VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council
Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

Village Manager
Genaro "Chip" Iglesias

DT: April 30, 2008

TO: Honorable Mayor and Council Members

FR: Genaro "Chip" Iglesias, Village Manager

RE: **AWARD OF ZONE 2/3 RECLAIMED WATER AND WATER MAIN REPLACEMENT, SANITARRY SEWER SYSTEM, AND PROPOSED PUMP STATION CONSTRUCTION CONTRACT TO TRANS FLORIDA DEVELOPMENT CORP.**

RECOMMENDATION

It is recommended that the Village Council awards the construction contract for the Zone 2/3 Reclaimed Water and Water main Replacement, Sanitary Sewer System, and Proposed Pump Station to the Trans Florida Development Corp.

BACKGROUND

Notice of Bid Invitation was published on March 6, 2008. A mandatory pre-bid conference was held on March 31, 2008. Addendum No. 1 and Addendum No. 2 were issued on April 7, 2008 and April 9, 2008 respectively. Nine bids were received and opened on April 21, 2008. All nine contractors were found to be capable of performing the work. The references, sub-contractors, licenses and registrations were checked for all the bidders. The lowest responsible responsive bidder was Trans Florida Development Corp., with a bid amount of $9,392.969.44.

Capital Project Authorizing Ordinance No. 2006-6, passed and adopted on second reading June 27, 2006, included all work anticipated under this Zone 2/3 contract, and actual construction costs are lower than estimates included in that Ordinance.

C3TS
CORZO
CASTELLA
CARBALLO
THOMPSON
SALMAN
Engineers
Architects
Planners

April 22, 2008

Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, Florida 33149

Attention: **Chip Iglesias**
Village Manager

Reference: **Reclaimed Water and Water Main Replacement,**
Sanitary Sewer System and Proposed Pump Station
Zone 2 and Zone 3
C3TS Project No. 1108-17

Dear Mr. Iglesias:

EB0005022
AAC002142

We have reviewed the nine bids submitted for the above referenced project. All bids were responsive and were accompanied by proper bid bonds and addenda acknowledgement. We checked references for contractor performance on past and current projects, evaluated their subcontractors, their licenses and registrations.

Based on our findings, it is our opinion that all of the above contractors are qualified and capable of performing the work. Therefore, we recommend that the project be awarded to the lowest responsible responsive bidder, Trans Florida Development, in the amount of $9,392,969.44.

Sincerely,

Corzo Castella Carballo Thompson Salman, P.A.

Ramon Castella, P.E.
Principal

RC/er

Enclosure

Cc: Armando Nuñez, Village Public Works
Jose Lopez, P.E., Village Project Representative
Trish Carney, P.E., PBSJ

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901 Ponce de Leon Blvd., Suite 900 Coral Gables, Florida 33134 305.445.2900 1.800.448.0227 Facsimile 305.445.3366
Web Site: www.c3ts.com
Equal Opportunity Employer

RESOLUTION NO. 2008 -

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING AND AWARDING CONSTRUCTION CONTRACT BETWEEN THE VILLAGE AND TRANS FLORIDA DEVELOPMENT CORP (THE "CONTRACTOR") TO PROVIDE FOR THE CONSTRUCTION OF VILLAGE OF KEY BISCAYNE ZONE 2/3 RECLAIMED WATER AND WATER MAIN REPLACEMENT, SANITARY SEWER SYSTEM, AND PROPOSED PUMP STATION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to public bidding process, the Village of Key Biscayne (the "Village") has sought bids for the construction of zone 2/3 reclaimed water, water main replacement, sanitary sewer system and proposed pump station (the "Project"); and

WHEREAS, the Village Manager has caused the nine (9) bids which were submitted for the Project to be reviewed for the Village by the firm of Corzo Castella Carballo Thompson Salman, P.A. ("C3TS"); and

WHEREAS, C3TS has reviewed the bids and has recommended that the Project be awarded to the lowest, responsible, responsive bidder, to wit: Trans Florida Development Corp (the "Contractor") in the amount of Nine Million, Three Hundred Ninety-Two Thousand, Nine Hundred Sixty- Nine and 44/100 ($ 9,392,969.44) Dollars; and

WHEREAS, the Village Council finds that the Project has previously been authorized, to the extent required, by Capital Project authorizing Ordinance No. 2006-6; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed as indicated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Agreement Approved, Specification of Funds, Conditions.

A. Agreement Approved. That the Contract for construction (the "Agreement"), in substantially the form attached hereto, between the Contractor and the Village for construction of the Project is hereby approved, and the Village Manager is hereby authorized to execute the Agreement on behalf of the Village, once approved as to form and legal sufficiency by the Village Attorney, and subject to the provisions and conditions of this Resolution.

B. Funding Source. That funding for the Project shall be provided in accordance with the Village Manager's memorandum which accompanies this Resolution, in an amount which shall not exceed the construction contract cost amount which is expressly set forth in the above stated recitals.

C. Conditions. That the Agreement shall be subject to the condition precedent that Village funds are available and budgeted for the accomplishment of the work for this Project. Further, the Agreement shall be subject to the conditions which have been incorporated into the Agreement, including, but not limited to, the conditions which are set forth in Section 1.13.2 (B) and (C) of the Agreement.

Section 3. Implementation. That the Village Manager is hereby authorized to take any and all action which is necessary to implement the purposes of this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 30th day of April, 2008.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

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SECTION 00500

CONTRACT

THIS AGREEMENT, made and entered into this ___day of _____, 2008, A.D., by and between the Village of Key Biscayne, party of the first part (hereinafter sometimes called the OWNER), and Trans Florida Development Corp., party of the second part (hereinafter sometimes called the "CONTRACTOR").

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1.01 SCOPE OF THE WORK

A. The CONTRACTOR shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the Work indicated on the Drawings and described in the Specifications entitled:

The Village of Key Biscayne
Zone 2/3 Reclaimed Water and Water Main Replacement, Sanitary Sewer System and Proposed Pump Station

as prepared by Post, Buckley, Schuh & Jernigan, Inc., acting as, and in the Contract Documents entitled the ENGINEER, and shall do everything required by this Contract and the other Contract Documents.

The work includes the construction of sanitary sewers, manholes, proposed pump station, lateral connections, fire hydrants, reclaimed water and water main replacement including valves and appurtenances, and roadway/right-of-way restoration, and other related work as shown on the plans.

1.02 THE CONTRACT SUM

A. The OWNER shall pay to the CONTRACTOR for the faithful performance of the Contract, in lawful money of the United States, and subject to addition and deductions as provided in the Contract Documents, a total sum as follows:

Based upon the prices shown in the Proposal heretofore submitted to the OWNER by the CONTRACTOR, a copy of said Proposal being a part of these Contract Documents, the aggregate amount of this Contract (obtained from either the lump sum price, the application of unit prices to the quantities shown in the Proposal, or the combination of both) being the sum of Nine Million Three Hundred Ninety Two Thousand Nine Hundred Sixty Nine Dollars and Forty Four Cents ($9,392,969.44).

1.03 COMMENCEMENT AND COMPLETION OF WORK

A. The CONTRACTOR shall commence Work and the Contract Time will commence to run on the date fixed in the Notice to Proceed.

B. The CONTRACTOR shall prosecute the Work with faithfulness and diligence and shall substantially complete the Work no later than four hundred seventy (470) calendar days after the commencement

date as fixed in the Notice to Proceed. The work shall be completed within sixty (60) calendar days from the data certified by Engineer as the date of substantial completion.

C. Incentive – Disincentive Compensation

The Village desires to expedite construction on a portion of this Contract to construct sanitary sewers around the Key Biscayne Community School. This is being done in order to minimize the inconvenience to the school and to reduce the time of construction. In order to achieve this, incentive - disincentive provisions are established for the Contract Work Items described below.

Contract Work Item	Incentive – Disincentive Completion Date	Incentive – Disincentive Total Amount
Substantial completion of the contract work elements described in Section 01010 - 1.04(A). (Summary of Work)	**75 calendar days from the Notice to Proceed_ date.**	**$75,000.00**

The Village will pay the Contractor an incentive payment in the amount of the "Incentive-Disincentive Amount" as set forth above, and as determined by the Engineer 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-Disincentive Completion Date" 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).

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 Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the "Incentive – Disincentive Completion Date" for the purposes of incentive payment as set forth above. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Contract by the Incentive-Disincentive Completion Date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

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

The Contractor shall have no rights under the Contract to make any claim arising out of this Incentive-Disincentive payment except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any "Incentive-Disincentive" payment the Contractor must:

(1) Actually complete the "Contract Work Item" and obtain written verification of the actual completion date from the Engineer on or before the "Incentive-Disincentive Completion Date".

(2) The Contractor shall notify the Village in writing, within 30 days of receiving written verification of the actual completion date of the Contract Work Item by the Engineer per (1) above, that the Contractor elects to be paid the incentive payment which the Contractor is eligible to be paid based on the actual "Incentive-Disincentive Completion Date", and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Contractor 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 Contractor 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 Contractor's operations, 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.

Should the Contractor fail to actually complete the Contract Work Item and obtain written verification of the actual completion date from the Engineer prior to the Incentive-Disincentive Completion Date, or should the Contractor, having done so, fail to timely request the incentive payment for any reason, and including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction as set forth in (2) above, the Contractor shall have no right to any payment whatsoever under this Article. Notwithstanding the Contractor's election or non-election of the incentive under this provision, the disincentive provision applies to all circumstances where the work in the Contract is not verified as completed by the Engineer in writing by the Allowable Incentive-Disincentive Completion Date.

Should the Contractor fail to complete the Contract Work Item on or before the Allowable Incentive-Disincentive Completion Date, as adjusted in accordance with the contract provisions, the Village shall deduct the "Incentive-Disincentive Total Amount" from monies otherwise due the Contractor. The term "Allowable Incentive-Disincentive Completion Date" as used in this Article shall mean the Incentive-Disincentive Completion Date plus adjustments pursuant to this article. This deduction shall be the disincentive for the Contractor's failing to timely complete the Contract Work Item. All Contract Articles relating to liquidated damages remain in effect and are applicable.

In the event the Contractor 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.

As to any Contract Work Item provided for herein, the Contractor 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.

The Village of Key Biscayne reserves the right to offer other incentive-disincentive compensation to the CONTRACTOR for expediting other portions of the work, and will be open to suggested offers for the same by the CONTRACTOR.

1.04 CONTRACTOR'S ACCEPTANCE OF CONDITIONS

A. The CONTRACTOR hereby agrees that, by virtue of submitting a completed Proposal including his declarations therein of full satisfaction, knowledge and understanding of the Contract Documents, site conditions (surface and subsurface) and all other conditions affecting the Work, he assumes full responsibility for performance of the Work as required under this Contract. It is expressly agreed that under no circumstances, conditions, or situations shall this Contract be more strongly construed against the OWNER than against the CONTRACTOR and his Surety.

B. It is understood and agreed that the passing, approval and/or acceptance of any part of the Work or material by the OWNER, ENGINEER, or by any agent or representative, as being in compliance with the terms of this Contract and/or of the Contract Documents, shall not operate as a waiver by the OWNER of strict compliance with the terms of this Contract, and/or the Contract Documents covering said Work; and the OWNER may require the CONTRACTOR and/or his surety to repair, replace, restore and/or make to comply strictly and in all things with this Contract and the Contract Documents any and all of said Work and/or materials which within a period of one year from and after the date of the acceptance of any such Work or material, are found to be defective or to fail in any way to comply with this Contract or with the Contract Documents. This provision shall not apply to materials or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. The CONTRACTOR shall not be required to do normal maintenance work under the guarantee provisions. Failure on the part of the CONTRACTOR and/or his Surety, immediately after notice to either, to repair or replace any such defect.

1.05 LIQUIDATED DAMAGES

A. It is mutually agreed that time is of the essence of this Contract and should the CONTRACTOR fail to complete the work within the specified time, or any authorized extension thereof, there shall be deducted from the compensation otherwise to be paid to the CONTRACTOR, and the OWNER will retain the amount of two thousand dollars ($2000) per calendar day until substantial completion, as fixed, agreed and liquidated damages for each calendar day elapsing beyond the specified time for completion or any authorized extension thereof. After substantial completion, should contractor fail to complete the remaining work within the time specified in Section 1.03 above, the owner will retain the sum of one thousand dollars ($1000) per calendar day until completion. These amounts shall represent the actual damages which the OWNER will have sustained by failure of the CONTRACTOR to complete the work within the specified time; it being further agreed that said sum is not a penalty, but is the stipulated amount of damages sustained by the OWNER in the event of such default by the CONTRACTOR.

B. For the purposes of this Article, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.

C. For the purposes of this Contract, the day of final acceptance of the work shall be considered a day of delay, and the scheduled day of completion of the work shall be considered a day scheduled for production.

1.06 REIMBURSEMENT OF ENGINEERING EXPENSES

A. Should the completion of the Contract be delayed beyond the specified or adjusted time limit, Contractor shall reimburse Owner for all expenses of engineering and inspection incurred by Owner during the period between said specified or adjusted time and the actual date of substantial completion. All such expenses for engineering and inspection incurred by Owner will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineers charges associated with the construction contact project management, including resident project representative costs. These expenses are not included in the daily rate for liquidated damages as defined in Article 1.05 of this Contract. These are additional expenses to be paid whether or not the liquidated damages are assessed.

1.07 PARTIAL AND FINAL PAYMENTS

A. In accordance with the provisions fully set forth in the General Conditions, and subject to additions and deductions as provided, the OWNER shall pay the CONTRACTOR as follows:

1. Within 30 days after receipt by the OWNER of the CONTRACTOR's request for partial payment, the OWNER shall make partial payments to the CONTRACTOR, on the basis of the estimate of Work as approved by the ENGINEER, for work performed during the preceding calendar month, less ten percent (10%) of the amount of such estimate which is to be retained by the OWNER until all Work has been performed strictly in accordance with this Agreement and until such Work has been accepted by the OWNER.

2. Upon submission by the CONTRACTOR of evidence satisfactory to the OWNER that all payrolls, material bills and other costs incurred by the CONTRACTOR in connection with

the construction of the Work have been paid in full, and also, after all guarantees that may be required in the specifications have been furnished and are found acceptable by the OWNER, final payment on account of this Agreement shall be made within sixty (60) days after completion by the CONTRACTOR of all Work covered by this Agreement and acceptance of such Work by the OWNER.

1.08 ADDITIONAL BOND

A. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Performance and Payment Bonds hereto attached for its faithful performance, the OWNER shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the Work, the CONTRACTOR shall, at his expense, and within three days after the receipt of notice from the OWNER to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the OWNER. In such event, no further payment to the CONTRACTOR shall be deemed due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the OWNER.

1.09 CONTRACT DOCUMENTS

A. The Contract Documents which comprise the entire agreement between the Village and the Contractor concerning the work consist of this Contract for Construction, the Drawings, Plans and Specifications, the Invitation for Bids, the Addenda , the Bid, Instructions to Bidders, the General and Supplementary Conditions, FDEP supplementary conditions (construction), the Performance Bond, Insurance Certificates, the Notice of Award, the Notice to Proceed, any Change Orders and any other Contract Documents, not specifically listed herein which shall be considered incorporated into and made a part of this Contract by this reference and shall govern this Project. Contractor is reminded and hereby recognizes that all Work under this contract must comply with applicable federal regulations, which shall be deemed to be incorporated herein immediately upon Village's written request.

B. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

C. The Contract Documents shall remain the property of the Village. The Contractor shall have the right to keep one record set of the Contract Documents upon the completion of the Project: however, that in no event shall the Contractor use, or permit to be used, any or all of such Contract Documents on other Projects without the Village's prior written authorization.

1.10 WAIVER OF JURY TRIAL

Village and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action,

proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

1.11 ASSIGNMENT

Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Village Manager.

1.12 MISCELLANEOUS

Insurance Requirements:

Contractor shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Village (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth in the Contract Documents.

1.13 VILLAGE'S RIGHT TO TERMINATE CONTRACT

A. If Contractor fails to timely begin the Work, or fails to perform the Work, with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in any acceptable manner, Village may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of Work out of the hands of the Contractor, and use any or all materials on the Project site which have been paid for by the Village, as may be suitable and acceptable and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Village, together with costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Village shall exceed the unpaid balance, then Contractor shall be liable and shall pay to Village the amount of said excess.

B. Contractor agrees that in the event that a referendum or initiative measure is adopted at an election by the majority of the electors of the Village voting on such measure, which repeals the Village's Ordinance No. 2006-6, Zone 2/3 Reclaimed Water and Water main replacement, sanitary sewer system and proposed pump station Capital Project Authorization Ordinance (Ordinance No.2006-6) or otherwise operates to prohibit the construction of the Project in accordance with the Plans: the Village Council shall have the authority, within (30) days after any such event, to terminate the Contract by providing written notice of termination to the Contractor. In the event of such termination, the Village shall not be liable

to Contractor for payment to any supplemental compensation, penalties, damages, loss of profits, termination fee or demobilization fee as a result of such termination, and the Contractor shall only be paid by the Village in accordance with the Contract, for the portion of the Work for the Project which has been performed by Contractor up to the time of notice of termination of Contract. The Contractor shall be entitled to recover from the Village payment for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit earned on the Project prior to the date of termination.

C. In the event that a referendum or initiative measure is adopted at an election by the majority of the electors of the Village voting on such measure, which repeals the Village's Ordinance No. 2006-6. Zone 2/3reclaimed water and water main replacement, sanitary sewer system and proposed pump station Revenue Bond Ordinance (Ordinance No.2006-6,) or otherwise operates to prohibit the financing for the construction of the Project in accordance with the Plans: the Village Council shall have the authority, within thirty (30) days after any such event, to terminate the Contract by providing written notice of termination to the Contractor. In the event of such termination, the Village shall not be liable to Contractor for payment of any compensation, penalties, damages, loss of profits, termination fee or demobilization fee as a result of such termination, and the Contractor shall only be paid by the Village in accordance with the Contract, for the portion of the Work of the Project which has been performed by the Contractor up to the time of notice of termination of Contract. The Contractor shall be entitled to recover from the Village payment for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit earned on the Project prior to the date of termination.

1.14 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS AND DATA:

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Village's Project Engineer, and shall notify Village's Project Engineer in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Village's Project Engineer will promptly review the same. Any Work done after such discover, but prior to written authorization of the Village's Project Engineer, will done at the Contractor's sole risk.

1.15 CONTRACTOR'S RESPONSIBILITY FOR DAMAGES AND ACCIDENTS:

A. Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Village, and shall promptly repair any damage done from any cause.

B. Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Village, Contractor shall replace same without cost to Village.

1.16 DEFECTIVE WORK/GUARANTEE:

A. Village shall have the authority to reject or disapprove Work which the Village finds to be defective. If required by the Village, Contractor shall promptly either correct all defective Work or

remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

B. Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Village's Project Consultant, Village shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Village in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Village may declare Contractor in default.

C. The contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective of not in accordance with the Contract Documents, Contractor, after receipt of written notice from Village, shall promptly correct such defective or nonconforming Work within the time specified by Village without cost to Village. Nothing contained here in shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under Contract Documents including but not limited to any claim regarding latent defects.

D. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

1.17 LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS:

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any throughfare, except as provided for in the Contract Documents, without the written consent of the proper authorities.

1.18 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS:

A. The Village or any of their duly authorized representatives shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts and transcriptions.
B. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 1.12.7.A above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.
C. The right to access and examination of records in subparagraph 1.12.7.A shall continue until disposition of any mediation, claims, litigation or appeals.

1.19 DAMAGES FOR DELAY:

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Village by reason of any delays. Contractor shall not be entitled to an increase in the Contract

Price or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages, including by not limited to, cost of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole exclusive remedy for such resulting delay. Notwithstanding the above, and in accordance with the requirements of Article 12 of the General Conditions, the Contractor shall be granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be caused by the Village, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon seven days written notice to the Village.

1.20 PUBLIC ENTITY CRIMES AFFIDAVIT:

Contractor shall comply with Section 287.133, Florida Statues, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

1.21 INDEMNIFICATION:

Contractor shall indemnify and hold harmless Village, Village's officers and employees and Village's Project Engineer and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor and persons employed or utilized by Contractor in the performance of the Agreement.

1.22 CAPITALIZED TERMS:

Capitalized terms shall have their plain meaning as indicated herein.

1.23 INDEPENDENT CONTRACTOR:

The Contractor is an independent contractor under the Contract. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Village. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

1.24 PAYMENT TO SUB-CONTRACTORS:

Certification of Payment to Subcontractors: The term "subcontractor," as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Village made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Village will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete, as determined by the Village. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their Contracts and that the retainage is returned to subcontractors within

30 days after satisfactory completion of the subcontractor's work. Contractor shall provide this certification in the form designated by the Village.

The Village will not make any progress payments after the initial partial payment until the Contractor completes the Equal Opportunity monthly report, unless the Contractor demonstrate good cause for not making any required payments and furnishes written notification of any such good cause to both the Village and the affected subcontractors and suppliers.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Village will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes suppliers within 30-day period.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: VILLAGE OF KEY BISCAYNE, FLORIDA, signing by and through its Village Manager authorized to execute same by Council action on the ____day of_____ 2008, and _____signing by and through_____, duly authorized to execute same.

ATTEST:

_____
Village Clerk

VILLAGE OF KEY BISCAYNE, FLORIDA

By: _____
Village Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
VILLAGE ATTORNEY

This_____day of _____, 2008.

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR

ATTEST:

_____

_____
(Secretary)

By:_____
(Signature and Title)

(Corporate Seal)

_____
(Type Name/Title signed above)

This _____day of _____, 2008.

CERTIFICATE

(Sample)

STATE OF FLORIDA)
ss
COUNTY OF)

I HEREBY CERTIFY that a meeting of the Board of Directors of _____ _____, a corporation under the laws of the State of _____, held on _____, 20__, the following resolution was duly passed and adopted:

> "RESOLVED, that _____, as _____ President of the corporation, be and he is hereby authorized to execute the Contract dated _____, 20__, between the _____ and this corporation, and that his execution thereof, attested by the Secretary of the corporation and with corporate seal affixed, shall be the official act and deed of this corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation this ____ day of _____, 20__.

_____
Secretary

END OF SECTION