8.3 Final payment shall be paid not more than 10 days after Village's Representative issues the final Certificate For Payment. Retention shall be released to Design-Builder 35 days after the filing of the Notice of Completion.

9.8.4 Acceptance of final payment by Design-Builder shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Design-Builder as unsettled at the time of the final Application For Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Design-Builder shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

- .1 Employees involved in the Construction Work and other persons who may be affected thereby.
- .2 The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of Design-Builder or Subcontractors.
- .3 Other property at the Project site and adjoining property.

10.2.2 Design-Builder shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, Design-Builder shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 Design-Builder shall designate a responsible member of Design-Builder's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by Design-Builder in writing to Village and Village's Representative.

10.2.5 Design-Builder shall not load, or permit any part of the Construction Work or the Project site to be loaded, so as to endanger the safety of persons or property.

10.3 EMERGENCIES. In an emergency affecting the safety of persons or property, Design-Builder shall act to prevent or minimize damage, injury, or loss. Design-Builder shall promptly notify Village's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Design-Builder's action.

ARTICLE 11

INSURANCE AND BONDS

11.1 DESIGN-BUILDER'S INSURANCE

11.1.1 Design-Builder shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and Village from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Design-Builder, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions. See Article 3.27 of the General Conditions regarding the scope and extent of Design-Builder's liability for repair of damaged Work.

11.1.2 The following policies and coverage shall be furnished by Design-Builder:

- .1 COMMERCIAL FORM GENERAL LIABILITY INSURANCE covering all Work done by or on behalf of Design-Builder and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Design-Builder by these Contract Documents. However, if the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall survive for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement coinciding with the effective date of this Contract.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of Design-Builder and providing insurance for bodily injury and property damage.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. Design-Builder shall also require all of its Subcontractors to maintain this insurance coverage.
- .4 PROFESSIONAL LIABILITY INSURANCE to insure its activities in connection with this Contract and shall obtain, keep in force, and maintain as required by the Supplementary Conditions. However, if the insurance under this Article 11.1.2.4 is written on a claims-made basis, it shall be maintained continuously for a period no less than three (3) years following termination of this Contract or Final Completion, whichever occurs later. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Contract and shall include, without limitation coverage for professional services as called for in this Contract.
- .5 BUILDER'S RISK INSURANCE covering construction, additions, machinery and equipment included in the Project. The amount of the insurance shall be no less than the estimated insurable replacement value of the Project when completed and coverage shall be provided on an "all risk" (i.e., Special Form) basis. The maximum deductible for other than windstorm, hail, earth movement or flood shall be \$10,000 per occurrence. The maximum deductible for windstorm and hail shall be the greater of \$100,000 or 4% of the estimated actual cash value of the insurable property at risk at the time of loss. The risk of loss shall remain with Contractor until the date of Final Completion.

11.1.3 The coverages required under this Article 11 shall not in any way limit the liability of Design-Builder.

11.1.4 Certificates of Insurance, as evidence of the insurance required by these Contract Documents and on the form contained in the Exhibits, shall be submitted by Design-Builder to Village. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to Village, in accordance with policy provisions.

11.1.5 In the event Design-Builder does not comply with these insurance requirements, Village may, at its option, provide insurance coverage to protect Village; and the cost of such insurance shall be paid by Design-Builder and may be deducted from the Contract Sum.

11.1.6 Design-Builder's insurance as required by Article 11.1.2 above, shall, by endorsement to the policies and the Certificates of Insurance, include the following:

- .1 The Village of Key Biscayne, Florida, and each of its elected officials, representatives, consultants, officers, agents, employees, and each of their representative's consultants, regardless of whether or not identified in the Contract Documents or to the Contractor in writing, will be included as additional insureds on the Contractor's General Liability insurance for and relating to the Work to be performed by the Contractor and Subcontractors pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04). This requirement shall not apply to Worker's Compensation and Employer's Liability insurance.
- .2 A Severability of Interest Clause that shall be primary insurance as respects the Village of Key Biscayne, its officers, agents and employees. Any insurance or self-insurance maintained by the Village shall be excess of and non-contributory with this insurance. The provision shall state that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurers' liability."
- .3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policies referred to herein by one or more insureds hereunder for which another insured hereunder may be liable, then the policies shall cover such insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurers' limits of liability as set forth in the insuring agreements."
- .4 Village, Village's consultants, Village's Representative, and Village's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .5 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by Village, Village's consultants, Village's Representative, and Village's Representative's consultants. This provision, however, shall only apply as per the stipulations of Article 11.1.6.1 above.
- .6 The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

11.1.7 The form and substance of all insurance policies required to be obtained by Design-Builder shall be subject to approval by Village. All policies required by above Articles 11.1.2.1, 11.1.2.2, 11.1.2.3, 11.1.2.4 and 11.1.2.5 shall be issued by companies registered to do business in the State of Florida.

11.1.8 Design-Builder shall, by mutual agreement with Village and at Village's cost, furnish any additional insurance as may be required by Village. Design-Builder shall provide Certificates of Insurance evidencing such additional insurance.

11.1.9 The Certificate of Insurance shall show (1) all companies affording coverage, and (2) the name of the insured exactly in the manner as shown on the Price Proposal Form. The name of the insured must be the name under which the entity is licensed by the Design-Builders State License Board.

11.1.10 At the request of Village, Design-Builder shall submit to Village copies of the policies obtained by Design-Builder.

11.2 NOT USED

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 Design-Builder shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Exhibits.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the cost of construction.

11.3.3 The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by Village.

11.3.4 Surety companies used by Design-Builder shall be, on the date the Contract is signed by Village, listed in the latest published State of Florida list of Insurers admitted to transact surety insurance in the State.

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by Design-Builder.

ARTICLE 12

UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Construction Work is covered contrary to Village's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by Village's Representative, be uncovered for Village's Representative's observation and be replaced at Design-Builder's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which Village's Representative has not specifically requested to observe prior to its being covered, Village's Representative may request to see such Construction Work and it shall be uncovered and replaced by Design-Builder. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, Design-Builder shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Warranty Period" means a period of 1 year, unless a longer period of time is specified, commencing as follows:

- .1 For any Construction Work not described as incomplete in the Certificate of Completion, on the date of Completion.
- .2 For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 9.6 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

.3 For all Construction Work other than .1 or .2 above, from the date of Final Acceptance.

12.2.2 Design-Builder shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Warranty Period, and (2) replace, repair, or restore to Village's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Design-Builder shall promptly commence such correction, replacement, repair, or restoration upon notice from Village's Representative or Village, but in no case later than 10 days after receipt of such notice; and Design-Builder shall diligently and continuously prosecute such correction to completion. Design-Builder shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for Village's Representative's services and expenses. Design-Builder shall perform corrective Work at such times that are acceptable to Village and in such a manner as to avoid, to the extent practicable, disruption to Village's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by Village or Separate Contractors, Design-Builder shall pay to Village all reasonable costs of correcting such Defective Work. Design-Builder shall replace, repair, or restore to Village's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 Design-Builder shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Design-Builder nor accepted by Village.

12.2.5 If Design-Builder fails to commence correction of Defective Work within 10 days after notice from Village or Village's Representative or fails to diligently prosecute such correction to completion, Village may correct the Defective Work in accordance with Article 2.4 of the General Conditions; and, in addition, Village may remove the Defective Work and store salvageable materials and equipment at Design-Builder's expense.

12.2.6 If Design-Builder fails to pay the costs of such removal and storage as required by above Articles 12.2.4 and 12.2.5 within 10 days after written demand, Village may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Design-Builder shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Design-Builder is liable to Village, including compensation for Village's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Design-Builder is liable to Village, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Design-Builder or the remaining payments are insufficient to cover such deficiency, Design-Builder shall promptly pay the difference to Village.

12.2.7 Design-Builder's obligations under this Article 12 are in addition to, and not in limitation of, its warranty under Article 3.4 of the General Conditions or any other obligation of Design-Builder under the Contract Documents. Enforcement of Design-Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies Village may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of Design-Builder under the Contract Documents. Establishment of the Warranty Period relates only to the specific obligation of Design-Builder to correct the Work and in no way limits either Design-Builder's liability for Defective Work or the time within which proceedings may be commenced to enforce Design-Builder's obligations under the Contract Documents.

ARTICLE 13

TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY DESIGN-BUILDER

13.1.1 Subject to below Article 13.1.2, Design-Builder shall have the right to terminate the Contract only upon the occurrence of one of the following:

- .1 Provided that Village has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of Design-Builder, any Subcontractor, or any employee or agent of Design-Builder or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- .2 Village fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days, or Village has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Design-Builder stating the nature of such default(s).
- .3 Repeated suspensions by Village, other than such suspensions as are agreed to by Design-Builder under Article 13.3 below, which constitute in the aggregate more than 20% of the Contract Time.

13.1.2 Upon the occurrence of one of the events listed in Article 13.1.1 above, Design-Builder may, upon 10 days additional notice to Village and Village's Representative, and provided that the condition giving rise to Design-Builder's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by Design-Builder, Village will pay to Design-Builder the sum determined by Article 13.4.4 of the General Conditions. Such payment will be the sole and exclusive remedy to which Design-Builder is entitled in the event of termination of the Contract by Design-Builder pursuant to this Article 13.1; and Design-Builder will be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY VILLAGE FOR CAUSE

13.2.1 Village will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

- .1 Design-Builder becomes insolvent or files for relief under the bankruptcy laws of the United States.
- .2 Design-Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- .3 A receiver is appointed to take charge of Design-Builder's property.
- .4 The commencement or completion of any Work activity on the critical path is more than 30 days behind the date set forth in the Contract Schedule for such Work activity as a result of an Unexcusable Delay. For a Contract with a Contract Time of less than 300 days, the 30-day period shall be reduced to the number of days commensurate with 10% of the Contract Time.
- .5 Design-Builder abandons the Work.

13.2.2 Upon the occurrence of any of the following events, Village will have the right to terminate the Contract for cause if Design-Builder fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from Village, or within such longer period of time as is reasonably necessary to complete such cure:

- .1 Design-Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 Design-Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from Village.
- .3 Design-Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.
- .4 Design-Builder is in default of any other material obligation under the Contract Documents.
- .5 Design-Builder persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2 above, Village may, at its election and by notice to Design-Builder, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design-Builder; accept the assignment of any or all of the subcontracts; and then complete the Work by any method Village may deem expedient. If requested by Village, Design-Builder shall remove any part or all of Design-Builder's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Design-Builder fails to do so, Village may remove or store, and after 90 days sell, any of the same at Design-Builder's expense.

13.2.4 If the Contract is terminated by Village as provided in this Article 13.2, Design-Builder shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by Village.

13.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for Village staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Design-Builder. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Design-Builder shall pay such excess to Village.

13.2.6 No termination or action taken by Village after termination shall prejudice any other rights or remedies of Village provided by law or by the Contract Documents upon such termination; and Village may proceed against Design-Builder to recover all losses suffered by Village.

13.3 SUSPENSION BY VILLAGE FOR CONVENIENCE

13.3.1 Village may, at any time and from time to time, without cause, order Design-Builder, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 90 days, as Village may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Article 13.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Design-Builder shall, at Village's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Design-Builder and Village, Village shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.

13.3.2 If a Suspension Order is canceled or expires, Design-Builder shall continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by Design-Builder for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. Design-Builder agrees that submission of its claim within said 21 days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3 The provisions of this Article 13.3 shall not apply if a Suspension Order is not issued by Village. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

13.4 TERMINATION BY VILLAGE FOR CONVENIENCE

13.4.1 Village may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Design-Builder. Upon such termination, Design-Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design-Builder, Village shall pay Design-Builder in accordance with Article 13.4.4 below.

13.4.2 Upon receipt of notice of termination under this Article 13.4, Design-Builder shall, unless the notice directs otherwise, do the following:

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
- .4 Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Design-Builder's obligations under Article 13.4.2 above, as to bona fide obligations assumed by Design-Builder prior to the date of termination.

13.4.4 Upon such termination, Village shall pay to Design-Builder the sum of the following:

- .1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Design-Builder as of the date of termination, less sums previously paid to Design-Builder.
- .2 Incorporation in the Work.
- .3 Plus any proven losses with respect to materials and equipment directly resulting from such termination.
- .4 Plus reasonable demobilization costs.
- .5 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which Design-Builder is entitled in the event of termination of the Contract by Village pursuant to this Article 13.4; and Design-Builder will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW. This Contract shall be governed by the laws of the State of Florida.

14.2 SUCCESSORS AND ASSIGNS. Village and Design-Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

14.3 RIGHTS AND REMEDIES

14.3.1 All Village's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of Village under the Contract Documents or otherwise available at law or in equity.

14.3.2 No action or failure to act by Village or Village's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Village or Village's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

14.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against Village, Village's Representative, or Design-Builder.

14.4 SURVIVAL. The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and Village's right to audit Design-Builder's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

14.5 COMPLETE AGREEMENT. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7 of the General Conditions.

14.6 SEVERABILITY OF PROVISIONS. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

14.7 VILLAGE'S RIGHT TO AUDIT. Village and entities and agencies designated by Village will have access to and the right to audit and the right to copy at Village's cost all of Design-Builder's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Design-Builder shall preserve all such records and other items during the performance of the Contract and for a period of at least 3 years after Final Completion.

14.8 METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS

14.8.1 The following documents must be delivered in a manner specified in Article 14.8.2:

- .1 Design-Builder Notices of election to litigate;
- .2 Written demand for a final decision by Village's Representative pursuant to Article 4.2.5;
- .3 Design-Builder claims pursuant to Article 4.3;

- .4 Design-Builder notices of conditions pursuant to Articles 3.10.4, 3.24, or 3.25;
- .5 Village's notices of Design-Builder's failure to perform and/or correct defective work pursuant to Articles 4.1.6, 12.2 and 13.2.3;
- .6 Village's notice to stop work pursuant to Article 2.3.1;
- .7 Notices of termination or suspension pursuant to Article 13.

14.8.2 Delivery methods for documents specified in Article 14.8.1:

- .1 By personal delivery.
- .2 Sent by facsimile copy where receipt is confirmed.
- .3 Sent by Express Mail, or other method of delivery providing for overnight delivery where receipt is confirmed.
- .4 Sent by registered or certified mail, postage prepaid, return receipt requested.

14.8.3 The documents identified in Article 14.8.1 shall only be effective if delivered in the manner specified in Article 14.8.2. Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 14.8.

14.9 TIME OF THE ESSENCE. Time limits stated in the Contract Documents are of the essence of the Contract.

14.10 MUTUAL DUTY TO MITIGATE. Village and Design-Builder shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.

[End of Section 2]

SECTION 3

SUPPLEMENTAL CONDITIONS

3.1 DESIGN-BUILDER

3.1.1 Independent Contractor. Design-Builder is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the manner in which it performs the obligations required of it by the terms of the Contract Documents.

3.1.2 Agents, Employees. Design-Builder, wholly and without reservation, assumes the responsibility for the acts of its agents and employees and the agents and employees of each Subcontractor and Subconsultant, of every tier, as they relate to the Work. Design-Builder, its agents and employees, shall not be entitled to any rights or privileges of Village's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between the Village and any agent or employee of Design-Builder or any Subcontractor or Subconsultant. Village shall have the right, but not the obligation, to monitor the employment and other activities of Design-Builder and the Subcontractors and Sub-Consultants to determine compliance with the terms of the Contract Documents.

3.1.3 Licenses. Design-Builder shall maintain, and shall require the Subcontractors and Subconsultants, of every tier, to maintain, such contracting, professional and business licenses as may be required by Applicable Laws for the duration of time that Design-Builder is performing the Work, including the period of any warranty provided by Design-Builder under the Contract Documents covering all or any portion of the Work.

3.1.4 Subcontractors, Subconsultants. Design-Builder is responsible to the Village for acts and omissions of the Subcontractors and Subconsultants and their agents and employees and other persons performing portions of the Work under a contract with a Subcontractor or Subconsultant, of any tier.

3.1.5 Activities of Others. Design-Builder shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Village, Village's Representative, Inspectors of Record or Village Consultants, or by tests, inspections or approvals required or performed by persons other than the Design-Builder.

3.2 DESIGN RESPONSIBILITIES

3.2.1 Design Consultation. Design-Builder shall on an on-going basis throughout its performance of the Work provide Village's Representative with complete, continuous and current advice and recommendations on issues related to the status and progress of the design and non-design portions of the Work, including, without limitation, matters related to design feasibility, constructability, occupancy and maintenance, and shall keep the Village's Representative apprised at all times of the full range of alternatives that are available to the Village for reducing construction time, lowering costs, easing long-term maintenance, minimizing adverse effects of labor or material shortages, shortening time requirements for procurement, expediting installation and construction completion and other possible economies and efficiencies. It is understood that although this consultation is a collaborative effort, the Village is relying upon Design-Builder's expertise and experience to proactively initiate inquiries, investigate and take other steps necessary to obtain all pertinent information concerning the Village's special needs and requirements so as to enable Design-Builder to obtain a clear understanding of the goals of the Project in terms of design, cost, quality and schedule and to provide complete and current advice to the Village that will enable the Village to anticipate and make fully informed decisions

concerning the Project. As part of this collaborative effort, Design-Builder shall throughout the duration of its performance of the Work attend regular meetings (as frequently as may be necessary to maintain progress of the Work or as otherwise reasonably required by the Village) for the purpose of reviewing the status of the Construction Documents and Work. Minutes of such meetings shall be maintained and distributed by the Design-Builder to all meeting participants.

3.2.2 Construction Documents. Using qualified, licensed design professionals, Design-Builder shall furnish all necessary and appropriate architectural, engineering and other professional services required for the preparation of the Construction Documents that incorporate designs and specifications that are complete, detailed and suitable to produce a completed construction that, without limitation to any other requirements of the Contract Documents: (1) conforms to the Project Criteria and any Approved Deviations; (2) is consistent with the Design Intent, and (3) gives due and appropriate consideration to the matters disclosed by the Reference Documents and any other information provided by the Village to Design-Builder.

3.2.3 Submissions to the Village. Design-Builder shall formally submit to Village's Representative in accordance with the Design-Build Schedule, for the Village's review and approval, in-progress Construction Documents reflecting Design-Builder's progress in the performance of its design portion of the Work at the following points in time: (1) completion of schematic design documents; (2) 25% completion of Construction Documents; (3) 50% completion of Construction Documents; (4) 75% completion of Construction Documents; and (5) completion of Final Construction Documents. Additional formal submissions reflecting the status of in-progress Construction Documents, if reasonably judged by the Village as necessary, shall be prepared and made without additional compensation. All such formal submissions shall be in both hard copy and electronic format. Construction Documents submitted by the Design-Builder shall incorporate changes or corrections required by the Village, approved by the Village or Governmental Authorities or be accompanied by a written statement as to why such changes were not incorporated. The Village may, in its sole and absolute discretion, reject the Design-Builder's explanation and require the Design-Builder to make such changes or corrections to the Construction Documents. Design-Builder shall at all times remain solely responsible, notwithstanding the Village's, Village's Representative's or any Village Consultant's review or approval of the Construction Documents, for the accuracy, completeness, sufficiency and suitability of the Construction Documents and for their compliance with Applicable Laws and the Contract Documents.

3.2.4 Professional Certifications. All submissions of Construction Documents and Submittals to Project Manager shall include certification by the Designer of Record, who shall be a properly licensed design professional, including such professional's manual signature and seal. Any Construction Documents or Submittals related to the Work designed or certified by such professional, if prepared by others, shall nevertheless bear such professional's manual signature when submitted to the Village. The Village, Village's Representative and Village Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals provided by such design professionals.

3.2.5 Approved Deviations.

.1 Notations by Design-Builder. Design-Builder shall separately identify in writing at the time of each of its formal submissions of Construction Documents required by Paragraph 3.2.3, above, any portions thereof that by reason of information contained or omitted constitute deviations from the requirements of the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by Village's Representative pursuant to this Paragraph 3.2.5. All such formal submittals of Construction Documents to Village's Representative, including electronic submittals, shall further include a certification by Design-Builder as follows: "WITH THE

EXCEPTION OF DEVIATIONS EXPRESSLY IDENTIFIED IN THIS SUBMISSION IN THE MANNER REQUIRED BY PARAGRAPH 3.2.5 OF THE DESIGN-BUILD CONTRACT, THE SUBMITTED CONSTRUCTION DOCUMENTS DO NOT CONTAIN ANY DEVIATIONS FROM THE DESIGN-BUILD CONTRACT, GENERAL CONDITIONS, PROJECT CRITERIA, DESIGN INTENT OR APPROVED DEVIATIONS PREVIOUSLY IDENTIFIED BY DESIGN-BUILDER IN WRITING AND APPROVED BY THE VILLAGE”.

.2 Approval by the Village. The Village shall have the right, but not the obligation, to approve or disapprove, in the exercise of its sole and absolute discretion, any portion of the Construction Documents that constitutes a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by Village’s Representative pursuant to this Paragraph 3.2.5. Such approval shall not be effective or binding upon the Village unless such deviation is approved in a Change Order or Unilateral Change Order that states in bold letters “APPROVED DEVIATION”.

.3 No Implied Approval. Under no circumstances shall any general or specific approval by Village’s Representative of Construction Documents that contain a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by Village’s Representative pursuant to this Paragraph 3.2.5 be interpreted as implying approval by Village’s Representative or the Village of such deviation unless such deviation has been approved by Village’s Representative in the manner required by Subparagraph 3.2.5.2, above.

.4 Design Liability. Design-Builder is solely responsible, notwithstanding the Village’s Representative’s approval of an Approved Deviation, for any Design Deficiencies in such Approved Deviation.

.5 Corrections and Losses. All costs to make corrections in the Construction Documents due to information or an omission in the Construction Documents that constitutes a deviation from the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations previously approved by Village’s Representative pursuant to this Paragraph 3.2.5 that is not approved by Village’s Representative in the manner provided for by this Paragraph 3.2.5, as well as any resulting loss to the Village from the inclusion of such deviation in the Construction Documents or as part of the Work constructed at the Site, shall be borne by Design-Builder at Design-Builder’s Own Expense.

3.2.6 Changes. Design-Builder shall have the right, with written approval of the Village not to be unreasonably withheld, without Contract Adjustment, to make Changes to the Construction Documents provided that such Changes do not result in deviations from the RFP Documents, Design-Build Contract General Conditions, Project Criteria, Design Intent and Approved Deviations. Changes in the Construction Documents, and any related Work, that is performed without such approval shall, if requested by the Village, be corrected, removed or replaced by Design-Builder at Design-Builder’s Own Expense.

3.2.7 Resolution of Uncertainties. The Village and Design-Builder acknowledge that questions may arise concerning the level and scope of performance required under the RFP Documents, Design-Build Contract, General Conditions, Project Criteria, Design Intent or Approved Deviations. The Village and Design-Builder will in good faith attempt to resolve such conflicts or uncertainties. In the event that they are unable, after good faith efforts, to resolve such conflicts or uncertainties, then, in recognition of their mutual desire that such questions not result in a compromise of the high standards they mutually intend be followed for design and construction of the Project, the Village and Design-Builder agree that any such unresolved conflicts or uncertainties shall be interpreted so as to require Design-Builder to perform the Work, without Contract Adjustment, in a manner that resolves the conflict or uncertainty in favor of the higher or better standard indicated by the Project Criteria, Design Intent or Approved Deviations.

3.2.8 Design Deficiencies. Design Deficiencies in the Construction Documents, whether or not the Construction Documents are approved by the Village, are the sole responsibility of the Design-Builder and shall be corrected by Design-Builder at the Design-Builder's Own Expense.

3.2.9 Not used.

3.2.10 Sustainable Design. Design-Builder shall make recommendations to the Village for incorporating into the Final Construction Documents the design requirements for design and construction that will, to the best of Design-Builder's efforts and within the constraints of the Contract Price and Contract Time, incorporate the elements of sustainable design and construction that are recommended in the Sustainable Building Guidelines.

3.2.11 Utilities Relocation. Subject only to Design-Builder's rights to Contract Adjustment for Differing Site Conditions, Design-Builder shall include in its performance of the Work and as part of the Contract Sum provision for all aspects of design, permitting, relocation and construction of existing and new utilities.

3.2.12 Design-Builder Review of Site.

.1 Design-Builder Review. Design-Builder warrants and represents that, in order to fully familiarize itself with all conditions, restrictions, obstructions, difficulties and other matters which might affect the Design-Builder's ability to complete the Work within the limitations of the Contract Price and Contract Time, it has prior to the Final Proposal Submission Date, carefully and thoroughly inspected:

(1) the Site and its surroundings, Existing Improvements and their existing uses by Village or the public, routes of ingress and egress, and local conditions in the vicinity of the Site (including, without limitation, sources and availability of labor, materials and equipment);

(2) the status of any construction at the Site concurrently under construction; and

(3) all information that either has been provided by the Village to Design-Builder (including, but not limited to, the RFP Documents and Reference Documents) or reasonably available for review from the public records of the Village or County in which the Project is located, concerning visible and concealed conditions above and below the surface of the ground at the Site and in Existing Improvements (including, without limitation, surveys, reports, data, as-built drawings of Existing Improvements and utility sources, capacities and locations).

.2 Continuing Obligation. Design-Builder shall, in order to keep current its knowledge of all such conditions and information concerning the Site and Existing Improvements, throughout its performance of the Work and exercising the Standard of Performance, take steps to keep itself apprised of any additional information and changes in conditions at the Site and in Existing Improvements that affect the design or construction of the Project, promptly notify Village's Representative if Changes to the Construction Documents are necessary to accommodate such new or additional information or conditions and take such matters into consideration in all aspects of Design-Builder's performance of the Work.

3.2.13 Design-Builder Review of Documents.

.1 Design-Builder Review. Design-Builder's submission of its Design-Build Proposal and its execution of the Design-Build Contract each constitutes a separate and independent representation that it had the opportunity, prior to agreeing to the Contract Price and Contract Time, to thoroughly and carefully review and evaluate to its satisfaction the RFP Documents, Project Criteria, Reference

Documents and other documents and information provided by Village to Design-Builder concerning the Project, Site or Existing Improvements.

.2 No Contract Adjustment. Design-Builder agrees that it shall not be entitled to, and hereby conclusively waives, any right to Contract Adjustment due to additional or unforeseen Losses or Delays on the basis that the RFP Documents, Project Criteria, Reference Documents or other documents or information provided by Village to Design-Builder concerning the Project, Site or Existing Improvements contained an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws, if prior to the Final Proposal Submission Date such error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws was either:

(1) discovered by Design-Builder and Design-Builder, notwithstanding such discovery, failed to report such error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws to Village in writing prior to the Final Proposal Submission Date; or

(2) although not actually discovered by Design-Builder was prior to the Final Proposal Submission Date reasonably discoverable by Design-Builder exercising the Standard of Performance specified in Section 2.2 of the form of Design-Build Contract that was part of the RFP Documents.

3.2.14 No Warranty by Village. Design-Builder is solely responsible to satisfy itself as to the suitability, accuracy and completeness of any information provided by the Village, such as but not limited to, information that is in the nature or form of design requirements, calculations, estimates, projections, budgets, studies, reports, surveys or other information describing the Project, Work, Site, Existing Improvements, Hazardous Substances or Mold (including, without limitation, opinions, data, recommendations and other information contained in the Reference Documents), and nothing stated in the RFP Documents or Contract Documents shall be construed as implying the creation or existence of any warranty, express or implied, on the part of the Village with respect to the accuracy, sufficiency or completeness of such information.

3.2.15 Requests for Information.

.1 Time for Submittal. Requests for Information shall be submitted to Village's Representative no later than three (3) Days after the date Design-Builder learns of the circumstances giving rise to the question contained in the Request for Information.

.2 Content. Each Request for Information shall include the following:

(1) a detailed description of the discrepancy or variance discovered;

(2) Design-Builder's request for clarification, including, without limitation, any request for further detailing or correction of the Contract Documents; and

(3) a statement of whether Design-Builder believes it is entitled to a Contract Adjustment by reason of such discrepancy or variance.

.3 Form. Design-Builder shall submit Requests for Information using forms provided or approved by Village's Representative.

.4 Unnecessary, Multiple Requests. Design-Builder shall carefully review, coordinate and consolidate (where appropriate to prevent piecemeal submission) Requests for Information (whether

originating with Design-Builder or the Subcontractors or Sub-Consultants) prior to submitting them in order to eliminate unnecessary and duplicative of requests.

.5 Responses. Responses to Requests for Information shall be furnished with reasonable promptness so as to not unreasonably Delay progress of the Work; provided, however, that the timing of a response by the Village, Village's Representative or a Village Consultant to a Request for Information shall not constitute grounds for a Contract Adjustment unless Design-Builder has complied with the requirements set forth in this Paragraph 3.2.15.

.6 Backcharges by Village. Village shall have the right to deduct from payments due to Design-Builder sums expended by Village for the services of the Village's Representative, Inspectors of Record and Village Consultants due to a failure by Design-Builder to comply with this Paragraph 3.2.15.

.7 Waiver by Design-Builder. Failure by Design-Builder to submit a Request for Information in accordance with this Paragraph 3.2.15 under circumstances in which a Request for Information was required by this Paragraph 3.2.15 shall result in Design-Builder waiving its right to a Contract Adjustment on account of any Loss or Delay that could have been avoided if such Request for Information had been timely submitted.

3.2.16 Correction of Work. Design-Builder shall, at Design-Builder's Own Expense, correct or replace in accordance with the direction of Project Inspector any portion of the Work that is performed by Design-Builder or a Subcontractor or Sub-Consultant knowing that it involves, or that Design-Builder or Subcontractor or Sub-Consultant in the exercise of the Standard of Performance should have known involves, a portion of the Contract Documents that contains an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws, without first notifying and obtaining the written approval of the Village's Representative.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 General Obligation. Design-Builder shall provide competent, fully qualified personnel to supervise, administer, manage and direct the Work, competently and efficiently, at all times devoting their best skill and attention to perform the Work in accordance with the Contract Documents.

3.3.2 Supervisory Staff. Design-Builder shall employ a competent project manager, superintendent, scheduler, forepersons and necessary assistants during performance of the Work. Design-Builder's superintendent and forepersons shall be present at the Site at all times that the Work is in progress and at any time that any employee of Design-Builder or a Subcontractor or Sub-Consultant is present at the Site. Design-Builder's project manager and superintendent shall, unless excused from attendance by the Village, attend all job meetings. Design-Builder's project manager and superintendent must be able to fluently read and write in English. Design-Builder's superintendent shall not perform the Work of any trade, pick up materials, or perform any Work not directly related to the supervision of the Work and shall be available twenty-four (24) hours a Day, seven (7) Days a week, to respond to emergencies.

3.3.3 Supplementary Personnel. Without limitation upon any of the rights or remedies of the Village under the Contract Documents or under Applicable Laws, in the event that Design-Builder fails to have personnel on Site to supervise the Work, the Village shall have the right, but not the obligation, upon twenty-four (24) hours' telephonic or email notice by the Village's Representative to Design-Builder, to provide such supervision on a temporary basis and to deduct from the sums owing to Design-Builder the actual costs of such temporary supervision. Design-Builder shall, notwithstanding the Village's providing such temporary supervision, remain solely responsible for all actions and omissions of its personnel and of the Subcontractors and Sub-Consultants who are on the Site.

3.3.4 Means, Methods, Procedures. Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

3.4 LABOR, MATERIALS AND EQUIPMENT

3.4.1 Contract Price. Design-Builder shall provide and pay for labor, materials, tools, equipment, machinery, water, heat, utilities, transportation, facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated into the Work.

3.4.2 Coordination. Design-Builder shall provide supervision sufficient to ensure proper coordination for the timely and efficient performance and completion of the Work.

3.4.3 Field Conditions. Design-Builder shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions with the information in the Contract Documents and with other information obtained by or available to Design-Builder before commencing the Work or any activities on the Site.

3.4.4 Layout. Design-Builder is solely responsible for (1) the accurate layout of all portions of the Work, (2) the accuracy of the Project lines and levels, and (3) erection of the Work square, plumb, level, true to line and grade, in the exact plane, to the correct elevation and sloped to drain where needed.

3.4.5 Materials, Equipment

.1 Delivery, Storage, Inventory. Materials and equipment shall be: (1) furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work; and (2) if located on the Site shall be properly stored and protected as necessary, or as directed by Village's Representative, to prevent Loss from any cause, including, without limitation, theft. In the event that Village's Representative gives direction as to the location on the Site for storage or protection of materials or equipment, Design-Builder shall nonetheless remain solely responsible for its safe and secure storage and protection. No part of any such stored materials and equipment shall be removed from its place of storage except for immediate installation in the Work. Design-Builder shall keep an accurate inventory of all such stored materials and/or equipment in a manner satisfactory to Village.

.2 Purchases. Design-Builder shall place orders for materials and/or equipment as specified so that delivery of same may be made without Delay to the Work. Design-Builder shall, upon request from Village's Representative, furnish to Village documentary evidence showing that orders have been placed. Village reserves the right, in the event of Design-Builder's failure, after three (3) Days written notice to Design-Builder, to comply with the requirements of this Subparagraph 3.4.5.2, to place orders for such materials or equipment as it may deem advisable in order that the Work may be completed within the Contract Time and to deduct the costs paid or payable by Village associated with such purchases from the Contract Sum otherwise owing to Design-Builder. Design-Builder shall, if requested by Village's Representative, accept assignment of any such contracts entered into by Village without a Contract Adjustment.

.3 Title. No material, supplies or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Design-Builder warrants good title to all material, supplies and equipment installed or incorporated in the Work and agrees upon Final Completion to deliver the Work, including the premises, land, improvements and appurtenances on or to which the Work is placed, located or affixed, to Village free from any claims, liens, or charges. Design-Builder further agrees that neither it nor any person,

firm, or corporation furnishing any materials or labor for any of the Work shall have any right of lien upon the Site, or any Existing Improvements or appurtenance thereon, except that (1) nothing stated in this Subparagraph 3.4.5.2 shall be interpreted as a waiver by Design-Builder or any Subcontractor or Sub-Consultant of its right under Applicable Laws to serve a stop notice for Work that is not paid for by Village as required under the terms of the Contract Documents; and (2) Design-Builder may install metering devices or other equipment of utility companies or political subdivisions, title to which may be retained by such utility company or political subdivision, provided that in the event of such installation Design-Builder advises Village's Representative as to the owner, and the precise location, thereof.

.4 Substitutions. No substitution of materials, equipment, articles, processes or other items of the Work required under the Contract Documents will be made without written approval of Village's Representative. Said approval may, if the substitution involves a Change to the Project Criteria or an Approved Deviation, be granted or denied in the Village's Representative's sole and absolute discretion. In all other cases, Village's Representative's approval will not be unreasonably denied, delayed or conditioned. With respect to any such substitution made or requested by Design-Builder, neither the occurrence of a substitution by Design-Builder nor the approval or disapproval by Village's Representative of a substitution that is made in accordance with this Subparagraph 3.4.5.4 shall give rise to any right of the Design-Builder to a Contract Adjustment. Design-Builder shall, notwithstanding Project Manager's approval, remain solely responsible for the sufficiency and suitability of all substitutions.

.5 Parts List. Design-Builder will provide a printed parts list for all items which might be subject to replacement and for which parts lists are either expressly required by the Contract Documents or customarily provided according to usual commercial practices.

.6 Manuals. Four (4) hard copies and one (1) electronic version of operations and maintenance manuals will be prepared and transmitted to Village's Representative within the Contract Time for Final Completion. Final Payment will not be due until Village's Representative has received all manuals covering the Work that are either required to be provided by the terms of the Contract Documents or if not required are customarily provided according to usual commercial practices applicable to the portion of Work involved. Operating instructions will be included within the equipment manuals and will state all information necessary for Village to operate, use, maintain and service the equipment fully and efficiently.

.7 Start Up. Design-Builder will be responsible for start-up of all systems and equipment purchased as part of the Work and has included sufficient amounts in the Contract Sum to cover contingencies arising out of the start-up of such systems and equipment. Design-Builder will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.

3.5 DELIVERIES OF MATERIALS AND GOODS

Any and all materials and goods in connection with the Work shall be delivered F.O.B. destination (i.e., at a specific Village address), and delivery costs and charges (if any) will be included in the proposal price. Exceptions should be noted.

3.6 MATERIALS.

Any materials or products delivered by Design-Builder pursuant to this RFP shall remain the property of the Design-Builder until accepted to the satisfaction of the Village. In the event material(s) or products supplied to the Village are found to be defective or do not conform to the requirements of this RFP or the Specifications, the Village reserves the right to return the materials or product(s) to the Design-Builder, at the Design-Builder's expense.

3.7 SAFETY STANDARDS.

Design-Builder and its Subconsultants and Subcontractors shall comply with all applicable local, state and federal laws and health and safety requirements, with all latest revisions or amendments, including but not limited to, the Occupational and Safety and Health Administration (OSHA) standards, State of Florida Department of Transportation (FDOT vehicle safety and traffic control requirements).

3.8 PAYMENTS.

Payment will be made on a monthly basis after Work is rendered, accepted, and properly invoiced as indicated in the Design-Build Agreement and in accordance with the Florida Prompt Payment Act. Design-Builder must provide one invoice for all Work performed regularly on a monthly basis. The invoice must be itemized and in accordance with Schedule of Values submitted with the Proposal.

3.9 LICENSES AND PERMITS.

Design-Builder shall secure and pay for any and all necessary and required licenses, certifications, permits and inspections to perform the Work, including, but not limited, all State, Miami-Dade County and Village licenses and permits. The Design-Builder shall be responsible for all fees associated with the attainment of permits for the Work. The Village waives the permit fees required by and payable to the Village.

Where the Design-Builder is required to enter onto Village property, public right of way or other property to deliver materials or to perform the Work, the Design-Builder will assume the full duty, obligation and expense of obtaining all necessary approvals, licenses, permits, inspections and insurance required. The Design-Builder shall be liable for any damages or loss to the Village, property or person occasioned by the acts or omissions, or the negligence of the Design-Builder (or its agent) or any person the Design-Builder has designated for performance of the Work.

3.10 INSURANCE.

The Design-Builder shall not commence Work under the Design-Build Agreement until it has obtained all insurance required and such insurance has been approved by the Village.

3.10.1 The Design-Builder shall purchase and maintain, in full force and effect for the term of the Agreement, at Design-Builder's sole expense, the following required insurance policies with minimum limits and requirements:

.1 Business automobile policy that covers any auto or vehicle used in connection with the Agreement, regardless of whether the vehicle is owned, rented, hired or borrowed by the Design-Builder. Minimum limits for bodily injury/property damage liability shall be \$1,000,000.00 per occurrence.

.2 Comprehensive general liability policy with minimum coverage limits of \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 in the general aggregate for bodily injury and property damage, and \$2,000,000.00 general aggregate for products/completed operations. Comprehensive general liability insurance shall include endorsements for property damage, personal injury, contractual liability, completed operations, products liability and independent Design-Builder's coverage.

.3 Workers' compensation and employer's liability policy, which covers all of the Design-Builder's employees to be engaged in the performance of the Services or work on the Agreement as specified by, and in accordance with, Chapter 440, Florida Statutes. No employee, subconsultant, subcontractor or agent of the Design-Builder shall be allowed to perform any Services pursuant to the Agreement without workers' compensation insurance.

.4 Builder's Risk. Design-Builder shall provide, in a policy acceptable to the Village Builder's Risk on the Project covering construction, additions, machinery and equipment included in the Project. The

amount of the insurance shall be no less than the estimated insurable replacement value of the Project when completed and coverage shall be provided on an "all risk" (i.e., Special Form) basis. The maximum deductible for other than windstorm, hail, earth movement or flood shall be \$10,000 per occurrence. The maximum deductible for windstorm and hail shall be the greater of \$100,000 or 4% of the estimated actual cash value of the insurable property at risk at the time of loss. The risk of loss shall remain with Design-Builder until the date of Final Completion.

.5 Professional Liability (for the Designer). The Designer of the Design-Build team shall provide and maintain Professional Liability Insurance in an amount of not less than \$1,000,000.00 per occurrence, single limit.

3.10.2 All insurance policies provided by the Design-Builder shall be issued by companies licensed to do business in the State of Florida and rated "A-X" or better by A.M.Best's Key Rating Guide and qualified to do business in the State of Florida. The Design-Builder shall be responsible for all deductibles and self-insured retentions on its liability policies.

3.10.3 Except for Professional Liability insurance, the Village shall be named as additional insured on required insurance policies. The form and types of coverage and sufficiency of insurer shall be subject to the approval of the Village. On a yearly basis, Design-Builder must submit to the Village any and all Insurance Certificate renewals.

3.10.4 The Design-Builder agrees to indemnify, defend and hold harmless the Village from and against any and all claims, suits, judgments, losses, damages, executions and/or liabilities as to bodily injuries and/or property damage which arise or grow out of the Design-Build Agreement or Design-Builder's performance of the Work required by this RFP.

3.10.5 Copies of all policies or certificates of such insurance shall be delivered to the Village, and said documentation shall provide for the Village to be notified a minimum of thirty (30) days prior to any cancellation, termination, reduction or non-renewal of any required insurance policy.

3.10.6 The Design-Builder shall also, upon request by the Village, provide copies of all official receipts and endorsements as verification of Design-Builder's timely payment of each insurance policy premium as required by the Design-Build Agreement.

3.11 COMPLIANCE WITH LAW AND OTHER REQUIREMENTS.

3.11.1 Design-Builder shall perform the Work and conduct its operations in compliance with all applicable federal, State, County and local laws in providing the Work required by this RFP, including specifically, Chapter 17 (Noise), of the Village's Code of Ordinances regulating inter alia noise, power tools, etc.

3.11.2 When excavating, digging or accomplishing demolition in the performance of the Work pursuant to this RFP, Design-Builder shall be responsible for identifying and locating any and all utilities (including underground lines, pipes and cables) at the location, prior to any such work, so as to avoid interference or disruption to utilities, including contacting and coordinating with "Sunshine 811".

3.12 ASSIGNMENT.

The Design-Builder shall not transfer or assign the performance of the Work required by this RFP and the Contract without the Village's prior written consent. Any award issued pursuant to this RFP and monies which may be payable by the Village, are not assignable except with the Village's prior written approval.

3.13 ATTORNEY'S FEES.

If the Village incurs any expense in enforcing the terms of the Design-Build Agreement, whether suit be brought or not, Design-Builder agrees to pay all such costs and expenses including, but not limited to, court costs, interest and reasonable attorney's fees.

3.14 DESIGN-BUILDER'S RELATION TO THE VILLAGE.

It is expressly agreed and understood that the Design-Builder is in all respects is an independent contractor as to all Work hereunder, and that the Design-Builder is in no respect an agent, servant or employee of the Village. This RFP specifies the Work to be performed by the Design-Builder, but the method to be employed to accomplish the Work shall be the responsibility of the Design-Builder, unless otherwise provided in the Design-Build Agreement or by the Village.

3.15 CANCELLATION.

Failure on the part of the Design-Builder to comply with the conditions, specifications, requirements and terms as determined by the Village, shall be just cause for cancellation of the award, with the Design-Builder holding the Village harmless.

3.16 LIQUIDATED DAMAGES.

The Village reserves the right to impose applicable liquidated damages, as a reasonable and rational estimate of damages the Village incurs as a result of inexcusable delays and not as a penalty, in the amounts established by the Village in the Design-Build Agreement. If the Design-Builder or, in case of its default, the surety fails to complete the Work within the time stipulated in the Design-Build Agreement, or within such extra time that the Village may have granted the Design-Builder, in case of its default, the Design-Builder or surety shall pay to the Village liquidated damages in the amount stipulated herein and in the Design-Build Agreement per calendar day in which the Work is not completed. The Village has the right to apply, as payment on such liquidated damages, any money the Village owes the Design-Builder. The Village does not waive its right to liquidated damages due under the Contract by allowing the Design-Builder to continue and finish the Work, or any part of it, after the expiration of the Contract Time including granted time extensions.

3.17 INCENTIVE COMPENSATION TERMS

The Village will pay the Design-Builder an incentive payment in the amount of the "Incentive Amount" as set forth in Instructions to Proposers, Item 1.5, as determined by the Village's Representative and subject to the conditions precedent set forth below. For purposes of the calculation and the determination of entitlement to the incentive payment stated above, the incentive shall be earned upon early (less than the Contract Time for achievement of construction completion milestone) formal issuance of a Certificate of Completion will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (i.e., hurricane or a declared state of emergency).

3.17.1 The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in utility construction work. Such delays or events and their potential impacts on performance by the Design-Builder are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the required Certificate of Completion date for the purposes of the incentive payment. Further, any and all costs or impacts whatsoever incurred by the Design-Builder in accelerating the Design-Builder's work to overcome or absorb such delays or events in an effort to achieve an early issuance of a

Certificate of Completion, regardless of whether the Design-Builder successfully does so or not, shall be the sole responsibility of the Design-Builder in every instance.

3.17.2 In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Design-Builder's performance on the Contract, the Design-Builder and the Village shall agree as to the number of calendar days to extend the expected date of issuance of a Certificate of Completion ("Certificate of Completion Date"). In the event the Design-Builder and Village are unable to agree to the number of calendar days to extend the Certificate of Completion Date, the Village will unilaterally determine the number of calendar days to extend the Certificate of Completion Date reasonably necessary and due solely to such catastrophic event and the Design-Builder shall have no right whatsoever to contest such determination, save and except that the Design-Builder establishes that the number of calendar days determined by the Village was arbitrary or without any reasonable basis.

3.17.3 The Design-Builder shall have no rights under the Contract to make any claim arising out of this incentive payment except as is expressly set forth in this Article.

3.17.4 As conditions precedent to the Design-Builder's entitlement to any incentive compensation, the Contractor must:

.1 Actually complete the Contract Work and obtain written verification of the actual completion date from the Village's on or before the required Certificate of Completion Date.

.2 Notify the Village in writing, within 30 days of receiving written verification of the actual completion date of the Contract Work Item by the Village's Representative per (1) above, that the Design-Builder elects to be paid the incentive payment which the Design-Builder is eligible to be paid based on the actual Certificate of Completion Date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Design-Builder of any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the Village, its employees, officers, agents, representatives, consultants, and their respective employees, officers and representatives, the Design-Builder has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Design-Builder's performance, extended or unabsorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the Contract. This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Village final estimating quantity adjustments.

3.17.5 Should the Design-Builder fail to actually complete the Contract Work Item and obtain written verification of the actual completion date from the Village's Representative prior to the expected Certificate of Completion Date, or should the Design-Builder, having done so, fail to timely request the incentive payment for any reason, and including but not limited to the Design-Builder choosing not to fully waive, release and acknowledge satisfaction as set forth in (2) above, the Design-Builder shall have no right to any payment whatsoever under this Article.

3.17.6 In the event the Design-Builder elects to exercise the incentive payment provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.

3.17.7 As to any Contract Work Item provided for herein, the Design-Builder will remain responsible for all such work and the continued maintenance thereof until such date as the Village final accepts all Work under the Contract in accordance with Contract conditions, and without regard to whether the Village has provided written verification of the actual completion date or not, and without regard to whether any incentive was earned or elected hereunder.

3.18 STAGING.

There is limited staging area available at the project site and additional space may not be available adjacent to the construction site. The Village will provide a site for staging of construction equipment. See RFP Exhibit "G" for details. If additional space is required, Design-Builder shall arrange therefor, subject to approval by the Village

3.19 PARKING.

No private vehicle parking is allowed in or around the project site, Design-Builder is responsible for identifying and providing off-site parking for workers and transportation to and from construction site.

3.20 RETENTION.

Owner shall retain ten percent (10%) from each payment to Design-Builder. Such retention shall be released at Final Payment pursuant to satisfaction of all Final Payment requirements.

3.21 VILLAGE AS THIRD-PARTY BENEFICIARY

The Village shall be a third-party beneficiary of the contract between the Design-Builder and the Designer and any other design professional under the Design-Build Agreement who shall owe to the Village a professional standard of care. Nothing contained in the Design-Build Agreement documents shall create a professional obligation or contractual relationship between any other third party and the Village.

[End of Section 3]

RFP EXHIBIT "A"
PROPOSAL FORM AND CERTIFICATION

VILLAGE HALL PARKING GARAGE DESIGN-BUILD RFP NO. _____

I have carefully examined the Request for Proposals, Instructions to Proposers, General and supplemental Conditions, Drawings and Specifications, proposed agreement and any other documents accompanying or made a part of this Request for Proposal.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this proposal on behalf of the firm as its act and deed and that the firm is ready, willing and able to perform if awarded the contract.

I hereby propose to furnish the goods or services specified in the Request for Proposal. I agree that my proposal will remain firm for a period of 180 days in order to allow the Village adequate time to evaluate the proposals, select a contractor, and award and execute a contract.

I further certify, under oath, that this proposal is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the Village of Key Biscayne or any other proposer is interested in said proposal; and that the undersigned executed this Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

PART 1 – Base Bid

For performance of the contract to provide the goods and services to the Village of Key Biscayne in full accordance with the terms and conditions of the Request for Proposal, **with lowest level of the Parking Garage at grade level**, the undersigned Proposer hereby proposes firm, fixed prices of:

- For Design Phase Services, including design development documents, final design documents, construction documents and design services during construction:
_____ dollars (\$ _____).
- For Construction Phase Services:
_____ dollars (\$ _____).
- For a Total Contract Price of:
_____ dollars (\$ _____).

PART 1 -- Alternate

For performance of the contract to provide the goods and services to the Village of Key Biscayne in full accordance with the terms and conditions of the Request for Proposal, **with lowest level of the Parking Garage partially or wholly below grade level**, the undersigned Proposer hereby proposes firm, fixed prices of:

- For Design Phase Services, including design development documents, final design documents, construction documents and design services during construction:

_____ dollars (\$ _____).

- For Construction Phase Services:

_____ dollars (\$ _____).

- For a Total Contract Price of:

_____ dollars (\$ _____).

PART 2

Guaranteed Green Garage Bronze Certification Alternate:

- For Additional Design Phase Services:

_____ dollars (\$ _____).

- For Additional Construction Phase Services:

_____ dollars (\$ _____).

(Name of Proposing Entity)

(Signature of Authorized Representative)

(Title of Authorized Representative)

RFP EXHIBIT "B"

CONTRACT FORM (SAMPLE CONTRACT)

VILLAGE OF KEY BISCAYNE, FLORIDA

CONTRACT FOR DESIGN-BUILD OF THE VILLAGE HALL PARKING GARAGE

XV. THIS CONTRACT, made and entered into as of the [REDACTED] day of [REDACTED], 2016, by and between the Village of Key Biscayne, a Florida municipal corporation (the "Village"), and [REDACTED] a Florida [REDACTED] whose principal address is [REDACTED] ("Design-Builder").

RECITALS:

WHEREAS, on [REDACTED], 2016, the Village issued an Request for Proposals ("RFP"), incorporated herein by reference, soliciting proposals for the provision of design-build services, as described therein (the "Services") for the Village of Key Biscayne's Village Hall Parking Garage project (the "Project"); and

WHEREAS, in response to the RFP, Design-Builder submitted a proposal for the provision of the Services (the "Proposal"), incorporated herein by reference; and

WHEREAS, a proposal evaluation committee duly appointed by the Village Manager recommended to the Village Manager that the Village accept Design-Builder's Proposal for the performance of the Services, and

WHEREAS, the Village Manager has concurred with the proposal evaluation committee and has recommended that the Village Council approve the award of a contract with Design-Builder, and

WHEREAS, the Village Council has, by Ordinance # [REDACTED] approved the Village Manager's recommendation and awarded the Contract to Design-Builder.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Contract, the parties agree as follows:

I. SCOPE OF SERVICES.

Design-Builder agrees to provide the Services consisting of the design and construction of a parking garage to be situated south of the Village Hall in the space currently occupied by a surface parking lot in Key Biscayne, Florida, in accordance with the Scope of Work described in the RFP; including design criteria and specifications, Contract General Conditions, and Contract Supplemental Conditions; and the Design-Builder's Proposal.

II. TERM OF CONTRACT.

The term of the Contract shall commence on the date states in a Notice to Proceed issued by the Village ("Commencement Date") subsequent to the full execution of the Contract, subject to the satisfaction of any conditions identified in the RFP, and shall conclude on the satisfactory completion of the entire

scope of work required by the Contract Documents. Pursuant to the RFP, the period of performance shall be [REDACTED] ([REDACTED]) days from the Commencement Date.

III. CONTRACT DOCUMENTS

The Contract Documents associated with this Contract shall include Change Orders; Amendments to the Contract; Contract Supplemental Conditions, as included in the RFP; Contract General Conditions, as included in the IFQ; the remainder of the terms and conditions of the RFP; the Design-Builder's Proposal; Design Criteria and Specifications. In the event of any discrepancy or conflict between or among provisions in the Contract Documents, the order of the documents presented above shall establish precedence.

IV. FEE FOR SERVICE.

For the complete and satisfactory performance of the entire scope of work required by the Contract Documents, the Village shall pay to the Contractor the total firm fixed price of [REDACTED] Dollars (\$ [REDACTED].00), of which [REDACTED] Dollars (\$ [REDACTED].00) shall be costs of construction. Progress payments of undisputed amounts shall be made within thirty (30) days of the receipt by the Village of a properly prepared and submitted Application for Payment. Compensation shall include all applicable sales tax and duties as required by law.

V. TERMINATION

The Village may terminate this Agreement without cause with ten (10) day's prior written notice. The Village may terminate this Agreement with cause, effective on the date specified in the written notice, and the Contractor shall cease performance of the Work and vacate the site on that effective date. In either case, with or without cause, the Village shall compensate the Contractor for the reasonable value of the work performed up to the termination date, but reserves the right, in the event the termination was for cause, to withhold payment for damages, excess costs to complete or other Village expenses. Termination costs shall not include lost profits, delay damages, consequential or indirect costs, unabsorbed or under-absorbed overhead expenses of the Contractor, its subcontractors or suppliers.

VI. INDEPENDENT CONTRACTOR; EMPLOYEES.

Contractor and its employees and agents shall be deemed independent contractors and not agents or employees of the Village, and shall not attain any rights or benefits generally afforded Village employees; further, Contractor, its employees and agents shall not be deemed entitled to the Village's worker's compensation insurance benefits.

VII. PERFORMANCE

The Design-Builder shall be responsible for the performance of all design and construction Services under this Agreement until those Services are complete and accepted by the Village in accordance with plans and specifications with a standard of care expected from a competent designer and construction contractor performing similar work in a similar location. Such performance shall include the Design-Builder's designation of a skilled and competent supervisor of the Services who shall be on the work site at all times that construction work is being performed and who shall be responsible for coordinating, directing and supervising all work and workers at the site; verifying any and all measurements at the site; enforcing Design-Builder's health and safety provisions at the work site; receiving, inspecting, accepting and protecting any and all equipment, materials and supplies delivered to, stored at or installed at the work site.

VIII. CHANGES

In the event that the Village requires, orders or authorizes changes in the Services within the general scope of this Agreement and consisting of additions, deletions or revisions, the compensation and/or Term of Contract may be equitably adjusted, but only by written change order executed by both parties.

IX. LIQUIDATED DAMAGES

Pursuant to Article 1.4 of the Instructions to Proposers section of the RFP, the amount of liquidated damages for inexcusable delay to completion of the project milestones identified in the RFP shall be \$500.00 per calendar day for the first milestone, \$1,000.00 per calendar day for the second milestone, \$2,000.00 per calendar day for the third milestone and \$500.00 per calendar day for the fourth milestone.

X. INCENTIVE FOR EARLY COMPLETION OF CONSTRUCTION

Contract Milestone	Incentive Target	Incentive Amount
Certificate of Completion (Contract Milestone 1.4C)	Early completion of Construction	\$ _____ per calendar day less than 270 days, up to a maximum of \$ _____

Details, conditions, rights and remedies associated with Design-Builder earning the incentive appear in the Supplemental Conditions at Article 3.17.

XI. NOTICES.

All notices and communications to the Village or Contractor shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

Village: John Gilbert
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, Florida 33149
Telephone: (305) 365-5514
Facsimile: (305) 365-8936

With copy to: Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Fax: (305) 854-2323

Design-Builder: _____

Attn.: _____
Telephone: _____
Fax: _____

XII. INDEMNIFICATION

The indemnification requirements for this Agreement shall be as described in Article 3.28 of the General Conditions in the RFP.

XIII. INSURANCE

The Design-Builder shall not commence Work under the Contract until it has obtained all insurance required and such insurance has been approved by the Village.

A. The Contractor shall purchase and maintain, in full force and effect for the term of the Agreement, at Contractor's sole expense, the following required insurance policies with minimum limits and requirements:

1. Business automobile policy that covers any auto or vehicle used in connection with the Agreement, regardless of whether the vehicle is owned, rented, hired or borrowed by the Contractor. Minimum limits for bodily injury/property damage liability shall be \$1,000,000.00 per occurrence.

2. Comprehensive general liability policy with minimum coverage limits of \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 in the general aggregate for bodily injury and property damage, and \$2,000,000.00 general aggregate for products/completed operations. Comprehensive general liability insurance shall include endorsements for property damage, personal injury, contractual liability, completed operations, products liability and independent contractor's coverage.

3. Workers' compensation and employer's liability policy, which covers all of the Contractor's employees to be engaged in the performance of the Services or work on the Agreement as specified by, and in accordance with, Chapter 440, Florida Statutes. No employee, subcontractor or agent of the Contractor shall be allowed to perform any Services pursuant to the Agreement without workers' compensation insurance.

4. Builder's Risk. Contractor shall provide, in a policy acceptable to the Village Builder's Risk on the Project covering construction, additions, machinery and equipment included in the Project. The amount of the insurance shall be no less than the estimated insurable replacement value of the Project when completed and coverage shall be provided on an "all risk" (i.e., Special Form) basis. The maximum deductible for other than windstorm, hail, earth movement or flood shall be \$10,000 per occurrence. The maximum deductible for windstorm and hail shall be the greater of \$100,000 or 4% of the estimated actual cash value of the insurable property at risk at the time of loss. The risk of loss shall remain with Contractor until the date of Final Completion.

B. All insurance policies provided by the Contractor shall be issued by companies licensed to do business in the State of Florida and rated "A-X" or better by A. M. Best's Key Rating Guide and qualified to do business in the State of Florida. The Contractor shall be responsible for all deductibles and self-insured retentions on its liability policies.

C. The Village and its consultants shall be named as additional insured on required insurance policies. The form and types of coverage and sufficiency of insurer shall be subject to the approval of the Village. On a timely basis, Contractor must submit to the Village any and all Insurance Certificate renewals.

D. The Contractor agrees to indemnify, defend and hold harmless the Village from and against any and all claims, suits, judgments, losses, damages, executions and/or liabilities as to bodily injuries and/or property damage which arise or grow out of the Contract or Contractor's performance of the Work..

E. Copies of all policies or certificates of such insurance shall be delivered to the Village, and said documentation shall provide for the Village to be notified a minimum of thirty (30) days prior to any cancellation, termination, reduction or non-renewal of any required insurance policy.

F. The Contractor shall also, upon request by the Village, provide copies of all official receipts and endorsements as verification of Contractor's timely payment of each insurance policy premium as required by the Contract.

XIV. DISPUTE RESOLUTION

In the event a dispute arises out of or in connection with this Agreement, the parties shall first attempt to resolve the dispute through amicable negotiation. If the dispute is not so resolved in a reasonable period, either party may initiate an action in law or equity in a court of competent jurisdiction.

XIV. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any litigation hereunder shall be in Miami-Dade County, Florida. **The parties hereby waive any right to trial by jury for any litigation hereunder.**

XV. ASSIGNMENT

The Design-Builder will not voluntarily or by operation of law assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Village.

XVI. ENTIRE AGREEMENT

It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

XVII. INUREMENT

This Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

XVIII. TITLES/HEADINGS

Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

XIX. INTERPRETATION

Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

XX. SEVERABILITY

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

XXI. WAIVER

The waiver by either party of a breach, default, delay or omission of any of the provisions of this Agreement by the other party will not be construed as a waiver of any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms and conditions above stated on the day and year first above written.

For the DESIGN-BUILDER:

By: _____
[Title] _____

For the VILLAGE:

By: _____
Village Manager

ATTEST:

Village Clerk

Approved as to Form and Legal Sufficiency for
Village's reliance only:

Village Attorney

CONTRACT EXHIBIT "A"
VILLAGE'S REQUEST FOR PROPOSALS

CONTRACT EXHIBIT "B"
DESIGN BUILDER'S PROPOSAL

RFP Exhibit "C"

QUALIFICATION QUESTIONNAIRE – PART 1

Design-Build Contractor Response Form

Completed questionnaire must be submitted as specified within this document. Any attachments must be clearly identified. To be considered, the applicant must respond to all parts of this Questionnaire in accordance with the requirements of RFP.

CONTACT INFORMATION

Firm Name: _____
(as it appears on license)

Contact Person: _____

Address: _____

Phone: _____

Email: _____

State of Incorporation: _____ Date of Incorporation: _____ FEIN # _____

If out of state Corporation that is currently authorized to do business in the State of Florida, provide date of such authorization _____

Responsible Managing Employee (RME) (per definition)

Responsible Managing Officer (RMO) (per definition)

Definition

RME: Employee of Contractor who will be in a management or superintendent role on the project.

RMO: Any officer of the company working in the local office overseeing the project.

Contractor's License Number(s): _____

QUALIFICATION QUESTIONNAIRE – Part 2

Business History and Organizational Performance (16 questions).

NOTE: “Associated” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and who are listed as owner, partner or officer of your firm in response to Contractor’s Qualification Questionnaire.

1. Is your organization licensed to do business in Florida as a Contractor under your present business name and license number?

Yes No

If yes, how many years:

List directors, partners, officers and responsible managing employees: _____

2. Is your firm, owners, partners or any principal of the company or any firm with whom a principal has been associated currently the debtor in a bankruptcy case?

Yes No

If yes, please explain:

3. Was your firm, owners, partners or any principal of the company or any firm with whom a principal has been associated been in bankruptcy any time during the last five (5) years?

Yes No

If yes, please explain:

4. Has any contracting license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

Yes No

If yes, please explain:

5. At any time in the last five (5) years, has your firm been assessed and/or paid liquidated damages after completion of a project, under a construction contract with either a public or private owner?

Yes No

If yes, list projects and amounts: _____

6. In the last five years has your firm, or any firm with which any of your company's owners, directors, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

Yes No

If yes, please explain:

7. In the last five years, has your firm been denied an award of a public construction contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

If yes, please explain:

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another Contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-Contractor and a project owner

8. In the past five (5) years, has any claim against your firm concerning your firm's or any firm with whom a principle has been associated work on a construction project, been filed in court or arbitration?

Yes No

If yes, please explain:

9. In the past five (5) years, has your firm or any firm with whom a principal has been associated made any claim against a project owner concerning work on a project or payment for a contract, and filed that claim in court or arbitration?

Yes No

If yes, please explain:

10. At any time during the past five (5) years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf in connection with a construction project, either public or private?

Yes No

If yes, please explain:

11. In the last five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If yes, please explain:

12. Has your firm, or any of its owners, officers, or partners or any firm with whom a principal has been associated ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If yes, please explain:

13. Has your firm, or any of its owners, officers or partners or any firm with whom a principal has been associated ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If yes, please explain:

14. Has your firm or any of its owners, officers or partners or any firm with whom a principal has been associated ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If yes, please explain:

15. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three (3) years, state the percentage that your firm was required to pay and explain.

16. During the last five (5) years, has your firm ever been denied bond credit by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, please explain:

QUALIFICATION QUESTIONNAIRE –PART 3

Compliance with Applicable Laws (8 questions)

NOTE: “Associated” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and who are listed as owner, partner or officer of your firm in response to Contractor’s Qualification Questionnaire.

1. Has the State of Florida cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations (as defined by the State of Florida) of its safety or health regulations in the past five years?

Yes No

If yes, attach a separate signed page describing each penalty and its status.

2. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five (5) years?

Yes No

If yes, attach a separate signed page describing each citation and its status.

3. Has the EPA, or a State of Florida Agency /Department cited and assessed penalties against either your firm or the owner of a project on which your firm was the Contractor, in the past five (5) years?

Yes No

If yes, attach a separate signed page describing each citation and its status.

4. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

5. List your firm’s Experience Modification Rate (EMR) workers’ compensation insurance for each of the past three premium years: _____ Current year: _____ Previous year: _____ Two years previous: _____

If your EMR for any of these three years is or was 1.00 or higher, please attach a letter of explanation.

NOTE: An Experience Modification Rate is issued to your firm annually by your workers’ compensation insurance carrier.

6. Within the last five (5) years, has there ever been a period when your firm had employees but was without workers’ compensation insurance or state-approved self-insurance?

Yes No

If yes, attach separate signed page describing time period without worker's compensation insurance and explanation.

- 7. Has there been more than one occasion during the last five (5) years on which your firm or any firm with whom a principal has been associated been required to pay either back wages or penalties for your own firm's failure to comply with the prevailing wage laws?

Yes No

If yes, please explain:

NOTE: This question refers *only* to your own firm's violation of prevailing wage laws. It does not pertain to violations of the prevailing wage laws by a subcontractor.

- 8. During the last five (5) years, has there been more than one occasion on which your own firm or any firm with whom a principal has been associated been penalized or required to pay back wages for failure to comply with the federal Davis-Bacon prevailing wage requirements?

Yes No

If yes, please explain:

QUALIFICATION QUESTIONNAIRE – PART 4

EXPERIENCE (CONSTRUCTION) for Recent Comparable Design-Build Project # __

Questions concerning recent design-build projects completed by the proposed construction contractor. Please fill out a separate Part 4 for each project declared. If Proposer is a Joint Venture or Partnership, each question, as applicable, shall be answered by each joint venturer or general partner.

- 1. Contractor shall provide information about its three (3) most recently completed design-build projects. Names and references must be current and verifiable. Use separate sheets of paper that contain all of the following information:

Project Name: _____
Location: _____
Owner: _____

Owner Contact (name and current phone number):

Architect, Engineer, or Consultant:

Architect, Engineer, or Consultant Contact (name and current phone number):

Construction Manager (name and current phone number):

- 2. Scope of Work Performed:

Provide a description of the work performed including any special construction methods.

- 3. Public Agency or Private Project: Public Private

4. Total Value of Construction: \$ _____

Total Value of Change Orders: \$ _____

5. Original Construction Contract Duration: _____

Original Contract Completion Date: _____

Actual Date of Completion: _____

- 6. What is the useable floor space of project in square feet? _____
- 7. How many floors/stories are in the project? _____ stories
- 8. Percentage of contract completed by contractor's own forces (not subcontracted) _____%

NOTE: When responding to a question, if more space is required than provided on the questionnaire, a separate sheet shall be used to finish the response. If necessary, Contractor has attached a separate sheet noting the question number and question as stated and their response.

QUALIFICATION QUESTIONNAIRE – PART 5

EXPERIENCE (DESIGN) for Recent Comparable Design-Build Project # __

Questions concerning recent design-build projects completed by the proposed designer. Please fill out a separate Part 4 for each project declared.

1. Designer shall provide information about its three (3) most recently completed design-build projects. Names and references must be current and verifiable. Use separate sheets of paper that contain all of the following information:

Project Name: _____

Location: _____

Owner: _____

Owner Contact (name and current phone number):

Construction Contractor:

Construction Contractor Contact (name and current phone number):

Construction Manager (name and current phone number):

2. Scope of Work Performed:

Provide a description of the work performed including any special design or construction methods.

3. Public Agency or Private Project: Public Private

4. Total Value of Construction: \$ _____

5. Total Value of Change Orders: \$ _____

6. Original Construction Contract Duration: _____

Original Contract Completion Date: _____

Actual Date of Completion: _____

7. What is the useable floor space of project in square feet? _____

8. How many floors/stories are in the project? _____ stories

NOTE: When responding to a question, if more space is required than provided on the questionnaire, a separate sheet shall be used to finish the response. If necessary, Contractor has attached a separate sheet noting the question number and question as stated and their response.

RFP EXHIBIT “D”

SINGLE EXECUTION AFFIDAVITS

THIS FORM COMBINES SEVERAL AFFIDAVIT STATEMENTS TO BE SWORN TO BY THE PROPOSER AND NOTARIZED BELOW. IN THE EVENT THE PROPOSER CANNOT SWEAR TO ANY OF THESE AFFIDAVIT STATEMENTS, THE PROPOSER IS DEEMED TO BE NON-RESPONSIBLE AND IS NOT ELIGIBLE TO SUBMIT A PROPOSAL. THESE SINGLE EXECUTION AFFIDAVITS ARE STATEMENTS MADE ON BEHALF OF:

_____ **BY:** _____
Proposing Entity Individual’s Name and Title

FEIN of Proposing Entity

I. Americans with Disabilities Act Compliance Affidavit

The above named firm, corporation or organization is in compliance with and agreed to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction.

- The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 USC 1210112213 and 47 USC Sections 225 and 661 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.
- The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Section 553.501-553.513, Florida Statutes:
- The Rehabilitation Act of 1973, 229 USC Section 794;
- The Federal Transit Act, as amended 49 USC Section 1612;
- The Fair Housing Act as amended 42 USC Section 3601-3631.

Proposer Initials

II. Public Entity Crimes Affidavit

I understand that a “public entity crime” as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentations.

I understand that “convicted” or “conviction” as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by

inform the public entity prior to entering into a contract in excess of the threshold amount provided in Section 287.017, Florida Statutes for category two of any change in the information contained in this form.

Proposer Initials

III. No Conflict of Interest or Contingent Fee Affidavit

Proposer warrants that neither it nor any principal, employee, agent, representative nor family member has paid or will pay any fee or consideration that is contingent on the award or execution of a contract arising out of this solicitation. Proposer also warrants that neither it nor any principal, employee, agent, representative nor family member has procured or attempted to procure this contract in violation of any of the provisions of the Miami-Dade County conflict of interest or code of ethics ordinances. Further, Proposer acknowledges that any violation of these warrants will result in the termination of the contract and forfeiture of funds paid or to be paid to the Proposer should the Proposer be selected for the performance of this contract.

Proposer Initials

IV. Business Entity Affidavit

Proposer hereby recognizes and certifies that no elected official, board member, or employee of the Village of Key Biscayne (the "Village") shall have a financial interest directly or indirectly in this transaction or any compensation to be paid under or through this transaction, and further, that no Village employee, nor any elected or appointed officer (including Village board members) of the Village, nor any spouse, parent or child of such employee or elected or appointed officer of the Village, may be a partner, officer, director or proprietor of Proposer or Vendor, and further, that no such Village employee or elected or appointed officer, or the spouse, parent or child of any of them, alone or in combination, may have a material interest in the Vendor or Proposer. Material interest means direct or indirect ownership of more than 5% of the total assets or capital stock of the Proposer. Any exception to these above described restrictions must be expressly provided by applicable law or ordinance and be confirmed in writing by Village. Further, Proposer recognizes that with respect to this transaction or bid, if any Proposer violates or is a party to a violation of the ethics ordinances or rules of the Village, the provisions of Miami-Dade County Code Section 2-11.1, as applicable to Village, or the provisions of Chapter 112, part III, Fla. Stat., the Code of Ethics for Public Officers and Employees, such Proposer may be disqualified from furnishing the goods or services for which the bid or proposal is submitted and may be further disqualified from submitting any future bids or proposals for goods or services to Village.

Proposer Initials

Sworn Signature of Proposing Entity Representative and Notarization for all above Affidavits:

Signature

Sworn to and subscribed before me this _____ day _____, 20_____.

Personally known _____ OR

Produced identification _____

Notary Public – State of

My commission expires:

Type of identification

Printed, typed or stamped commissioned name of notary public