

**RESOLUTION NO. 04-221**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING RESOLUTION NO. 04-216 APPROVING THE REVISED DESIGN/BUILD AGREEMENT BETWEEN RECREATIONAL DESIGN AND CONSTRUCTION CORPORATION AND THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on March 9, 2004, the Town Council of the Town of Miami Lakes (the “Town”) approved a design-build agreement (the “Agreement”) with Recreational Design and Construction Corporation (“RDC”) for the design and construction of Royal Oaks Park (the “Park”) by Resolution No. 04-216; and

**WHEREAS**, subsequent to the Town Council’s approval, but prior to execution of the Agreement, Town staff determined that certain Detailed Specifications had not been addressed; and

**WHEREAS**, Town staff met with RDC and RDC agreed to revise the Agreement regarding the Detailed Specifications; and

**WHEREAS**, the Town Council finds that approving the revised agreement with RDC for the design and construction of the Park is in the best interest of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1.    Recitals.**    The foregoing Recitals are true and correct and are incorporated herein by this reference.

**Section 2.    Amending Resolution No. 04-216.**    Section 2 of Resolution 04-216 is hereby amended to read as follows:

“The contract for the design and construction of Royal Oaks Park is awarded to Recreational Design and Construction Corporation and the revised Design/Build

Agreement for the design and construction of Royal Oaks Park Phase One between the Town of Miami Lakes and Recreational Design and Construction Corporation (the "Agreement") dated April 7, 2004, a copy of which is attached as Exhibit "A," replacing in its entirety the Agreement approved by the Town Council on March 9, 2004, together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved."

**Section 3. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 13<sup>th</sup> day of April, 2004.

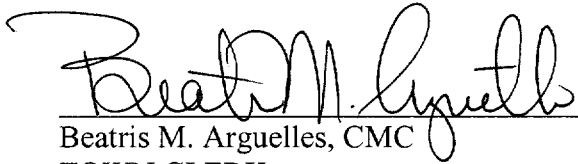
Motion to adopt by Collins, second by Alonso.

FINAL VOTE AT ADOPTION

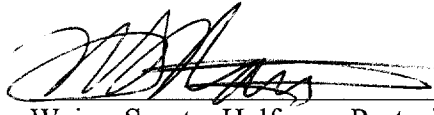
Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

  
Beatris M. Arguelles, CMC  
TOWN CLERK

Approved as to form and legality for the use  
and benefit of the Town of Miami Lakes only:

  
Weiss, Serota, Helfman, Pastoriza, Guedes  
Cole & Boniske, P.A.  
TOWN ATTORNEY

702001/Resolutions/Approving revised ROP Design-Build Agmt

# EXHIBIT "A"

Revised 4.07.04

## DESIGN BUILD AGREEMENT

**THIS DESIGN BUILD AGREEMENT** (the "Agreement") is made and entered into as of the 22<sup>nd</sup> day of April, 2004 by and between **THE TOWN OF MIAMI LAKES**, a Florida municipal corporation ("Town"), having an address at 6853 Main Street, Miami Lakes, Florida, 33014 and Recreational Design and Construction Corporation (Design/Builder"), having an address at 3990 N. Powerline Rd, Oakland Park, FL 33309

### RECITALS

1. On December 12, 2003, the Town issued a Request for Proposals ("RFP"), for the provision of design build services in connection with the development of the Project (as defined below).
2. In response to the RFP, Design/Builder submitted a proposal to be the Design/Builder for the Project.
3. Town desires to engage Design/Builder, and Design/Builder agrees to design and build the Project, all as set forth below.

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

#### 1. PROJECT SUMMARY.

The following summary (the "Project Summary") provides the pertinent facts and certain general terms with regard to the design and construction of the Project, which is the subject of this Agreement. Capitalized terms not defined in the text shall have the meanings ascribed to them in Section 2 of this Agreement.

1.1 **Project Description.** Design, permitting and construction of Phase One of Royal Oaks Park as further described in the Request For Proposal documents for the Design and Construction of Royal Oaks Park (the "Project").

1.2 **Project Representatives.** For purposes of this Project, the following shall serve as the Project Representative for each party: Town: Linda Reale, Ast. Mgr.  
Design/Builder: Joe Cerrone, President.

#### 1.3 Services.

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1.3.1 The Design/Builder shall complete the design, permitting and construction of the Project for design, construction and delivery of a fully operational and permitted sports park in accordance with the terms and conditions of the Contract Documents and consistent with the Detailed Specifications, attached as Exhibit "M." The parties acknowledge and agree that nothing in this Agreement shall be construed as to provide, grant or confer any rights unto Design/Builder and its Subconsultants and Subcontractors with respect to the provision of any other services (whether design, construction or otherwise), except for Work expressly set forth in the Contract Documents.

1.4 **Schedule for Performance.** The Design/Builder shall complete the design and the construction of the Project pursuant to the schedules for each set forth in Exhibit "A" to this Agreement (the "Contract Times"); provided, however, that Design/Builder shall perform the design phase of the Work in accordance with said Contract Times as well as the schedule of performance set forth in Section 4.2. The Contract Times set forth in Exhibit "A" shall commence on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the effective date of the Agreement.

#### 1.5 **Compensation.**

1.5.1 It is the intent and agreement of the parties that the Town shall pay the Design/Builder for Design/Builder's performance of its obligations hereunder a lump sum for the Work that shall not exceed a guaranteed maximum price ("GMP") established for the Work, subject to additions and deductions by Change Order as provided in this Agreement. The GMP for the Work is Two Million Eight Hundred Eighty Four Thousand Thirty-Nine Dollars and 00/100 Dollars (\$2,884,039.00). Payment by the Town of the GMP shall be deemed full compensation to the Design/Builder for the performance of the Work required by this Agreement.

1.5.2. In the event additional labor, costs or expenses are necessary to complete the Work such amounts shall be the sole responsibility of Design/Builder; it being acknowledged and agreed that the GMP for the Work shall be the maximum amount the Town shall be required to pay for the Work

1.5.3. Included in the GMP is an allowance account for unforeseen conditions, potential construction changes, permit fees and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Town Engineer and pursuant to any procedures outlined by the Town Engineer or the Town Manager.

## 2. **DEFINITIONS.**

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

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

- 2.2** “Agreed Cost” is defined in Section 7.2.
- 2.3** “Approved 65% Construction Documents” is defined in Section 4.2.1.
- 2.5** “Approved 100% Construction Documents” is defined in Section 4.2.1.
- 2.6** “Approved 100% Schematic and Design Development Documents” is defined in Section 4.3.3.
- 2.7** “Bonds” is defined in Section 12.1.
- 2.9** “Building Department” means the Town Building Department.
- 2.10** “Change Order” is defined in Section 7.1
- 2.11** “Change Order Request” is defined in Section 7.2.
- 2.12** “Contract Documents” means this Agreement, the RFP, the Design Criteria Package, the Plans and Specifications and all exhibits and documents related thereto or contemplated thereby, as well as all Addenda, Amendments and Change Orders related to each with respect to the Project and all changes to said documents issued by Town after execution of this Agreement.
- 2.13** “Contract Times” is defined in Section 1.4.
- 2.14** “Construction Documents” is defined in Section 4.1.1.
- 2.15** “Construction Work” means the permitting, construction and operational testing of the Project required of the Design/Builder under the terms of this Agreement and the Contract Documents.
- 2.16** “County” means Miami-Dade County.
- 2.17** “Date of Termination” is defined in Section 37.1.
- 2.18** “Day” or “Days” or “day” or “days” means calendar days.
- 2.19** “Design/Build firm” as defined in Chapter 287, Florida Statutes selected to perform as the Design Builder in this Agreement.
- 2.20** “Design Consultant” means the design professional selected by Town to act as Town’s owner’s representative and interact with the Design/Builder.
- 2.21** “Design/Builder’s Estimate” is defined in Section 7.2.

**2.22** “Design/Builder’s Representative” is defined in Section 30.2 and named in Section 1.2.

**2.23** “Design Criteria Package,” as defined in Section 287.055, Florida Statutes, means the set of documents contained in the RFP that describe the Project requirements and scope of Work, which are to be used by the Design/Builder in developing the design for the Project.

**2.24** “Design Services” are all design services performed by and required of the Design/Builder pursuant to this Agreement and includes services performed by the Design/Builder’s Subconsultants.

**2.25** “Environmental Claims” is defined in Section 19.1.

**2.26** “Environmental Laws” is defined in Section 19.4.

**2.27** “Field Office” means a field office at the Project Location provided at the Project site by the Design/Builder. Expenses relating to the Field Office are included in the GMP for the Construction Work.

**2.28** “Final Completion” means that all Work required under the Contract Documents has been fully and properly completed, including, but not limited to, punch list items, issuance of certificates of final occupancy and/or use, issuance by all governmental and/or governing authorities having jurisdiction over the Project of all required final approvals, permits, and licenses required for the operation of Royal Oaks Park (including testing of all infrastructure, connections and systems), delivery of record drawings, electronic files, and manuals and all other applicable regulatory requirements.

**2.29** “Final Completion Date” is defined in Section 6.4.

**2.30** “Final Payment” is defined in Section 8.6.

**2.31** “Final Request” is defined in Section 8.6.

**2.32** “GMP” or “Guaranteed Maximum Price” is defined in Section 1.5.

**2.33** “Hazardous Substance” is defined in Section 19.4.

**2.34** “Liquidated Damages” is defined in Section 6.6 and shown on Exhibit “A.”

**2.35** “Materials” means materials, supplies, apparatus, appliances, equipment, fixtures, machinery, tools and all other items furnished or delivered in connection with the Project.

**2.36** “Notice to Proceed” means written notification by Town to the Design/Builder authorizing commencement of any phase of the Work as may be required by this Agreement in the form attached hereto as Exhibit “K.”

**2.37** “Plans and Specifications” is defined in Section 4.1.1.

**2.38** “Progress Schedule” is defined in Section 3.7.

**2.39** “Progress Sets” is defined in Section 4.3.1.

**2.40** “Project” is defined in Section 1.1.

**2.41** “Project Location” or “Project Site” means the property owned by the Town upon which the Project is to be constructed.

**2.42** “Project Summary” is defined in Section 1.

**2.43** “Schedule of Values” is defined in Section 8.2.

**2.44** “Schematic and Design Development Documents” means the drawings and other documents illustrating the scale and relationship of Project components including the selection of materials, systems, and equipment, and methods of Project delivery, as well as initial program drawings and documents that establish and describe the size and character of the Project as to architectural, structural, mechanical, electrical, plumbing, and fire protection systems, materials and such other elements as may be appropriate, and shall also include a review of all applicable laws to determine compliance, scheduling and construction budget information.

**2.45** “Subconsultant” means any person or entity, other than Design/Builder’s own employees, employed or retained by, or under contract with Design/Builder to perform a portion of the Design Services under this Agreement.

**2.46** “Subconsultant Contract” means any contract in writing between the Design/Builder and a Subconsultant.

**2.47** “Subcontractor” means any person or entity, other than the Design/Builder’s own employees, employed or retained by, or under contract with the Design/Builder to perform the non-design portion of the Work.

**2.48** “Subcontractor Contract” means any contract in writing between the Design/Builder and a Subcontractor.

**2.49** “Substantial Completion” is defined in Section 6.4.

**2.50** “Substantial Completion Date” is defined in Section 6.1.



**2.51** “Town” shall mean Town Council or Town Manager, as applicable.

**2.52** “Town’s Project Representative” is defined in Section 30.1 and named in Section 1.2.

**2.53** “Work” means the Design Services and Construction Work of the Project required of the Design/Builder under the terms of this Agreement and the Contract Documents.

**3. GENERAL RESPONSIBILITIES.**

**3.1** The Design/Builder agrees that all design documents prepared or furnished, including, without limitation, the Plans and Specifications, shall comply with any provisions required by grants received by the Town for this Project, all applicable laws, statutes, codes, rules and regulations including, without limitation, those adopted by the Town, all Environmental Laws as defined in Section 19.4 of this Agreement, Floodplain Management and Protection of Wetlands regulations in 44 C.F.R. Section 9.11(c) and all design requirements established by the Florida Accessibility Code and the Americans with Disabilities Act (ADA).

**3.2** The Design/Builder agrees that the Design Services under this Agreement shall be performed in conformance with the standards of care and quality adopted or accepted by nationally recognized architectural and engineering organizations, and/or other applicable professional organizations for similar applications and in accordance with the Florida Building Code. Any designs, drawings, or specifications prepared or furnished by the Design/Builder that fail to meet the requirements of paragraph 3.1 above, or otherwise are defective or contain errors, conflicts or omissions, will be corrected by the Design/Builder within 10 days or such other time as agreed to by the Town Manager or his designee, at no cost to Town. The Design/Builder will reimburse Town for any and all damages, including fines, consequential and incidental damages, without limitation, resulting from the use of such defective designs, drawings, or specifications, within 30 days receipt of an invoice from the Town. Town’s approval, acceptance, use of, or payment for all or any part of the Design Services shall in no way alter the Design/Builder’s obligations with respect to the design of the Project or Town’s rights hereunder.

**3.3** The Design/Builder shall be fully responsible for coordinating all the Work required under this Agreement regardless of whether performed by its own employees or a Subconsultant or Subcontractor so as to insure that the services required are performed in an efficient, timely and economical manner. The Design/Builder shall be responsible to Town for the services furnished to the Design/Builder by a Subconsultant, or Subcontractor to the same extent as if the Design/Builder had furnished the service itself. The Design/Builder shall require in Subconsultant and Subcontractor Contracts that the Subconsultant or Subcontractor be bound to, and to assume toward, the Design/Builder all the obligations and responsibilities which the Design/Builder, by this Agreement, assumes toward Town and that failure by the Subconsultant or Subcontractor to comply with all of the Design/Builder’s obligations and responsibilities set forth in this Agreement shall be a material breach of the Subconsultant’s or Subcontractor’s Contract. The Design/Builder also agrees to reasonably cooperate and

reasonably coordinate with the Design Consultant or other consultants retained directly by Town.

**3.4** The Design/Builder shall not specify in the Plans and Specifications a particular design, process or product that infringes upon any patent.

**3.5** The Design/Builder shall design and construct (including operational testing) or cause to be designed and constructed (including operational testing) the Project for Town at the Project Location with supporting improvements, facilities and equipment as described or reasonably inferable from the Contract Documents. The Design/Builder shall provide, furnish and install all Materials and provide all design and construction services except to the extent specifically indicated in the Contract Documents to be furnished by or the responsibility of others, as and when required for, or in connection with the design, construction, furnishing or equipping of, or for inclusion or incorporation in, the Project in accordance with the Contract Documents. Without limiting the foregoing, the Design/Builder's Work shall be in compliance with the Contract Documents.

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

**3.7** The Design/Builder shall provide, in a digital format acceptable to the Town, a critical path schedule, or such other type of schedule as Town may approve, and periodic updating thereof and other necessary schedules (all of which are hereinafter collectively referred to as the "Progress Schedule") in the interest of completing the Project in the most expeditious and economical manner and in accordance with Section 1.4. Within twenty-one (21) calendar days after execution of this Agreement, the Design/Builder shall prepare and submit for Town's approval the Progress Schedule for the Work. The Town shall have fourteen (14) days to review and approve the Progress Schedule. If the Town does not approve the Design/Builder's submitted Progress Schedule, Design/Builder and Town shall work together to develop a Progress Schedule acceptable to all parties. The Progress Schedule shall indicate the dates for the commencement and completion of the various stages of design and construction and shall be revised as required by the conditions of the Work, subject to approval by Town. The Progress Schedule shall encompass the design and all of the trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored on a weekly basis. The parties acknowledge and agree that notwithstanding any theoretical delays or theoretical extensions of time for Substantial Completion (as defined in Section 6.4) as may be shown on the Progress Schedule, the Substantial Completion Date (as defined in Section 6.1) shall be governed by this Agreement and shall be extended only in accordance with the procedures set forth in this Agreement.

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

**3.9** Neither Town nor the Design Consultant makes any warranties to the Design/Builder, express or implied, that the Contract Documents are free of errors or omissions. Rather, the Design/Builder shall carefully study and compare Contract Documents with each other, with information furnished by Town, and shall carefully inspect and verify field conditions, and shall at once report to the Town all errors, inconsistencies or omissions discovered. If the Design/Builder proceeds with the design and performs any construction activity knowing it involves a recognized error, inconsistency or omission without such notice, the Design/Builder shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The intent of the Contract Documents is to include all items necessary for the proper performance and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall not be required unless it is reasonably inferable as being necessary to produce the intended results.

**3.10** If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the Design/Builder shall be given to Town before such conditions are disturbed. If the conditions differ materially from those indicated in the Contract Documents and were not known and were not readily ascertainable with due diligence to the Design/Builder at the time this Agreement was executed, and cause a material increase or decrease in the Design/Builder's cost of, or time required for, performance of any part of the Work, Design/Builder shall submit a Change Order Request pursuant to Section 7.3 of this Agreement.

**3.11** The Design/Builder shall prepare or cause to be prepared, as part of the Work, all shop drawings, samples, submittals and detail drawings not made a part of the Plans and Specifications, and Addenda which are required in the performance of the Design/Builder's obligations under this Agreement. All shop drawings, submittals, samples, and detail drawings shall be submitted to the Town. Town's review and/or approval of the shop drawings, submittals, detail drawings and samples shall in no way diminish or release the responsibility of the Design/Builder for any failure of the shop drawings, submittals, detail drawings or samples to be in compliance with the Contract Documents, any governing codes, laws or ordinances, as well as the adequacy and fitness for the intended purpose and/or the Design/Builder's obligations in this respect. The Design/Builder shall maintain copies of all shop drawings, submittals and detail drawings, and maintain all samples at the Project and shall afford Town access to the documents at all times during regular working hours.

**3.12** The Design/Builder shall maintain one record set of Contract Documents in good order and marked currently to record all changes made during construction and an accurate location of all portions of the Work sufficient to prepare accurate as-built Plans and Specifications as further described in Section 15 of this Agreement. All of these, including the as-built Plans and Specifications, shall be delivered to the Town upon Final Completion of the Work for review and incorporation into the record set of documents.

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

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

**3.15** The Design/Builder shall pay all sales, consumer, use and other similar taxes for the Work or portions of each, which are legally required at any time during the Design/Builder's performance of the Work.

**3.16** The Design/Builder shall pay all royalties and license fees that are legally required at any time during the Design/Builder's performance of the Work.

**3.17** The Design/Builder and any Subconsultants, or Subcontractors shall use their best efforts to cooperate with the Town and Design Consultant during the period of design and construction of the Project in order to minimize disruption of services.

**3.18** Notwithstanding Section 3.15, the Town reserves the right to require the Design/Builder to assign to the Town any of the Design/Builder's subcontracts, purchase orders or other agreements for the procurement of materials for the purpose of utilizing the Town's sales tax exemption. Any materials purchased by the Town pursuant to such an assignment are hereinafter referred to as "Town Furnished Materials." The responsibilities of the Town and the Design/Builder relating to such Town Furnished Materials shall be governed and controlled in accordance with the terms and conditions of the Procedure for Town Furnished Materials set forth in Exhibit "N." If the Town elects to provide Town Furnished Materials, the parties specifically acknowledge that the GMP (as defined in Section 1.5) shall be subject to the additions and deductions made by Change Order in accordance with Section 7 of the Agreement and the Procedure for Town Furnished Materials.

#### **4. DESIGN SERVICES.**

##### **4.1 Basic Services.**

**4.1.1** The Design/Builder shall provide or cause to be provided to the Town (a) the Schematic and Design Development Documents, (b) those services, including, without limitation, architectural, structural, mechanical, electrical, plumbing, fire protection and any other engineering services necessary to produce a complete and accurate set of plans and specifications for the permitting and construction of the Project (collectively referred to as the “Plans and Specifications” or “Construction Documents”), and (c) all design services required to facilitate the complete integration of future phases to the Project. The Design/Builder warrants that at the time of completion, the Plans and Specifications will be adequate and fit to accomplish the intended purpose of the Project. Town’s review and/or approval of the Plans and Specifications shall in no way diminish or release the foregoing warranty of adequacy and fitness for the intended purpose and/or the Design/Builder’s obligations in this respect.

**4.1.2** The Design Services shall be performed in accordance with the Contract Times and Schedule of Performance set forth in Exhibit “A” and Sections 4.2 and 4.3. Time is of the essence with respect to the performance of the Design Services. The Design/Builder shall not, except for cause beyond the reasonable control of the Design/Builder, exceed time limits established by this Agreement. Any adjustments to the Contract Times and Schedule of Performance must be approved in writing by Town and must be requested in writing by the Design/Builder pursuant to Section 7.3 of this Agreement.

**4.1.3** The Design/Builder shall be responsible for preparing and filing the documents required for approval of governmental and/or governing authorities having jurisdiction over the Project to ensure that final approvals, permits, and licenses for the performance of the Work (including operational testing) will be obtainable prior to the construction phase. Such documents shall be submitted to Town for review and approval prior to filing with said authorities. The Design/Builder shall interface and coordinate with permitting agencies and shall participate in meetings with appropriate agencies and respond to and incorporate appropriate preliminary and final permit review comments. The Town has waived the fees for all Town issued approvals, permits, and licenses; provided, however, the Design/Builder is required to pay all fees for non-Town approvals, permits, and licenses as part of the GMP.

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

**4.1.5** The Design/Builder shall establish an organization and lines of authority in order to coordinate, monitor, and report the progress of each phase of the design and shall furnish a competent staff for the administration, coordination, and supervision of the Design Services. All Design Services shall be performed by the Design/Builder’s own staff or Subconsultants approved as part of the Design/Builder’s team, unless otherwise authorized in writing by Town. The employment of, contract with, or the use of the services of any

Subconsultant shall be subject to Town's written approval in accordance with Section 9 below. No such approval shall be construed as an agreement between Town and any Subconsultant.

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

**4.1.7** The Design/Builder shall prepare and submit to the Town a Design/Production Schedule and Work Plan, including a Proposed List of Drawings, a Quality Assurance Plan, and a schedule of key interface dates with the Town, including milestone submittal dates. This information shall be defined as the Design Work Plan. Once approved by Town, the Design Work Plan shall be updated as necessary and/or as requested by Town. The Design Work Plan shall include at a minimum the following:

- a. Design Team Organization and Directory identifying all team members and contact information.
- b. Project Management/Quality Assurance Plan detailing the duties and responsibilities of the Design Team, and how Project management and coordination will be organized.
- c. Design/Production Schedule including workforce projections.

**4.1.8** The Design/Builder shall provide or cause to be provided detailed construction documents including architectural, structural, mechanical, electrical, plumbing, fire protection and others in accordance with Section 4.2 and 4.3 and the Contract Documents.

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

## **4.2 Schedule of Performance.**

**4.2.1** On or before scheduled due dates for each phase, the Design Builder shall make milestone submittals to the Town in accordance with the following table:

<u>Phase</u>	<u>Milestone</u>	<u>Due Date</u>
Schematic Design	Not Required	
Development Documents	65% Submittal	30 days from Notice to Proceed
Construction Documents	100% Submittal	60 days from Notice to Proceed

#### **4.3 Submittals and Review of Design Documents.**

**4.3.1 Progress Submittals.** The Design/Builder shall submit progress sets of Design Development Documents, and 100% Construction Documents for review and approval by the Town. Additionally, the Design/Builder will provide the Town with progress plans and/or prints anytime the Town requests such documents. Progress set submittals shall consist of a minimum of three (3) full-size drawing sets and three (3) sets of specifications along with revised construction cost estimates (“Progress Sets”). Upon written approval by the Town of the applicable Progress Set submittal, the Design/Builder shall transmit a complete package including plans, specifications, checklists and other requirements, as applicable. Reviews will not commence until the complete Progress Set submittal has been received.

**4.3.2 Review Procedures.** The following procedures shall be followed for review of Design Development Documents, and 100% Construction Documents, and any other Design Services submittals by Design/Builder.

- a. The Design/Builder or Design Consultant shall submit Design Development Documents and Construction Documents for review in accordance with the schedule established in Section 4.2
- b. The Town will be required to provide all review comments to the Design/Builder within fourteen (14) calendar days from receipt of the milestone submittal.
- c. The Design/Builder shall respond to and incorporate milestone review comments transmitted by the Town. Any budgetary overruns or discrepancies shall be resolved by design and engineering modifications to match the available funds.
- d. Unless otherwise agreed to in writing, the Design/Builder shall respond in writing, , within seven (7) days of receipt of the review comments. The Town or Design Consultant will log, transmit and facilitate the exchange of review comments. The Design/Builder shall also maintain a similar log and make it available to the Town at all times.
- e. Replies to Responses: The Town or Design Consultant will reply within seven (7) days to any responses requiring confirmation and will advise the Design/Builder if any further reconciliation is required.

- f. Resolution of differences: The Town or Design Consultant will schedule a meeting between the Design/Builder team and the Town team, to take place within seven (7) days after review comments are issued to the Design/Builder, in order to resolve all issues between teams. The Town or Design Consultant will arrange additional meetings or conference calls if necessary, in order to expedite resolution and avoid impact to the Project Schedule or the Contract Documents.
- g. Backcheck Review: If any comments remain unsatisfied, additional backcheck submittals shall be required from Design/Builder until all comments have been satisfied. Any costs associated with Design/Builder's preparation of the backcheck submittals shall be the Design/Builder's responsibility.
- h. Resolution of all review comments is requisite for completion of any phase of the Design Services.

**4.3.3 Milestones Submittals and Reviews.** The Design/Builder shall submit the Design Development Documents in accordance with the dates set forth in Section 4.2.1 and participate in interim reviews for the milestone submittals as directed by the Town in accordance with Section 4.3.2. The Design Development Documents 100% milestone submittal shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and shall include such other information fully explaining and supporting the Design Development Documents. The Town shall review this submittal pursuant to the review procedures set forth in Section 4.3.2. This set, with full resolution of review comments, as determined by the Town, shall establish compliance with completion of Design Development Documents 100% milestone submittal. Once approved by the Town, the Design Development Documents shall become the "Approved 100% Design Development Documents" and shall not be altered, modified, or revised without the Town's prior written approval. Any material design modifications to the Approved Design Development Documents requested by Town shall be an additional cost to the Town and reflected in a Change Order, and shall not be included in the GMP.

**4.3.4** The Design/Builder shall submit the Design Development Documents in accordance with the dates set forth in Section 4.2.1 and participate in interim reviews for the milestone submittals as directed by the Town in accordance with Section 4.3.2. The 100% Construction Documents Progress Set submittal, which shall be based upon the Approved Design Development Documents, shall serve to monitor progress of the Work. All recommendations of the Town from this review shall be incorporated into the Construction Documents prior to submission of the Construction Documents 100% submittal milestone. The Construction Documents 100% submittal milestone shall consist of six (6) full size sets of drawings; three (3) 11" x 17" size sets of drawings and five (5) sets of Project manuals for the Town to review pursuant to review procedures set forth in Section 4.3.2. This set with all resolution of comments from this review incorporated into the documents shall establish completion of the Construction Documents 100% submittal milestone. The 100% Construction



Documents with full resolution and all comments pending from any previous reviews shall establish completion of the Construction Documents 100% submittal milestone. Once approved by the Town the 100% Construction Documents shall become the “Approved 100% Construction Documents” and shall not be altered, modified, or revised without the Town’s prior written approval. Any material design modifications to the Approved 100% Construction Documents requested by Town shall be an additional cost to the Town and reflected in a Change Order, and shall not be included in the GMP,

**4.3.5.** Notwithstanding the provisions of Sections 4.3.3 and 4.3.4, any changes or revisions to the Approved 100% Schematic and Design Development Documents, or the Approved 100% Construction Documents necessary to (a) comply with applicable governmental requirements, (b) satisfy field conditions and/or (c) correct inconsistencies between various documents shall not be considered an additional cost to the Town and will be deemed included in the GMP.

#### **4.4 Construction Phase.**

**4.4.1** The Design/Builder shall be responsible for coordinating with the Town in order to prepare and file the documents required for the approval of governmental authorities having jurisdiction over the Project.

**4.4.2** Throughout the course of construction, the Design/Builder shall maintain an up-to-date set of Plans and Specifications and reproducible drawings, which show and/or describe all clarifications, Addenda, substitutions and approved Change Orders. Upon Final Completion, the Design/Builder shall provide Town with a set of record drawings and electronic files, as directed by Town, showing the complete Project as built (incorporating data concerning as-built conditions) as well as specifications and other documents as may be required by Town. This shall include all changes in the Work during the Construction Phase.

**4.4.3** During the construction phase, the Design/Builder shall reasonably cooperate with, and respond to, any reasonable requests or requirements of the Design Consultant.

**4.4.4** Design/Builder shall not proceed with the construction phase of the Work until all Development Documents have been reviewed and approved by the Town in accordance with Section 4.3.2 of this Agreement. The Town shall not be responsible for reimbursements for any construction materials purchased by Design/Builder prior to the Town’s approval of the Development Documents as described herein.

### **5. DESIGN CONSULTANT’S RESPONSIBILITIES**

**5.1** The parties acknowledge and agree that the Town may engage a Design Consultant to assist the Town in the administration of this Agreement. The Design Consultant shall act as an “Town’s representative” and shall have no authority to bind Town or direct Design/Builder except as expressly set forth herein.

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

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

**5.4** The Design Consultant will, within 10 days after payment request by Design/Builder, either indicate in writing a recommendation of payment to Town, or return the payment request to the Design/Builder indicating in writing Design Consultant's reasons for refusing to recommend payment. In the latter case, Design/Builder may make corrections, if necessary, and resubmit the payment request. The Town shall make payment to Design/Builder within 30 calendar days after approval by the Town of Design/Builder's payment request.

## **6. TIME FOR PERFORMANCE FOR CONSTRUCTION.**

**6.1** Upon delivery of a Notice to Proceed from Town to the Design/Builder for the Construction Work, the Design/Builder shall commence performance of the construction phase of the Work and shall diligently proceed with the performance of the construction phase of the Work to completion, and agrees to complete the performance of the entire Work within the number of calendar days shown on Exhibit "A" following Design/Builder's receipt of the Notice to Proceed. The Work shall be performed in strict accordance with the 100% Approved Construction Documents.

**6.2** The Substantial Completion Date, the Contract Time and the GMP take into full consideration the effect of inclement weather during the construction period and such effect on both cost and time for completing the Work is accounted for in the GMP, and the Substantial Completion Date (as defined in Section 6.1). The Substantial Completion Date incorporates the Design/Builder's expectation that it will experience the number of working days of weather delay shown on Exhibit "A" during construction of the Project. An extension of the Contract Time for weather delays may be claimed only for delays caused by adverse weather which affects scheduled working hours on scheduled Work days (but excluding any legal holiday unless previously scheduled) and only after the Design/Builder has previously been delayed by weather for at least the number of anticipated working days of weather delays shown on Exhibit "A," and then only to the extent of the actual number of days' delay in those activities which are critical path activities.

**6.3** Delays which affect those activities not identified on the Project's critical path shall not be considered for a Contract Time extension.

**6.4** “Substantial Completion” shall be defined as Final Completion exclusive of minor items of unfinished Work which do not preclude beneficial use of Royal Oaks Park. Substantial Completion shall be deemed to have occurred upon (a) the submission of a Certificate of Substantial Completion (in the standard AIA form) to the Town by the architect of record, (b) the issuance of a Temporary Certificate of Occupancy or Temporary Certificate of Use, as applicable, for any portion of the Project requiring said Certificates, (c) the issuance of all necessary approvals, permits and licenses for the operation of the Project and (d) the completion of all operational testing of the utilities and restroom facilities, indicating the Project can be used for the purposes required by the Contract Documents. The Design/Builder shall have thirty (30) calendar days after the date of Substantial Completion (the “Final Completion Date”) within which to complete all remaining Work required by the Contract Documents (the completion of all such Work, including any Work unfinished at the date of Substantial Completion, and the fulfillment of all requirements of the Contract Documents for Final Completion). Prior to the Design/Builder requesting the Town and Design Consultant to perform the Substantial Completion review, the Design/Builder shall inspect the Project and prepare a list of all deficient and unfinished Work. The list shall be submitted to the Town for review. At Substantial Completion, a Final Punch List will be prepared and provided to the Design/Builder. The Final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by the Design/Builder as a waiver by Town of the Design/Builder’s obligation to complete all the Work in complete compliance with Contract Documents. Time is of the essence in the performance of the Work.

**6.5** If the Project is behind schedule, the Town may direct the Design/Builder to expedite the Work at no additional cost to the Town by whatever means the Design/Builder may use, including, without limitation, increasing manpower or working overtime to bring the Work back within the currently submitted and approved Progress Schedule.

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

**6.7** All the time limits stated in the Contract Documents are of the essence. No claim for damages or any claim other than for an extension of time shall be made or asserted against the Town by reason of delays. Design/Builder shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the Town for direct, indirect,

consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Design/Builder shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. Extension of time shall only be provided for weather delays beyond those contemplated in Section 6.2 and specifically in Section D of Exhibit "A".

## **7. CHANGE ORDERS.**

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

**7.2** Town may order changes in the Work by initiating a change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Design/Builder shall prepare a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related to the design phase, the Design/Builder's estimate (the "Design/Builder's Estimate") of the changes in the GMP attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. The Design Consultant shall review the Design/Builder's Estimate and make a recommendation to the Town Manager regarding the same. If the Town and the Design/Builder agree on a cost ("Agreed Cost"), a Change Order shall be processed by the Town and/or Design Consultant and delivered to the Design/Builder for signature. Design/Builder shall not commence changes in the Work until it receives Town's written Notice to Proceed or, in the case of a Change Order, when the Change Order is executed.

**7.3** Design/Builder may request a change in the Contract Time or GMP by initiating a Change Order Request within five (5) days of Design/Builder's knowledge of facts or occurrence of events giving rise to the Change Order Request. The Design/Builder's Change Order Request shall set forth in detail the nature of the requested change and include a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related to the design phase, the Design/Builder's Estimate of the changes in the GMP attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. The Change Order Request shall be processed by the Town pursuant to Section 7.4 of this Agreement.

**7.4** Design/Builder's Change Order Requests shall be referred by the Town to Town's Project Representative by the Town for review and recommendation. Written notice of

Town's Project Representative's recommendation shall be delivered to the Town Manager within seven (7) working days of receipt of a written request by the Town. The Town Manager will review the recommendation and make a final decision on the Change Order Request. The Town Manager's decision shall be final.

**7.5** It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications. No adjustment in the GMP or the Substantial Completion Date, shall be made for any such refinement or detailing unless (a) such refinement or detailing results in changes in the scope, quality, function and/or intent of the Plans and Specifications not reasonably inferable or anticipatable by a Design/Builder of the Design/Builder's experience and expertise, (b) the Design/Builder submits a Change Order Request to the Town pursuant to Section 7., and (c) Town agrees to the Change Order Request.

**7.6** In the event that changes in the Work are required on an emergency basis in order to protect the health and safety of the public, the Design/Builder shall proceed at the written direction of the Town's Representative without a written Change Order from Town. The Design/Builder shall keep separate records of all costs and time required to perform the emergency Work. Upon the conclusion of the emergency, the Design/Builder shall submit a Change Order Request to the Town pursuant to Section 7.3.

**7.7** Approval of any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the GMP, the Substantial Completion Date, the Contract Time, subject to performance thereof and payment therefore pursuant to the terms of this Agreement and such Change Order.

## **8. PAYMENTS.**

**8.1** In full consideration of the full and complete performance of the Work and all other obligations of the Design/Builder hereunder, Town shall pay to the Design/Builder the GMP specified in Section 1.5.1 of this Agreement, subject to additions and deductions as provided in this Agreement and evidenced by executed Change Orders.

**8.2** On or before the first day of each month during the performance of the Work, or such other day of the month agreed to by the parties, the Design/Builder shall submit to the Town for its approval an original Request for Payment in the form attached as Exhibit "C". Submission of any original certificates, waivers of liens and claims, or other documents required in this Agreement to be submitted, is a condition precedent to Town's obligation to pay Design/Builder hereunder. Fifteen (15) days prior to the first Request for Payment, the Design/Builder shall prepare, and submit to Town for its approval a schedule of values allocating the entire GMP among the various portions of the Work (the "Schedule of Values"). The Town shall have fourteen (14) days to review and approve the Schedule of Values. If the Town does not approve the Design/Builder's submitted Schedule of Values, Design/Builder and Town shall work together to develop a Schedule of Values acceptable to all parties. The Schedule of Values approved by Town shall be used as a basis for reviewing the Design/Builder's Request for Payment. The Request for Payment shall show a complete breakdown of (a) the requested costs for planning, design, engineering and construction of the

Project components including all labor and Materials, (b) the actual portion of the Work completed and the amount due, (c) the share of the GMP allocated to that portion of the Work as set forth in Schedule of Values, and (d) such supporting evidence as may be required by Town including, but not limited to, the documents set forth in Section 8.9. The Request for Payment shall constitute a representation to the Town that (i) the Work has progressed to the point indicated, (ii) the quality of the Work is in accordance with the Plans and Specifications, and (iii) all monies previously reimbursed by the Town to the Design/Builder have been disbursed to the appropriate Subconsultants, Subcontractors, materialmen, vendors and miscellaneous suppliers based upon the prior Request for Payment. Provided that the Design/Builder submits all required documentation as required herein, Town shall tender all payments to the Design/Builder within thirty (30) calendar days of receipt of the Request for Payment less any retainage required by Section 8.5 below and minus amounts, if any, for which Town has withheld funds pursuant to its rights under any portion of the Contract Documents. Inadequately supported charges are subject to disallowance, however, Town will make payments of the balance of the Request for Payment when such amounts are approved. The Request for Payment shall also include the cost of Materials, verified by invoice, not incorporated in the Work, but delivered and suitably stored at the Project location or at some other location approved by Town.

**8.3** The Design Consultant shall review and provide recommendation for payment to the Town's Project Representative. Town's Project Representative may make such exceptions as are reasonably deemed necessary or appropriate under the state of circumstances then existing. In no event shall Town be required to make payment for items to which Town reasonably takes exception.

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

**8.5** The Design/Builder agrees that ten percent (10%) of the amount due for Work, (including self-performed Work) as set forth in each Request for Payment shall be retained by Town until Final Payment (as defined in Section 8.6). If the Design/Builder has furnished Bonds in accordance with Section 12.1, and the Design/Builder is performing satisfactorily, upon Substantial Completion, Town may elect to reduce the amount retained in its sole and absolute discretion. All requests for retainage reductions must be made in writing prior to invoicing for same. Town may, but shall not be obligated to, request consent of the Design/Builder's surety to such reduction. However, the Design/Builder shall remain liable for Subcontractor's Work and for any unpaid laborers, vendors, materialmen, suppliers or Subcontractors in the event it is later discovered that said Work is deficient or that any of said laborers, vendors, materialmen, suppliers, or Subcontractors did not receive payments due them on the Project.

**8.6** Within thirty (30) days after Final Completion of the Work and acceptance thereof by Town or as soon thereafter as possible, the Design/Builder shall submit a final

request for payment (“Final Request”) which shall set forth all amounts due and remaining unpaid to the Design/Builder (including the unpaid portion of the retainage) and shall include a set of as-built Plans and Specifications as described in Section 15 of this Agreement. Upon approval of the Final Request by Town, Town shall pay to the Design/Builder the amount due under such Final Request (“Final Payment”) within thirty (30) days of the satisfaction of requirements for Final Payment as set forth in Section 8.7 below.

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

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

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

Town, in its reasonable discretion, shall determine the value associated with conditions a through d above and shall reduce Design/Builder's payment by the determined amount.

**8.9** Design/Builder shall use the sums paid to it pursuant to this Section 8 solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the Work in accordance with the Plans and Specifications, and Addenda and payment of bills incurred by the Design/Builder in performance of the Work. With the submission of each Request for Payment the Design/Builder shall furnish to the Town a Certificate of Design/Builder & Partial Waiver of Lien on the form attached hereto as Exhibit "F" and a certified statement accounting for the disbursement of funds received from Town. As a condition precedent to the receipt of Final Payment, all such parties shall submit a full and final waiver and release of mechanic's lien rights for all sums due under their respective Subcontractor Contracts, purchase orders or other agreements. However, no provision hereof shall be construed to require Town to see to the proper disposition or application of the monies so advanced to the Design/Builder, except to the extent provided in Section 8.7.

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

**8.11** Notwithstanding anything herein to the contrary the Work shall not include and Design/Builder shall not be reimbursed for the following:

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

**8.11.2** The services and related expenses of the Design/Builder's purchasing, secretarial, estimating and accounting departments and clerical staff at the Design/Builder's general offices or any established branch offices. These services shall include all costs associated with computer equipment and related expenses, copying equipment, fax charges (either by page or machine costs), CADD equipment (unless approved in writing by Town prior to invoicing for same), signage, professional association costs (including, but not limited to, AGC/ABC Fees), bonding charges (including, but not limited to, Fidelity Bonds on office and/or job site personnel), and/or other related expenses.

**8.11.3** The use of capital including interest employed for the Work.

**8.11.4** Amounts required to be paid by the Design/Builder for federal, state or local income or franchise taxes.



**8.11.5** Costs due to the negligence of the Design/Builder, any Subconsultant or Subcontractor or supplier employed by the Design/Builder or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials and equipment wrongfully supplied, or making good any damage to property.

**8.11.6** Costs in excess of the sum of the GMP for the Work.

**8.11.7** Entertainment and meal expenses and charges of a personal nature.

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

**8.11.9** Bonuses, profit-sharing or other special labor charges.

**8.11.10** Any legal fees and accounting fees.

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

**9. SUBCONTRACTOR AND SUBCONSULTANT CONTRACTS AND PURCHASE ORDERS.**

**9.1** Within thirty (30) days after execution of this Agreement, the Design/Builder shall prepare and submit for Town's approval the names of the persons or entities proposed by the Design/Builder to furnish materials, equipment, or services for each portion of the Work. The Design/Builder shall contract solely in its own name and behalf, and not in the name or behalf of Town with the selected Subcontractor or Subconsultant. At a minimum, the Subcontractor Contract and Subconsultant Contract shall provide that the Subcontractor or Subconsultant, as applicable, shall perform its portion of the Work in accordance with all applicable provisions of this Agreement and the other Contract Documents, that Subcontractor or Subconsultant is bound to the Design/Builder to the same extent as the Design/Builder is bound to Town, shall provide for termination of the Subcontractor Contract and Subconsultant Contract by the Design/Builder in the same manner and method as provided in Section 37 of this Agreement, and shall further provide that, in the event this Agreement is terminated for any reason, that the Subcontractor or Subconsultant shall, at Town's option, perform its Subcontractor Contract or Subconsultant Contract for Town without additional or increased cost, provided the Subcontractor or Subconsultant is paid in accordance with its Subcontractor Contract or Subconsultant Contract. The Design/Builder shall sign and cause each Subcontractor and Subconsultant to sign an Assignment of Rights Agreement in the form attached hereto as Exhibit "H" (any cost for execution of said assignment will be borne by the Design/Builder and included in the GMP). Nothing contained herein shall, however, create any obligation on Town to assume any Subcontractor Contract or Subconsultant Contract or make any payment to any

Subcontractor or Subconsultant unless Town chooses to request Subcontractor or Subconsultant to perform pursuant to this Section 9.1 or as otherwise provided in this Agreement, and nothing contained herein shall create any contractual relationship between Town and any Subcontractor or Subconsultant.

**9.2** The Design/Builder shall not contract with any Subcontractor, Subconsultant, materialman, vendor, or supplier to whom Town has made reasonable objection or with whom the Town could not lawfully enter into a contract.

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

## **10. INSURANCE.**

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

**10.2** Design/Builder shall maintain the coverages for insurance as required by Exhibit "I" as set forth in this Section 10.2 and thereafter during any and every period when Design/Builder and/or any of its Subconsultants and/or Subcontractors are performing any Work or furnishing any services pursuant to the Contract Documents. Upon execution of this Agreement, Design/Builder shall provide or cause to be provided the workers' compensation insurance, comprehensive general liability insurance, business automobile insurance, professional liability insurance and the umbrella liability insurance policies. Immediately following the issuance of the Notice to Proceed for the Construction Work, Design/Builder shall provide the builder's risk insurance policies; provided, however, no Construction Work shall be performed unless and until the builder's risk insurance policy is provided to the Town in accordance with this Agreement.

## **11. INDEMNITY.**

**11.1** In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Design/Builder agrees to indemnify, protect, defend, and hold harmless the Town its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Design/Builder and other persons employed or utilized by the Design/Builder in the performance of the Agreement.

**11.2** The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or

for the Design/Builder and/or any Subcontractor or Subconsultants under worker's compensation acts, disability benefit acts, or other employee benefit acts.

**11.3** In the event that any claims are brought or actions are filed against the Town with respect to the indemnity contained herein, the Design/Builder agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed.

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

**11.5** In addition to the indemnification provided in Section 11.1, Design/Builder agrees to indemnify, protect, defend, and hold harmless the Town its elected officials, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused, resulting, arising from or related to:

**11.5.1** Design/Builder infringing on any patent pursuant to Section 3.4 of this Agreement; and

**11.5.2** Design/Builder's failure to pay taxes as required by Section 3.15 of this Agreement; and

**11.5.3** any improperly filed lien pursuant to Section 16 of this Agreement; and

**11.5.4** Design/Builder taking part in any of the activities prohibited in this Section 19.1 of this Agreement (collectively "Environmental Claims"); and

**11.5.5** the Design/Builder's failure to stop the Work upon encountering a Hazardous Substance at the Project, pursuant to Section 19.2 of this Agreement; and

**11.5.6** Design/Builder's, or its Subconsultant's or Subcontractor's performance of the construction pursuant to Section 23.1 of this Agreement.

## **12. BONDS.**

**12.1** Pursuant to and in accordance with Section 255.05, Florida Statutes, the Design/Builder shall obtain before the issuance of the first Notice to Proceed and thereafter at all times during the performance of the Construction Work maintain a separate performance bond and labor and material payment bond for the Construction Work each in an amount equal to one hundred percent (100%) of the GMP and each in the form attached hereto as Exhibits "J-1" and "J-2" or in other form satisfactory to Town. Upon Substantial Completion, the Design/Builder shall provide the Town with a maintenance bond for the Construction Work

each in an amount equal to one hundred percent (100%) of the GMP in the form attached hereto as Exhibit "J-3" (all of the bonds referenced in this Section 12.1 are collectively referred to herein as the "Bonds"). The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the GMP. Within ten (10) days of issuance of the Bonds, Design/Builder shall record all bonds required by the Agreement in the public records of Miami-Dade County.

**12.2** Prior to performing any portion of the Construction Work, the Design/Builder shall deliver to Town the Bonds (except the maintenance bond) required to be provided by Design/Builder as set forth in Section 12.1.

**12.3** If notice of any change affecting the general scope of the Work, the GMP, or the provisions of the Contract Documents is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be Design/Builder's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

**13. INDEPENDENT CONTRACTOR.** In performing its obligations hereunder, the Design/Builder shall be deemed an independent contractor and not an agent or employee of Town. The 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 under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

**14. INSPECTIONS AND AUDIT.**

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

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

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

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

Subconsultants shall preserve all such records and supporting documentation for a period of three (3) years after the Final Payment. The Design/Builder further grants to Town the authority to enter its premises for the purpose of inspection of such records and supporting documentation or, at the Design/Builder's option, Design/Builder may make such records and supporting documentation available to Town at a location satisfactory to Town. For purposes of this Agreement, a major Subcontractor or major Subconsultant is a Subcontractor or Subconsultant that performs more than ten percent (10%) of the Design Services or Construction Work, as applicable.

**14.5** Town will audit Design/Builder's and the other parties' records for purpose of adjustment to Design/Builder's payments under this Agreement, if at all, within three (3) years after Final Payment under this Agreement.

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

**16. NO LIENS.**

**16.1** Design/Builder acknowledges and agrees that neither Design/Builder or any of Design/Builder's Subcontractors or vendors shall have any rights to lien Town's property afforded under Chapter 713, Florida Statutes, as the Town is exempt from the same. Design/Builder further acknowledges and agrees that the Work to be performed hereunder is for the construction of a public building and that the Design/Builder shall comply with the requirements of Section 255.05, Florida Statutes, including but not limited to, the provision of bonds and payment of claims. The Design/Builder hereby waives, releases, and relinquishes any right to claim or file a mechanic's or materialmen's lien against the Work or any portion thereof, the Project Location or the County including, but not limited to, any rights the Design/Builder may have under Chapter 713, Florida Statutes. This waiver and relinquishment of Design/Builder's rights to claim a mechanic's lien is made for good and valuable consideration and in recognition that Town would not enter into this Agreement without such waiver and relinquishment. The Design/Builder shall include a provision substantially similar to this Section 16.1 in each of its Subcontractor Contracts and purchase orders, requiring Subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Project Location and to look solely to the credit of the Design/Builder or its surety for payment of any sums due on the Project.

**16.2** The Design/Builder shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work or the Town's property. If any laborer's, materialmen's, mechanic's, or other similar lien or claim

thereof is filed and if the Design/Builder does not cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, Town shall have the right to pay all sums necessary to obtain such release and discharge and deduct all amounts so paid from the next payment due the Design/Builder under this Agreement. If any such lien is filed or otherwise imposed, at the request of Town, the Design/Builder shall cause such lien to be released and otherwise discharged.

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

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

**19. HAZARDOUS SUBSTANCES.**

**19.1** The Design/Builder agrees that it shall not transport to, use, generate, dispose of, or install at the Project Location any Hazardous Substance, as defined in Section 19.4, except in accordance with applicable Environmental Laws. Further, in performing the Work, the Design/Builder shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any watercourse or ground water, except in accordance with applicable Environmental Laws.

**19.2** In the event the Design/Builder encounters on the Project Location any Hazardous Substance, or what the Design/Builder reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in a manner violative of any applicable Environmental Laws, the Design/Builder shall immediately stop Work in the area affected and report the condition to Town in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of Town if in fact a Hazardous Substance has been encountered and has not been rendered harmless.

**19.3** An extension of time plus payment of actual audited costs and reasonable itemized general conditions including demobilization costs shall be the Design/Builder's sole remedy for any delay arising out of the encountering and/or rendering harmless of any Hazardous Substance at the Project Site. A Change Order will only be issued if the delay

affects the critical path for the Project and the Change Order is submitted in accordance with Section 7 of this Agreement. Town and the Design/Builder may enter into an agreement for the Design/Builder to remediate and/or render harmless the Hazardous Substance, but the Design/Builder shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Design/Builder shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

**19.4** For purposes of this Agreement, the term “Hazardous Substance” shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which are defined in or included under or regulated by any local, state, or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, Chapters 24 and 26A of the Miami-Dade County Code of Ordinances, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), The Resource Conservation and Recovery Act (“RCRA”), The Toxic Substances Control Act (“TSCA”), The Clean Water Act (“CWA”), The Clean Air Act (“CAA”), and The Marine Protection Research and Sanctuaries Act (“MPRSA”), The Occupational Safety and Health Act (“OSHA”), The Superfund Amendments and Reauthorization Act of 1986 (“SARA”), Chapters 161, 253, 373, 376 and 403, Florida Statutes, the rules and regulations of the Florida Department of Environmental Protection, or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as “Environmental Laws”). It is the Design/Builder’s responsibility to comply with this Section 19 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

## **20. COMPLIANCE WITH LAWS AND GRANTS.**

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

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

**20.3** The Design/Builder agrees that all of the Design/Builder’s Services and the Work shall comply with all applicable laws, statutes, ordinances, codes, executive orders, rules, regulations including without limitation, those adopted by the Town, all Environmental Laws

as defined in Section 19.4, and the federal and State of Florida “Right to Know” laws related to Hazardous Substances in the workplace.

**20.4** The Design/Builder shall also comply with the Trench Safety Act set forth in Sections 553.60 through 553.64, inclusive, Florida Statutes, and OSHA Standard 29 C.F.R. § 1926.650 Subpart P. In order to evidence the Design/Builder’s intent to comply with the foregoing, upon execution of this Agreement, Design/Builder shall also execute and deliver to the Town a Trench Safety Act Compliance Statement attached hereto as Exhibit “L” and by this reference made a part hereof. Without limiting the foregoing, at all times during performance of the Work, under no circumstances shall any trench(es) remain open overnight.

**20.5** If any grants are obtained for this Project, Design/Builder agrees to abide by the conditions in the grant document. The Town shall provide Design/Builder with grant documents, to be included as part of this Agreement, within 10 days of notice of the receipt of any grant funding.

## **21. PERSONNEL.**

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

**21.2** The Design/Builder agrees that in the performance of the Work called for by this Agreement, it will employ only such labor, and engage Subconsultants and Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project Location or on any other building, structure, or other improvement which the Design/Builder or any other Design/Builder may then be erecting or altering on behalf of Town. The Design/Builder agrees that it shall not employ any labor that will interfere with the introduction and storage of materials and the execution of Work by other Subconsultants and Subcontractors.

## **22. SAFETY AND PROTECTION.**

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

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

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



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

**22.2** Design/Builder shall comply with applicable laws and regulations of any public body having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, materialman, supplier, vendor, or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Town has issued a notice to Design/Builder that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion in Section 6.2).

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

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

**22.5 Emergencies.** In emergencies affecting the safety or protection of persons or the construction or property at the Project Site or adjacent thereto, Design/Builder, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Town prompt written notice if Design/Builder believes that any significant changes in the construction or variation from the Contract Documents have been caused thereby. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Change Order may be requested by Design/Builder pursuant to Section 7 of this Agreement.

## **23. USE OF SITE AND OTHER AREAS.**

**23.1** Design/Builder shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas permitted by the Town and other land and area permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber any such land or area's with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or any adjacent land

or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceedings or at law.

**23.2** During the performance of the Work, Design/Builder shall keep the Project Site free from accumulations of waste materials, rubbish and other debris resulting from the construction. At the completion of the construction Design/Builder shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment, temporary construction and machinery and surplus materials. Design/Builder shall leave the Project Site clean and ready for occupancy by Town at Substantial Completion. Design/Builder shall restore to original condition all property not designated for alteration by the Contract Documents.

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

**23.4** Any construction within the public right of way that would affect the flow of pedestrian or vehicle movement must have a maintenance of traffic (MOT) plan approved by the Town's Project Representative.

## **24. RELATED CONSTRUCTION AT SITE.**

**24.1** Town may perform other work related to the Project at the Project Site by Town's own forces, or let other direct contracts therefore or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents then (a) written notice thereof will be given to Design/Builder prior to starting any such other work and (b) Design/Builder may make a request for a Change Order for additional time only as provided in Section 7 if Design/Builder believes that such performance will involve additional time and the parties are unable to agree as to the amount or extent thereof. All Contractors or vendors performing Work related to the Project at the Project Site shall have insurance coverage at such minimums as is required of Contractor under this Agreement.

**24.2** Design/Builder shall afford each other contractor who is a party to such a direct contract with Town and each utility owner (and Town, if Town is performing the additional work with its employees) proper and safe access to the Project Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the construction with theirs. Such contractors and utility owners shall be required to comply with Design/Builder's rules and regulations applicable to the Project Site including without limitation all safety requirements. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their

work with the written consent of Town and the others whose work will be affected. The duties and responsibilities of Design/Builder under this Section 24 are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Town and such utility owners and other contractors.

**24.3** If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Section 24, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to the Town in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

**24.4 Coordination.** If Town contracts with others for the performance of other work on the Project at the Project Site, the following information will be provided in writing to Design/Builder prior to the commencement of such work:

**24.4.1** the individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

**24.4.2** the specific matters to be covered by such authority and responsibility will be itemized; and

**24.4.3** the extent of such authority and responsibilities will be provided.

**25. DESIGN/BUILDER'S WARRANTIES.** The Design/Builder represents and warrants to the Town:

**25.1** That it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to perform this Agreement; that it is able to furnish the Materials, and Services; that it is experienced in and competent to perform the Work contemplated by this Agreement; and that it is qualified to do the Work herein and is authorized to do business in the state in which the Project is located.

**25.2** That the Design/Builder holds a license, permit or other special license to perform the services included in this Agreement, as required by Chapter 287, Florida Statutes and other applicable laws, or employs or works under the general supervision of the holder of such license, permit or special license.

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

**26. DEFECTS.**

**26.1** The Design/Builder shall at its sole cost (a) replace any parts of the Work that fail to conform with the requirements of this Agreement that appear during progress of the Work on the Project; (b) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the date of Final Completion of the Work hereunder or within such longer period of time as may be set forth in the Plans, Specifications, and Addenda or other Contract Documents or as may be required by law; and (c) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by Town or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or are due to defects in the Work. The provisions of this Section 26 apply to Work performed by Subcontractors as well as Work performed directly by employees of the Design/Builder. In addition to the Design/Builder's responsibility to make repairs or redo Work under this Section 26, the Design/Builder shall also be responsible to Town for any damages suffered by Town as a result of said defects, provided however the Design/Builder will not be liable for any consequential damages suffered by the Town. The Design/Builder shall commence any Work required under this Section 26 promptly after notice from Town and shall diligently complete such Work in a good and workmanlike manner in compliance with the terms of this Agreement applicable to the Work generally.

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

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

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

**27. SIGNAGE.** Except for safety signage required by applicable laws which shall be installed in compliance with applicable laws, all construction signage, including, but not limited to that appearing on cranes and other construction equipment located at the Project Location, shall be subject to the prior written approval of Town. The Design/Builder recognizes that all signage (except safety signage required by applicable laws) may be disallowed, in Town's sole discretion, and that existing signage or advertising on construction equipment, field offices, trailers, construction fences, etc., may be required to be masked or

deleted, all at no cost or expense to Town. Notwithstanding the foregoing, the parties intend to erect a Project sign identifying the Town, Design/Builder and key participants in the Project. Such Project sign shall be installed in compliance with the Town's sign regulations.

**28. PRESS RELEASES.** If the Town elects to provide any press releases with regard to the Project, the Design/Builder shall coordinate any public announcement or publicity releases relating to the Project through the Town Manager. The Design/Builder shall also require Subconsultants, Subcontractors, materialmen, suppliers, and vendors to comply with this requirement.

**29. OWNERSHIP OF CONTRACT DOCUMENTS.** All Schematic and Design Development Documents, Plans and Specifications, detail drawings, cost estimates, and other drawings and documents prepared in connection with the Project shall be and remain the property of Town and are not to be used by the Design/Builder on any other project and shall be relinquished to Town at Final Completion or sooner if otherwise required by this Agreement, provided, however, that the Design/Builder may maintain one record set of as-built drawings.

**30. REPRESENTATIVES.**

**30.1** The name of the party who is to be the "Town's Representative" is shown in the Project Summary unless and until Town notifies the Design/Builder in writing that another individual shall be Town's representative. Town's Representative is authorized to recommend approval of Change Orders and increases in the GMP, but Change Orders and increases in the GMP shall be binding on Town only if approved by the Town Manager, or the Town Council as applicable.

**30.2** The name of the party who is to be the "Design/Builder's Representative" is shown in the Project Summary. Unless a corporate officer of the Design/Builder advises Town and the Design Consultant, in writing, of any limitations on the authority of Design/Builder's Representative, Design/Builder's Representative shall have full authority to execute any and all instruments requiring the Design/Builder's signature and to act on behalf of the Design/Builder with respect to all matters arising out of this Agreement.

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

**32. NONDISCRIMINATION.** The Design/Builder agrees that it will not knowingly violate any applicable laws or regulations prohibiting discrimination in employment in the performance of its Work under this Agreement.

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

34. **CONSTRUCTION OF TERMS; CONFLICTS.**

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

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

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

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

37. **TERMINATION.**

37.1 Town shall have the right at any time, on not less than seven (7) days prior written notice to the Design/Builder, to terminate this Agreement without cause and/or for Town's convenience including, but not limited to termination in the event that (a) the Project is abandoned by Town; and/or the Town Council terminates, suspends or modifies the Project. Upon receipt by the Design/Builder of such notice of termination (the "Date of Termination"),

the Design/Builder shall immediately discontinue the Work and remove its equipment and employees from the Project location. In the event of termination under this Section 37.1, the Design/Builder shall have the right, as its sole and exclusive remedy, to recover from Town payment for Work performed and accepted by the Town up to the Date of Termination (less any payment made to the Design/Builder by Town). In addition, without terminating this Agreement as a whole, Town may, for convenience, terminate a portion of this Agreement (by reducing, in such manner as Town deems appropriate, the scope of the Work to be performed by the Design/Builder). Termination of a portion of this Agreement shall be treated as a reduction in the scope of the Work, to which an equitable reduction shall be made to the GMP as evidenced by a Change Order.

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

**37.3** In the event of termination under Section 37.2, Town shall notify the Design/Builder's surety, and the Design/Builder's surety shall take over and perform this Agreement. The Design/Builder's surety shall continue to perform, on at least an interim basis, until such time as it makes other satisfactory arrangements for completion pursuant to the Bond obligations. If the Design/Builder's surety does not commence performance with adequate quantity and quality of personnel, equipment, and material to maintain the Contract Time, within five (5) days from the date of receipt of such notice of termination, Town may, without further notice to the Design/Builder or its surety, take possession of and use, without any rental obligation to the Design/Builder or any third party, all or any part of the Design/Builder's Materials and other property of every kind used by the Design/Builder in the performance of the Work and use such property in the completion of the Work, and complete the Work with its own forces or by engaging the services of other parties therefore. Any such act by Town shall not be deemed a waiver of any other right or remedy of Town under this Agreement, the Bonds or otherwise. If after exercising any such remedy the cost to Town of the performance of the balance of the Work is in excess of that part of the GMP which has not previously been paid to the Design/Builder hereunder, the Design/Builder and the Design/Builder's surety shall be

liable for and shall reimburse Town for such excess costs and all delay and damages suffered by Town as a result thereof.

**37.4** If after termination of this Agreement under Section 37.2, it is determined that the Design/Builder was not in default or that sufficient cause to terminate under Section 37.2 did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Town under Section 37.1, and that the Design/Builder agreed to Town's use of its materials and other property, in which case the Design/Builder shall be entitled to be paid a reasonable sum for Town's use of the Design/Builder's Materials and/or other property of the Design/Builder

**37.5** If Town fails to perform any of its obligations hereunder, the Design/Builder shall have the right to give Town written notice thereof, stating the nature of the default complained of. If Town does not cure such default within fifteen (15) days after receipt of such notice (or such longer period agreed to by the parties in writing if the nature of the default is such that it cannot be cured within fifteen [15] days and Town has commenced and is diligently proceeding to cure within the original fifteen [15] day period), the Design/Builder shall have the right, on fourteen (14) days written notice thereof to Town to terminate this Agreement.

**37.6** The Design/Builder shall have the right to terminate this Agreement upon thirty (30) days written notice if the Work is suspended by the Town for a period of ninety (90) consecutive days or more due to causes not the fault of the Design/Builder.

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

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

**37.9** In the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by the Design/Builder or any of its Subcontractors, Town may, at its option and without demand, terminate this Agreement for default pursuant to Section 37.2.

## **38. DISPUTE RESOLUTION.**

**38.1** This Agreement shall be governed by the laws of the State of Florida and the applicable laws of the United States of America. Any proceeding seeking to enforce any provision of, or based on any rights arising out of, this Agreement shall be brought against



any of the parties in the courts of the State of Florida, Miami-Dade County, or if it has or can acquire jurisdiction in the United States District Court of the Southern District of Florida and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action. As a prerequisite to filing any court action, the parties shall submit the dispute to pre-suit mediation. The disputing party shall be responsible for notifying the other party and for coordinating the mediation. The parties shall jointly select a mediator. If the parties cannot agree on a mediator, each party shall select a mediator and the two mediators so selected shall select a third mediator who shall act as the mediator for the mediation. The parties shall each bear their own costs of mediation, and shall split the cost of the mediator and mediation process equally between them. The parties hereby waive any objection to venue, provided, however, that such venue be consistent with the requirements of Section 47.025, Florida Statutes.

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

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

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

**41. ADDRESSES.** All invoices, contracts, copies of notices and other correspondence should be addressed to Town and the Design/Builder as follows:

If to Town:

Alex Rey, Town Manager  
Town of Miami Lakes  
6853 Main Street  
Miami, Florida 33014  
Telephone No. (305) 664-2345  
Fax No. (305) 853-5357

With a copy to:

Nina Boniske, Town Attorney  
Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.  
2665 South Bayshore Drive  
Suite 420  
Miami, Florida 33133  
Telephone No. (305) 854-2323  
Fax No. (305) 854-2323

If to Design/Builder:

Joe Cerrone, Pres  
3990 N. Powerline Road  
Oakland Park, FL 3309  
954-566-3335 - Phone  
954-566-3335 - Fax

**42. ATTORNEYS' FEES.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs, including the fees and expenses of any paralegal, law clerks, and legal assistants, and including fees and expenses charged for representation at the trial level, in all appeals, and in any bankruptcy proceedings.

**43. PUBLIC ENTITY CRIMES ACT.** Design/Builder represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Town, may not submit a bid on a contract with Town for the construction or repair of a public building or public work, may not submit bids on agreements of real property to Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Town, and may not transact any business with Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall be a material breach of the Agreement and result in termination of this Agreement and recovery of any monies paid by Town, and may result in debarment from Town's competitive procurement activities. In addition to the foregoing, Design/Builder further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Design/Builder has been placed on the convicted vendor list.

**44. WAIVER OF CONSEQUENTIAL DAMAGES.** Design/Builder agrees to waive all claims for consequential damages that may arise from this Agreement.

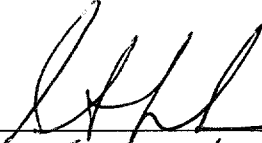
45. **WAIVER OF JURY TRIAL.** The Town and Design/Builder irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

46. **SURVIVAL OF PROVISIONS.** Any terms and provisions that require acts of the Design/Builder beyond the termination or expiration of this Agreement, including any insurance and indemnification provisions in sections 10 and 11, shall survive the termination of this Agreement.

**[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]**

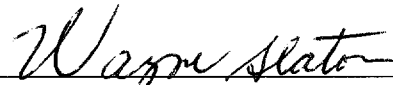
**IN WITNESS WHEREOF**, this Agreement is hereby executed as of the date first above set forth:

DESIGN/BUILDER

By:   
Name: STEVEN L. SIGMS  
Title: C.E.O.

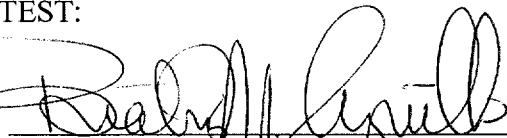
Dated: 4/17/2004, 2004

TOWN:  
**TOWN OF MIAMI LAKES,**  
a Florida municipal corporation

By:   
Wayne Slaton, Mayor


Dated: 4/23/, 2004

ATTEST:

By:   
Beatris M. Arguelles CMC, Town Clerk

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

WEISS SEROTA HELFMAN PASTORIZA  
GUEDES COLE & BONISKE, P.A.

By:   
Town Attorney

## EXHIBIT "A"

### CONTRACT TIMES

A. **Design Services.** Unless otherwise agreed to in writing by the parties, the Design Services shall be commenced pursuant to a Notice to Proceed from the Town's Project Representative to Design/Builder's Project Representative and completed within Sixty (60) days from the date set forth therein. Additionally, Section 4.2 of the Agreement contains certain milestone submittal dates for Design Development Documents and 100% Construction Documents.

B. **Construction Work.** Unless otherwise agreed to in writing by the parties, the Construction Work shall be commenced pursuant to a Notice to Proceed from the Town's Project Representative to Design/Builder's Project Representative with Substantial Completion to occur by February 1, 2005. Pursuant to Section 6.4 of the Agreement, Final Completion shall occur within thirty (30) calendar days following Substantial Completion.

C. **Liquidated Damages.** Pursuant to Section 6.6 of the Agreement, if the Design/Builder shall neglect, fail, or refuse to complete the Work by the Substantial Completion Date and the Final Completion Date, subject to any proper extension granted by Town, then the Design/Builder shall agree to pay to Town, or to cause the Design/Builder's surety to pay to Town, Liquidated Damages in the amount of (a) \$Two hundred fifty and 00/100 Dollars (\$250.00) per day commencing upon the first day following expiration of the Substantial Completion Date and continuing until the actual date of Substantial Completion, and (b) Two hundred and 00/100 Dollars (\$200.00) per day commencing upon the first day following expiration of the Final Completion Date and continuing until the actual date of Final Completion.

D. **Weather Delay Days.** The amount of days provided for weather delays, pursuant to Section 6.2 of this Agreement shall be 10 days.

**EXHIBIT "B"**  
**CHANGE ORDER**

## CHANGE ORDER

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**TO: Town of Miami Lakes**

**PROJECT: Royal Oaks Park**

**DESIGN/BUILDER:**

**DATE:** \_\_\_\_\_

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

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

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

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

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**TOWN OF MIAMI LAKES**  
a Florida municipal corporation

**DESIGN/BUILDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "C"**

**REQUEST FOR PAYMENT FORM**



**REQUEST FOR PAYMENT**

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**PROJECT TITLE: Royal Oaks Park**

**DESIGN/BUILD AGREEMENT DATED:**

**PROJECT NO:**

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Invoice #: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

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

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

**DESIGN/BUILDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

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**TO:**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park**

**DESIGN/BUILD AGREEMENT DATE:**

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

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

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

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

**THAT** the undersigned Subcontractor, in consideration of payment made to the undersigned of all sums due the undersigned for labor and/or materials supplied prior to, through and including the date of this release, and in connection with that certain project (the "Project") known as Royal Oaks Park, which Project is owned or leased by the Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Subcontractor does hereby acknowledge and represent that:

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

This instrument has been executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SUBCONTRACTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
MIAMI-DADE COUNTY    )

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

Notary Public: \_\_\_\_\_  
\_\_\_\_\_  
(name typed)

My Commission Expires: \_\_\_\_\_

**EXHIBIT "E"**

**CERTIFICATE OF DESIGN/BUILDER &  
FINAL WAIVER OF LIEN**

**CERTIFICATE OF DESIGN/BUILDER &  
FINAL WAIVER OF LIEN**

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park**

**DESIGN BUILD AGREEMENT DATE:**

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

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

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

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

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

including the date of this release, and in connection with that certain project (the "Project") known as Royal Oaks Park Design/Build, located at \_\_\_\_\_, which Project is owned or leased by the Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

**THAT** the undersigned Design/Builder does hereby acknowledge and represent that:

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

This instrument has been executed as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

DESIGN/BUILDER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
MIAMI-DADE COUNTY    )

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

Notary Public: \_\_\_\_\_  
\_\_\_\_\_  
(name typed)

My Commission expires: \_\_\_\_\_



**EXHIBIT "F"**

**CERTIFICATE OF DESIGN/BUILDER &  
PARTIAL WAIVER OF LIEN**

**CERTIFICATE OF DESIGN/BUILDER &  
PARTIAL WAIVER OF LIEN**

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park Design/Build**

**AGREEMENT DATE:**

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

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

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

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

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

including the date of this release, and in connection with that certain project (the "Project") known as Royal Oaks Park Design/Build located at \_\_\_\_\_, which Project is owned or leased by the Town, does hereby fully and finally waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

**THAT** the undersigned Design/Builder does hereby acknowledge and represent that:

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

This instrument has been executed as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

DESIGN/BUILDER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
MIAMI-DADE COUNTY    )

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

Notary Public: \_\_\_\_\_  
\_\_\_\_\_  
(name typed)

My Commission expires: \_\_\_\_\_

**EXHIBIT "G"**

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

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

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park Design/Build**

**AGREEMENT DATE:**

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

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

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

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

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

the date of this release, and in connection with that certain project (the "Project") known as Royal Oaks Park Design/Build, which Project is owned or leased by the Town, does hereby waive and release any and all liens, claims, actions, and demands, and all rights to same, against the Town, the Project, the real property upon which the Project is located and any and all other property owned by the Town, in connection with labor and/or services supplied by the undersigned to the Project prior to and through the date hereof; and

THAT the undersigned Subcontractor does hereby acknowledge and represent that:

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

This instrument has been executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SUBCONTRACTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
MIAMI-DADE COUNTY    )

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

Notary Public: \_\_\_\_\_  
\_\_\_\_\_  
(name typed)

My Commission Expires: \_\_\_\_\_

**EXHIBIT "H"**  
**ASSIGNMENT**

## ASSIGNMENT

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park Design/Build**

**DESIGN BUILD AGREEMENT DATE:**

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

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, \_\_\_\_\_, whose mailing address is \_\_\_\_\_ (the "Design/Builder"), does hereby TRANSFER, ASSIGN and CONVEY unto the TOWN OF MIAMI LAKES, a Florida municipal corporation, whose mailing address is 6853 Main Street, Miami Lakes, Florida 33014 (the "Town"), all of the rights, interests, benefits and privileges of the Design/Builder under (a) that certain Subcontractor Contract/Subconsultant Contract (the "Subcontract") dated \_\_\_\_\_ 20\_\_\_\_, by and between the Design/Builder, and

\_\_\_\_\_  
("the Subcontractor"), a copy of said Subcontract is attached hereto as Exhibit "A" and made a part hereof, providing for a portion of the design services, labor and/or materials that the Design/Builder is obligated to provide the Town under that certain Design Build Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, for the design and construction of a project and related improvements in 6853 Main Street, Miami Lakes, Florida 33014 Miami-Dade County, Florida (the "Project"), and (b) any and all payment and performance bonds issued in conjunction with the Subcontract. However, the Town does not hereby assume any of the Design/Builder's liabilities, duties or obligations under the Subcontract.

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

Subcontractor hereby agrees with the Town as follows:



That Subcontractor hereby consents to the foregoing assignment and agrees to notify the Town in writing at the same time Subcontractor notifies the Design/Builder of the occurrence of any failure of payment under the provisions of the Subcontract or of the occurrence of any other default by the Design/Builder under the provisions of the Subcontract.

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

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

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

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

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

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

That this Assignment does not create third party beneficiary rights under the Agreement

in favor of anyone, including Subcontractor.

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

TOWN OF MIAMI LAKES  
a Florida municipal corporation

DESIGN/BUILDER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
MIAMI-DADE COUNTY    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_, on behalf of TOWN OF MIAMI LAKES, a Florida municipal corporation, who [ ] is personally know to me or [ ] produced \_\_\_\_\_ as identification.

Notary Public: \_\_\_\_\_  
  \_\_\_\_\_  
  (name typed)

My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA     )  
  )  
COUNTY OF MIAMI-DADE    )

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

Notary Public: \_\_\_\_\_  
  \_\_\_\_\_  
  (name typed)

My Commission Expires: \_\_\_\_\_

## EXHIBIT "I"

### INSURANCE REQUIREMENTS

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

1. Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) with respect to Design/Builder, and One Million Dollars (\$1,000,000.00) with per occurrence respect to Subconsultants. The deductible for this policy shall not exceed Ten Thousand Dollars (\$10,000.00), without the prior approval of the Town Manager.
2. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
  - (a) Employers' Liability with a limit of One Million Dollars (\$1,000,000.00) each accident.
  - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
3. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability with respect to Design/Builder. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
  - (a) Premises and/or Operations;
  - (b) Independent Contractors;

- (c) Products and/or Completed Operations for contracts over Two Million Dollars (\$2,000,000.00) contractor shall maintain in force until at least three (3) years after completion of all work required under the Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage;
  - (d) Explosion, Collapse and Underground Coverages;
  - (e) Broad Form Property Damage;
  - (f) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;
  - (g) Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
  - (h) Town and Design/Builder are to be expressly included as “Additional Insureds” with respect to liability arising out of operations performed for Town and Design/Builder by or on behalf of Design/Builder and Subcontractors or acts or omissions of Town or Design/Builder in connection with general supervision of such operation.
4. Umbrella Liability, general aggregate of Ten Million Dollars (\$10,000,000.00).
5. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
- (a) Owned Vehicles.
  - (b) Hired and Non-Owned Vehicles.
6. Builder’s Risk Insurance for the construction of above ground buildings and/or structures is required. The coverage shall be “All Risk” form for One Hundred Percent of the completed value, including Town and Design/Builder as named insureds, with a deductible of not more than Ten Thousand Dollars (\$10,000.00) each claim.

- (a) Waiver of Occupancy Clause or Warranty-Policy must be specifically endorsed to eliminate any “occupancy clause” or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the Builder’s Risk Coverage will continue to apply until the Substantial Completion Date.
- (b) When the buildings or structures are located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structures, or, the maximum amount of flood insurance coverage available under the National Flood Program.

All required insurance shall be evidenced by valid and enforceable policies issued by a company licensed to do business in the State of Florida and otherwise acceptable to the Town. The Design/Builder shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days’ prior written notice to Town except in the case of non-payment by the Design/Builder for which ten (10) days’ prior written notice will be provided to Town; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to claims brought by the Town; and (iv) be effective for a period from the date of this Agreement through at least one (1) year after completion of the Work provided hereunder, except for professional liability insurance which shall be effective for a period from the date of this Agreement through at least five (5) years after completion of the Work provided hereunder and builder’s risk insurance which shall be effective through Substantial Completion. Insurance shall be provided to the Town at the times required by Section 10.2 of this Agreement at which time the Design/Builder shall deliver to Town a certificate of insurance naming Town as an additional insured as required hereunder for each policy of required insurance except for professional liability insurance. The minimum coverages and time periods specified above are not intended, and shall not be construed, to limit any liability of the Design/Builder to Town under this Agreement. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). Design/Builder is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by this Agreement. The cost of deductibles paid by Design/Builder shall be included in the GMP.

**EXHIBIT "J-1"**

**PERFORMANCE BOND**

# PERFORMANCE BOND

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park Design/Build**

**DESIGN BUILD AGREEMENT DATE:**

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STATE OF FLORIDA            )  
  )  
COUNTY OF MIAMI-DADE)

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

WHEREAS, the Principal has entered into that certain Design Build Agreement with the Town, dated the \_\_\_\_\_ day of 2003, for the construction of Royal Oaks Park Design/Build (the "Agreement"), which Agreement is by reference made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

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

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2003.**

PRINCIPAL

SURETY

DESIGN/BUILDER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT "J-2"**  
**PAYMENT BOND**

# LABOR AND MATERIAL PAYMENT BOND

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**TO: Town of Miami Lakes**

**DESIGN/BUILDER:**

**PROJECT: Royal Oaks Park Design/Build**

**DESIGN BUILD AGREEMENT DATE:**

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STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI-DADE         )

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

WHEREAS, the Principal has entered into that certain Design Build Agreement with the Town, dated the \_\_\_\_\_ day of 2003, for the construction of the Royal Oaks Park Design/Build (the "Agreement"), which Agreement is by reference made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

Agreement, contract documents, plans, specifications and/or drawings, or the work to be performed thereunder.

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

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2003.**

PRINCIPAL

SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "J-3"**  
**MAINTENANCE BOND**



Prior to the end of 365 calendar days following the Approval of the Improvements warranted by this bond, the Town Manager, or his/her designee shall inspect them for final release. If the investigation reveals any insufficiencies, the Principal shall be notified in writing, that the work is unacceptable.

The Principal and the Surety, jointly and severally, agree that the Town shall have the right to correct insufficiencies in design, workmanship and/or materials in the event the Principal should fail or refuse so to do within ninety (90) days after written notice by the Town Manager or his/her designee and, pursuant to public advertisement and receipt and acceptance of bids, as may be required by law cause said insufficiencies in design, workmanship and/or materials to be corrected. In such case, the Principal and Surety shall be jointly and severally liable hereunder to pay to and indemnify the Town upon the correction of said insufficiencies in design, workmanship and/or materials, the final total cost thereof including but not limited to engineering, legal and contingent costs together with any damage, direct or consequential, which the Town may sustain on account of the failure of the Principal to comply with all of the requirements hereof.

In the event the Town receives a notice of cancellation of this Surety Bond and a substitute form of security is not received by the Town sixty (60) calendar days prior to the cancellation date, the Principal shall be deemed in default and the provisions herein shall apply.

**IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2003.**

PRINCIPAL

SURETY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "K"**

**NOTICE TO PROCEED**

## NOTICE TO PROCEED

Dated \_\_\_\_\_, 200\_\_

TO:

ADDRESS:

PROJECT: Royal Oaks Park Design/Build

CONTRACT: Design Build Agreement/[Section 1.1(a)][Section 1.1(b)]

You are hereby notified that the Contract Times with respect to [Design Services] [Construction Work] under [Section 1.1(a)] [Section 1.1(b)] the above Design Build Agreement will commence to run on \_\_\_\_\_, 20\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents with respect to [Design Services] [Construction Work]. In accordance with the Agreement, the following are certain dates relative to the [Design Services] [Construction Work]: Insert milestone submittal dates for Design services and Substantial Completion Date for Construction Work as appropriate.

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

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

(if necessary, add other requirements)

**TOWN OF MIAMI LAKES,  
a Florida municipal corporation**

By: \_\_\_\_\_  
Town's Project Representative



**EXHIBIT "L"**  
**TRENCH SAFETY ACT**

**Trench Safety Act Compliance**

Dated \_\_\_\_\_, 200\_\_

TO:

ADDRESS:

PROJECT: Royal Oaks Park Design/Build

CONTRACT: Design Build Agreement

Design/Builder acknowledges that included in the GMP are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. Design/Builder further identifies the costs of such compliance to be summarized below:

	<b>Trench Safety Measure (Description)</b>	<b>Unit of Measure (LFSF)</b>	<b>Unit (Quantity)</b>	<b>Unit Cost</b>	<b>Extended Cost</b>
A.	_____	_____	_____	_____	_____
B.	_____	_____	_____	_____	_____
C.	_____	_____	_____	_____	_____
D.	_____	_____	_____	_____	_____
				<b>Total \$</b>	_____

If applicable, the Design/Builder certifies that all trench excavation done within its control in excess of five (5) feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Subarticle 125-4.1 (**TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL - TRENCH EXCAVATION**).

Failure to complete the above may result in a material breach of this Agreement.

Design/Builder agrees that the above safety compliances and costs are included in the GMP.

\_\_\_\_\_  
Design/Builder Representative

\_\_\_\_\_  
Date

**EXHIBIT "M"**  
**DETAILED SPECIFICATIONS**

## **Royal Oaks Park Design/Build Phase One**

### **Detailed Specifications**

#### General

1. Provide professional architectural, engineering, geotechnical, surveying, landscape architecture and other necessary professional services as needed to complete the design and construction of Royal Oaks Park Phase One. Secure all needed permits and provide quality assurance necessary to construct the project in accordance with all codes, permitting and industry standard requirements. The owner is under no obligation to provide any design, permitting, or construction related services beyond what has been provided.

#### Sitework (Fields, Shade Shelters, Parking Lot, Entrance Road, Open Areas)

1. Clear and grub entire site, dispose of all trash, roots, weeds, and other debris offsite at a location selected by the design/builder subject to approval by the Town Manager or Design Consultant, and applicable permits, codes and ordinances. Trash included in material trucked in by the owner shall be the responsibility of the owner to remove.

2. Demuck unsuitable peat material along park entrance to 10' beyond edge of pavement, as identified by Tierra boring B-4. Additionally, demuck southwest corner of field No. 1 as identified by Tierra boring B-1.

3. Provide sufficient fill material to properly balance the site and construct the project to the lines and grades as shown on Design Criteria drawing C-5 except that future play area and School Board site shall be graded to 4.5 NGVD.

4. Install drainage system as described in Design Criteria package (drawings C-5 and C-8) except that 425 linear feet of exfiltration trench shall be constructed in lieu of the original requirement of 850 linear feet. All other elements of the drainage system remain as detailed in the design criteria package including addendum #1, sketch-SK-1.

5. Construct playing fields per design criteria package including utilization of 6" of clean graded sand in general conformance with design criteria specification 02211, soil amendments, fumigation, fertilizers, herbicides, Tiftway 419 Bermuda grass springs at 800 bushels/acre and all necessary mowing and maintenance until acceptance by the Town. (Exception: Field number one will be sprigged and maintained by a third party).

6. Reconstruct perimeter berm along north, west and south sides. Berm shall have 3:1 side slopes with a 3 foot wide top. Complete construction of berm along north, west, and south sides where not currently constructed. There will be no berm along east property line. Note: Some grading may be required along east property line to obtain necessary drainage permits.

7. In areas not receiving Tifway 419 Bermuda grass, springs Bahia sod shall be provided. These areas shall include perimeter berms, open play areas, storm water detention areas and other general common areas. Note: The entire site shall be grassed.

8. Construct a 163 space surface parking lot as shown on the design criteria site plan sheet C-3 and detailed on design criteria sheet C-6. Construction shall include type D concrete curbing, 12" compacted subgrade, 8" limerock base and 2 each 3/4" type S-III asphalt lifts. Pavement marking and signage shall be provided. Pavement markings shall be with paint conforming to FDOT specifications for color and material.

9. Construct precast concrete pavers in locations shown on design criteria site plan (sheet C-3) and as detailed on design criteria sheet C-6, except that 2" asphalt layer shall not be used. Pavers shall be provided as detailed in design criteria section 05260.

10. Construct entrance drive (including circle) as shown on the design criteria site plan sheet C-3 and detailed on design criteria sheet C-6. Construct shall include type F and D concrete curbing, 12" compacted subgrade, 8" limerock base and 2 each 3/4" type S-III asphalt lifts. Pavement markings and signage shall be provided. Pavement markings shall be with paint conforming to FDOT specifications for color and material. Modify NW 87<sup>th</sup> Avenue curbing and sidewalk for entrance into site. Median improvements to NW 87<sup>th</sup> Avenue are not included.

11. Construct 8 foot wide, 4" thick concrete sidewalk as shown on the design criteria site plan sheet C-3 and detailed on design criteria sheet C-6. Include two each bleacher pads as detailed on design criteria sheet C-7.

12. Construct a 4' PVC coated chain link fence (LCX type 1) around the perimeter of the site as shown on design criteria site plan sheet C-3. Fence shall be placed on top of the berm along the north, west, and south perimeter. Provide fence as per design criteria detail sheet C-6. Also two (2) pedestrian gates and one (1) double leaf vehicular access gate shall be provided.

13. Provide four each 6 foot picnic tables. Tables shall have a galvanized frame and aluminum slats.

14. Provide two (2) each shade shelters complete with concrete slab, hose bib, GFI receptacle and light. Shelters shall be 18'x18' solar fabric "safeshade" supplied by Sports Systems International, or equal, with associated footing.

#### Site Furnishings

~~1. Provide and install two (2) sets of football goals. One set each shall be on fields 3 and 4. Goals shall be official high school, semi permanent, single post slingshot design meeting all NFSHA specifications. Goal shall be manufactured by Titan or approved equal model #FBGP600 with 4 wind direction flags and optional ground sleeves.~~

~~2. Provide and install eight (8) each player benches. Benches shall be as manufactured by GT Sports model #2138, 8' portable with seat and back or approves equal. Benches shall have a galvanized frame and back.~~

~~3. Provide and install eight (8) sets of soccer goals on the four fields, two sets on each field. Goals shall be as manufactured by GT Sports, model # 1630 portable (pair) or equal. Frames shall be constructed of 2 3/8" O.D. galvanized pipe. Include nets.~~

~~4. Remove and relocate existing tot lot to a location west of the future community center. This will include relocation of items feasible and installation of new items as needed such as concrete sidewalks, ADA surfaces, sand bed, fill material, etc.~~

### Electrical Systems

~~1. Provide and install new Musco TLC Glare controlled Sports Lighting System for (4) four new fields. All poles shall be of concrete construction designed to meet current wind loading requirements. The lighting level for each playing field shall be 30 foot candle initial average and less than 2.5:1 maximum to minimum initial ratio. A lease purchase agreement will be entered into between the Town and Musco Lighting System in the amount of \$241,230. All other cost shall be the responsibility of the design builder.~~

~~2. Provide a 10 year warranty on the Sports Lighting system with a minimum 2 lamp change out requirement.~~

~~32. Provide and install entrance roadway lighting system. The lighting level for the entrance roadway shall be 2 foot candles with a less than 10:1 max. to min. initial. Entrance lighting shall include 15' mounting height decorative concrete poles manufactured by Ameron Victorian III or equal. Fixture shall be metal halide 175 watt.~~

~~43. Provide and install parking lot lighting system. The lighting level for the parking lot shall be 3 foot candles with a less than 10:1 maximum to minimum initial. Parking lot lighting shall be mounted on a rectangular concrete pole manufactured by Ameron model MBO or approved equal. Fixtures shall be 400 watt metal halide as manufactured by Auraform One model No. AU1-400 MH-480-111-LG-PM-HS-SPC-CLA or approved equal.~~

~~54. Provide and install (2) two each conduit systems for future score boards. Conduit shall be 1" schedule 40 PVC and shall run from electrical room in concession building to future scoreboards locations. Conduit shall be stubbed and capped for future use and pull strings shall be provided.~~

~~65. Provide and install one (1) 4 inch underground conduit system for Bellsouth from new restroom/concession building, including room north and east to the existing Bellsouth distribution System.~~

76. Provide and install three (3) five inch underground conduits from future community center north to the edge of the project site. Both ends of the three (3) conduits shall be capped and properly identified for future use.

87. Provide and install (2) two five inch primary voltage underground conduits for new restroom/concession building South to South end of property.

98. Provide and install new 600 AMP, 277/480 Volt, 3-Phase 4 wire, main electrical service point in new concession building. Main electrical service shall provide power to center systems for soccer fields, entrance road and parking lot, future site pathway lighting, irrigation system, future GFI receptacles, future chilled water drinking fountains and future scoreboards.

### Irrigation Systems

1. Provide and install an irrigation system as shown on design criteria sheet IR-1, except the school board property and future play area shall not be irrigated. Adjustments must be made for tot lot relocation, new shade shelters, etc.

2. Provide and install a complete prefabricated skid mounted fiberglass enclosed pressure demand centrifugal with jockey pump system. The system shall include one (1) 20 HP pump and one (1) 5 HP jockey pump. The system shall be constructed and perform per the design criteria specifications "Dual Centrifugal Pump System with Jockey- Fiberglass enclosed Pressure Demand."

A single eight (8) inch well shall be provided capable of producing 450 gallons per minute at 80 psi.

### Concession/Restroom Building

1. Clear and Grub Site

2. Fill and compact to desired elevation and density.

3. Construct a CBS structure 2,091 square feet, with poured tie beams and filled cells 40" o/c with 1 #5 vertical.

4. Building includes one (1) men's and one (1) women's restroom, one (1) concession room, one (1) large and two (2) small storage rooms, one (1) electrical room, one (1) janitor's closet, and one (1) breezeway.

5. Foundation to be reinforced concrete footers with stem wall construction and floating 4" concrete slabs. Thickened edges will be provided at structurally bearing interior concrete walls and at breezeway entrances.

6. Roof to consist of a pre-fabricated wood truss system with 5/8" CDX plywood sheathing, 30# and 90# felt and flat concrete roof tiles.

7. Insulation shall be R-30 batts above the ceilings throughout.

8. Facia to be continuous 2"x 8" wood material with wood outriggers under soffit. Space between outriggers to be stained tongue and groove wood.

9. All doors to be hollow metal doors and frames, 3'-0" x 6'-8", except for door mark 100, which is 9'-0" x 7'-4" metal roll-up door. All doors shall be painted with oil-based paint on site, except for rolling door which shall be factory painted.

10. All interior walls to be CBS except wall between concession room and storage. This wall to be 4", 20 gauge metal studs and 5/8" drywall on each side.

11. Exterior wall finishes to be smooth stucco on top 8'-6" and simulated keystone on bottom 3'-0". Smooth stucco (5/8") to be painted with water based paint. Color to be selected by Town.

12. Interior wall, ceiling and floor finishes as follows:

Room 100     Exterior Storage- All four walls to receive smooth stucco finish. Ceiling to receive 1 hour fire rated gypsum wallboard. Floor to be sealed, smooth finished concrete with no baseboard. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

Room 101     Women's Restroom- All four walls to receive tile wainscot to 5'-8" above 5" high epoxy cove base, with smooth stucco above wainscot to a height of 11'-5" AFF. Ceiling to receive cement plaster on 5/8" plaster board. Floor and base to be tile. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

Room 102     Janitor's Closet- All four walls to receive smooth stucco finish. Ceiling to receive wire lath and smooth stucco finish. Floor to be sealed, smooth finished concrete with no baseboard. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

Room 103     Electrical Room- All four walls to receive smooth stucco finish. Ceiling to receive wire lath and smooth stucco finish. Floor to be sealed, smooth finished concrete with no baseboard. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

Room 104     Men's Restroom- All four walls to receive tile wainscot to 5'-8" above 5" high epoxy cove base, with smooth stucco above wainscot to a height of 11'-5" AFF. Ceiling to receive cement plaster on 5/8" plaster board.



Floor and base to be fluid applied epoxy. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

- Room 105 Concessions- North, East and West walls to be stucco and paint over block; South wall to be gypsum board and painted. Ceiling to be smooth stucco finish on metal lath.
- Room 106 Storage (Concessions)- South, East and West walls to be stucco and paint over block; North wall to be gypsum board and painted. Ceiling to be smooth stucco finish on metal lath.
- Room 107 Storage (Equipment)- All four walls to receive smooth stucco finish. Ceiling to receive wire lath and smooth stucco finish. Floor to be sealed, smooth finished concrete with no baseboard. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.
- Room 108 Breezeway- All four walls to receive smooth stucco finish. Ceiling to receive wire lath and smooth stucco finish. Floor to be broom finished concrete, no sealer with no baseboard. Walls and ceiling to be painted with one coat of sealer and two coats of semi-gloss, washable paint.

13. Plumbing fixtures shall be as follow:

Men's Restroom- One (1) Watercloset (floor mounted): American Standard # 2234.015 "Madera" White Vitreous China; one (1) Watercloset-HC (Floor Mounted): American Standard # 3043.102 "Madera" White Vitreous China; Two (2) Watercloset Seats; Church # 295SSC (or equal); Two (2) Flush Valves: Sloan Royal #111; Three (3) Wall Hung Urinals, 1 of which is H/C: American Standard #6541.132 "Allbrook" white Vitreous China; Three (3) Flush valves: Sloan Royal #186-1; Three (3) Urinal Carriers; J.R. Smith #0637; Three (3) Wall hung Lavatories, 1 of which is H/C: American Standard #0124.024 "Comrade" White Vitreous China, Faucet: American Standard #5501.224, Grid Drain: McGuire #155A (or equal), Skald Guard Insulation Kit: Truebro (or equal), Lavatory Carrier: J.R. Smith #0700; One (1) hose bibb.

Women's Restroom- Four (4) Watercloset (floor mounted): American Standard #2234.015 "Madera" White Vitreous China; One (1) Watercloset-HC (floor mounted): American Standard #3043.102 "Madera" White Vitreous China; Five (5) Flush valves: Sloan Royal #111; Three (3) Wall Hung Lavatories, 1 of which is H/C: American Standard #0124.024 "Comrade" White Vitreous China, Faucet: American Standard #5501.224, Grid Drain: McGuire #155A (or equal), Skald Guard Insulation Kit: Truebro (or equal), Lavatory Carrier: J.R. Smith # 0700; One (1) hose bibb.

Concession Room- One (1) drop-in Single Compartment Sink:Elkay #LRAD-17722 (or equal); One (1) Sink Faucet: Elkay LK-4121 (or equal); One (1) Basket Strainer: Elkay

LK-35L offset tailpiece w/strainer basket and rubber stopper; One (1) Mop Basin: Sterns-Williams cement with marble chips mop receptor, SB-902, 24"x24"x12" with tiling flanges on two sides, stainless steel cap, cast brass integral drain with chrome plated strainer; Service Faucet: Mustee #63.600A (or equal); Mop Hanger: Mustee #65.600 (or equal); Hose/Hose Bracket: Mustee #65.700 (or equal); One (1) hose bibb.

Building Exterior- Four (4) hose bibbs; One (1) Drinking Fountain (Bi-Level): Halsey-Taylor HAC-8F of FSQ akk stainless steel cooler with 2 stream, mound building, stainless steel projector; self-closing valve with automatic stream regulator; push bars in front and on both sides, for handicapped and standard use; (or equal).

14. Toilet Accessories to be as follows:

Men's Restroom: Two (2) Towel Dispenser/Waste Receptacle (Surface Mounted): Bobrick #B-3909; Two (2) Toilet Tissue Dispenser (Surface Mounted): Bobrick #B-2740 (locate in all toilet stalls); Grab bars (Surface Mounted): Bobrick #B-6806 (36" and 42") with concealed mounting anchors (locate in all ADA toilet stalls); Diaper Changing Station (Surface Mounted): Bobrick #B-2200 (locate one in each Public restroom); Three (3) Mirrors: Bobrick #B2908, 18"x30", ½"x ½" x ½" Frame (locate above all lavatories); Three (3) Soap Dispensers: Bobrick #B-4063, minimum capacity 30 ounces, as required; Two (2) Clothes Hooks: Bobrick #B-233, located at each toilet compartment door, at center of door, 48" above finished door.

Women's Restroom: Two (2) Towel Dispenser/Waste Receptacle (Surface Mounted): Bobrick #B-3909; Five (5) Feminine Napkin Disposal (Surface Mounted): Bobrick #B-270 (locate in Women's toilet stalls); Five (5) Toilet Tissue Dispenser (Surface Mounted): Bobrick #B-2740 (locate in all toilet stalls); Grab bars (Surface Mounted): Bobrick #B-6806 (36" and 42") with concealed mounting anchors (locate in all ADA toilet stalls); Diaper Changing Station (Surface Mounted): Bobrick #B-2200 (locate one in each Public restroom); Three (3) mirrors: Bobrick #B2908, 18"x30". ½"x ½" x ½" Frame (locate above all lavatories); Three (3) Soap Dispensers: Bobrick #B-4063, minimum capacity 30 ounces, as required; Five (5) Clothes Hooks: Bobrick #B233, located at each toilet compartment door, at center of door, 48" above finished floor.

15. Lighting to be as follows:

Restrooms: Two (2) Kenall 2 light, 1x4 surface mounted high abuse fixtures, #N1048P-232EBI-120 and two (2) Kenall 2 light, 1x4 surface mounted high abuse fixtures emergency fixtures, #XN1048C-232EBI-120 & B0 Bodine in each restroom. All fixtures vandal resistant.

Exterior Storage: Three (3) Columbia 2 light, 4' enclosed strip # LUN4-232-EB8120-GLR with high impact housing.

Janitor's Closet: One (1) Columbia 2 light, 4' enclosed strip #LUN4-232-EB8120-GLR with high impact housing.

Electrical Room: One (1) Columbia 2 light, 4' enclosed strip #LUN4-232-EB8120-GLR with high impact housing.

Breezeway: Eight (8) Kenall Millenium, semi-recessed #MR17RPSRC-MW-100MI-120, vandal resistant fixtures, White color; One (1) double emergency light package.

Concession Room:Four (4) Kenall 2 light, 1 x 4 surface mounted high abuse fixtures, #N1048P-232EBI-120, One (1) double emergency light package.

Storage Room and Equipment Storage Room: One (1) Columbia 2 light, 4' enclosed strip #LUN4-232-EB8120-GLR with high impact housing, in each room.

Building Exterior: Ten (10) Kenall Millenium #Mr17NPC-MW-70MI-120, surface wall mounted, vandal resistant fixtures.

16. Toilet partitions shall be floor mounted Plastic: High density polyethylene, with floor to ceiling pilasters, flush pane, solid plastic complete with door hardware including bumper/coat hooks. Hardware to meet accessibility requirements. Provide steel supports above ceiling to securely brace partitions.

17. Urinal screens shall be wall mounted solid plastic type.

18. Fire extinguishers shall be included, as required by code.

19. Provide and install letter identifying the project, to be placed at the exterior wall as indicated by the Owner. Letters shall be Gothic style, 8" high, 1-3/4" stroke, 1-1/2" depth, cast from aluminum alloy and approved by the Owner. Finish shall be baked enamel and the color shall be determined by the DCP and approved by the Owner. Sign location shall be determined by the Owner.

20. Provide plastic signs identifying each area with ADA accessible design.

21. Provide hurricane-proof/driving rain resistant louvers at exterior locations as per plans, based on Ruskin ELF6375DXD Drainable Stationary Louvers, or approved equal.

**EXHIBIT "N"**

**PROCEDURE FOR TOWN FURNISHED MATERIALS**

## PROCEDURE FOR TOWN FURNISHED MATERIALS

1. The Town reserves the right to require the Design/Builder to assign to the Town any of the Design/Builder's subcontracts, purchase orders or other agreements for the procurement of materials. Any materials purchased by the Town pursuant to such an assignment are hereinafter referred to as "Town Furnished Materials" and the responsibilities of the Town and the Design/Builder relating to such Town Furnished Materials shall be governed and controlled by the terms and conditions of this Procedure for Town Furnished Materials ("Procedure").

2. The Design/Builder shall provide the Town a list of all intended suppliers, vendors, and materialmen hereinafter referred to as "Supplier" for consideration with respect to the Town Furnished Materials. This list shall be submitted within ten (10) days of receipt of the Town's written request for such list. The Design/Builder shall include price quotations, specific descriptions of the materials to be supplied and the estimated quantities of the same.

3. Upon request by the Town, and in a timely manner, the Design/Builder shall prepare Purchasing Requisition Request Forms which shall, in a form acceptable to the Town Manager, specifically identify the materials which the Town may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include the following:

- a. The name, address, telephone number and contact person for the Supplier;
- b. Manufacturer or brand, model or specification number of the item;
- c. Quantity needed as estimated by the Design/Builder;
- d. Any sales taxes associated with such quote;
- e. Shipping and handling insurance cost;
- f. 100% Performance and Payment Bond Cost;
- g. Delivery dates as established by the Design/Builder;
- h. Any reduction in the Design/Builder's cost for both the Payment Bond and the Performance Bond; and
- i. Detail concerning bonds or letters of credit provided by the Supplier if included in his proposal.

The Design/Builder shall include copies of Suppliers' quotations, and specifically reference any terms and conditions which have been negotiated with the Suppliers' concerning letter of credit, terms, discounts, or special payments.

4. After receipt of the Purchasing Requisition Request Form, the Town shall prepare a Purchase Order for each item of material which the Town chooses to purchase directly. The Town shall issue the Purchase Order directly to the Supplier. The Town's Purchase Order shall be accompanied by a copy of the Town's Consumer's Certificate of Exemption and a certificate containing the Town's name, address, exemption number, effective date and expiration date of the exemption, and the signature of the Town's Representative. Pursuant to the Purchase Order, the Supplier shall provide the required quantities of material at the price established in the Supplier's quote to the Design/Builder, less any sales tax associated with such price. The Purchase Order shall also provide for reimbursement of the cost to the Supplier for providing required shipping and handling insurance from the Supplier to the Town for full value of the Purchase Order, unless such insurance costs were included in the quote provided to the Design/Builder. The Purchase Order shall also require the delivery of the Town Furnished Materials on the delivery dates provided by the Design/Builder in the Purchasing Requisition Request Form.

5. The Design/Builder shall be responsible for all matters relating to the receipt of Town Furnished Materials, including, but not limited to: assuring that the correct materials in the correct amounts are received timely with appropriate warranties; inspecting and accepting the goods; and unloading, handling, and storing the materials until installation. The Design/Builder shall coordinate delivery schedules, sequence of delivery, loading, orientation, and other arrangements normally required by the Design/Builder for the particular materials furnished. The Design/Builder shall remain liable for his or her negligence in meeting any of these obligations.

6. As Town Furnished Materials are delivered to the Project Site, or such other Town designated location, the Design/Builder shall visually inspect all shipments and verify that all necessary documentation accompanies the shipment and such shipment conforms to the Purchase Order. The Design/Builder shall verify the receipt and conformance of the shipment of Town Furnished Materials in writing; the Supplier shall then forward the invoice to the Town for payment.

7. The Design/Builder shall insure that Town Furnished Materials, conform to the Plans and Specifications, and are not patently defective. Defective and/or non-conforming materials shall not be used, and the Design/Builder shall promptly notify the Town of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. The Design/Builder shall be responsible for all damages should the Design/Builder fail to perform such inspection and otherwise incorporates such defective or nonconforming Town Furnished Materials into the Project.

8. The Design/Builder shall maintain records of all Town Furnished Materials it incorporates into the Project from the stock of Town Furnished Materials in its possession. The Design/Builder shall account monthly to the Town for any Town Furnished Materials delivered into the Design/Builder's possession, indicating portions of all such materials which have been incorporated into the Project.

9. The Design/Builder shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Design/Builder for resolution with the appropriate Supplier.
10. Notwithstanding the transfer of Town Furnished Materials by the Town to the Design/Builder's possession, the Town shall retain legal and equitable title to any and all Town Furnished Materials.
11. The transfer of possession of Town Furnished Materials from the Town to the Design/Builder shall constitute a bailment for the mutual benefit of the Town and the Design/Builder. The Town shall be considered the bailor and the Design/Builder the bailee of the Town Furnished Materials. The Town Furnished Materials shall be considered returned to the Town for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.
12. The Town shall purchase and maintain insurance sufficient to protect against any loss of or damage to the Town Furnished Materials. Such insurance shall cover the full value of any Town Furnished Materials not yet incorporated into the Project during the period between the time the Town first takes title to any of such Town Furnished Materials and the time when the last of such Town Furnished Materials is incorporated into the Project or consumed in the process of completing the Project. The Town shall be named as the insured party and shall receive all proceeds in case of loss.
13. The Town shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs resulting from any delay in the delivery of, or defects in, the Town Furnished Materials. The Design/Builder's sole and exclusive remedy shall be an extension of Contract Time in accordance with Section 6.7 of the Agreement.
14. On a monthly basis, the Design/Builder shall review all invoices for Town Furnished Materials delivered to the Project Sites, or other Town designated locations, during that month and provide the Town with an Advisory List indicating the Design/Builder's concurrence or objection to the Town's issuance of payment, based upon the Design/Builder's records of materials delivered and any defects detected in such materials. The Advisory List shall be accompanied by applicable Purchase Orders, delivery tickets, invoices, copies of written verification of receipt and conformance furnished pursuant to Paragraph 7, and such other documentation as may be reasonably required by the Town. Upon receipt and verification of the Advisory List, the Town shall prepare a check drawn to the Supplier. This check shall be released, delivered and remitted directly to the Supplier within forty-five (45) days from receipt by the Town of the Advisory List. The Design/Builder agrees to assist the Town to immediately obtain partial or final release of waivers as appropriate.

15. If the Town elects to provide Town Furnished Materials, the Design/Builder shall, in accordance with Section 7.3 of the Agreement, execute and deliver to the Town a deductive Change Order Request. The deductive Change Order Request shall reference the full value of all Town Furnished Materials to be provided by each Supplier from whom the Town elected to purchase material directly, plus all sales taxes associated with such materials, plus any savings to the Design/Builder in the cost of Payment and Performance Bonds associated with such Town Furnished Materials.

16. At the end of the Project, in accordance with Section 7 of the Agreement, the Town shall provide the Design/Builder with a deductive Change Order for the cost plus applicable sales taxes of any Town Furnished Materials not yet reflected in a previously executed Change Order. The Design/Builder shall return all unused Town Furnished Materials to the appropriate Supplier and shall refund all associated monies to the Town. If the Design/Builder is unable to facilitate such refund, the Town shall provide a deductive Change Order for the cost plus applicable sales taxes of all unused and unreturned Town Furnished Materials.



# ACORD CERTIFICATE OF LIABILITY INSURANCE

CSR PR  
RECRE-1

DATE (MM/DD/YYYY)  
03/19/04

**PRODUCER**  
P.J.K. INSURANCE, INC.  
2500 NORTH POWERLINE ROAD  
POMPANO BEACH FL 33069  
Phone: 954-979-5855 Fax: 954-979-6788

**INSURED**  
Recreational Design &  
Construction, Inc.  
3990 Powerline Rd  
Oakland Park FL 33309

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <b>STEADFAST</b>	
INSURER B: <b>LANDMARK INSURANCE CO.</b>	
INSURER C: <b>ASSURANCE CO OF AMERICA</b>	19305
INSURER D: <b>HARBOR SPECIALTY INS. CO.</b>	
INSURER E: <b>COLUMBIA CASUALTY INS. CO.</b>	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$10,000 Ded.  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	SCO5227438	03/15/04	03/15/05	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
					MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	037733871	03/12/04	03/12/05	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AUTO ONLY: AGG	\$
B	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	LHN025066	03/15/04	03/15/05	EACH OCCURRENCE	\$ 3,000,000
					AGGREGATE	\$
						\$
						\$
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	099000006248203	12/01/03	12/01/04	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$ 1000000
					E.L. DISEASE - EA EMPLOYEE	\$ 1000000
					E.L. DISEASE - POLICY LIMIT	\$ 1000000
E	<input type="checkbox"/> OTHER <input checked="" type="checkbox"/> Professional Liability (E&O)	11-404-50-42	10/01/03	10/01/04	Per Claim	\$1,000,000
					Aggregate	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Town of Miami Lakes is listed additional insured.

## CERTIFICATE HOLDER

MIAMILK

TOWN OF MIAMI LAKES  
6853 MAIN STREET  
MIAMI LAKES FL 33014

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Pattie J. Kane*  
 Pattie J. Kane, CEO

**This is the *front page* of the performance/payment bond issued in compliance with  
Florida Statute Chapter 255.05**

Surety Name: Fidelity & Guaranty Insurance Company  
10 Inverness Parkway, Suite 600  
Birmingham, AL 35242  
800-492-3770

Bond Number: 400TA1609

Contractor Name: Recreational Design & Construction, Inc.  
3990 N. Powerline Rd  
Oakland Park, FL 33309  
954-566-3885

Owner Name: Town of Miami Lakes  
6853 Main Street  
Miami Lakes, FL 33014  
305-558-8108

Project Number: N/A

Project Description: Design/Build Royal Oaks Park Phase One

Project Address: Royal Oaks Park, Miami Lakes, FL

Legal Description of Property: Royal Oaks Park, Miami Lakes, Miami-Dade  
County, FL

**This is the *front page* of the bond. All other pages are subsequent regardless of the  
pre-printed numbers.**

PERFORMANCE BOND

Bond #400TA1609

TO: Town of Miami Lakes

DESIGN/BUILDER: RECREATIONAL DESIGN & CONSTRUCTION, INC.

PROJECT: Royal Oaks Park Design/Build

DESIGN BUILD AGREEMENT DATE:

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

KNOW ALL MEN BY THESE PRESENTS: That **RECREATIONAL DESIGN & CONSTRUCTION, INC.**, of **Ft. Lauderdale**, of the County of **Broward**, and State of Florida, as Principal, and **FIDELITY & GUARANTY INSURANCE COMPANY**, authorized, licensed and admitted to do business under the laws of the State of Florida to act as surety on bonds, as Surety, are held and firmly bound unto Town of Miami Lakes, a Florida municipal corporation (the "Town"), as obligee, in the penal sum of **Two Million Eight Hundred Eighty-Four Thousand Thirty-nine and 00/100** Dollars (**\$2,884,039.00**) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents;

WHEREAS, the Principal has entered into that certain Design Build Agreement with the Town, dated the \_\_\_\_\_ day of 2003, for the construction of Royal Oaks Park Design/Build (the "Agreement"), which Agreement is by reference made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2003.

PRINCIPAL

SURETY

RECREATIONAL DESIGN & CONSTRUCTION, INC.  
DESIGN/BUILDER

FIDELITY & GUARANTY INSURANCE COMPANY

By: 

Name: STEVEN L SIMS

Title: C.R.D.

By: 

Name: Gerald J. Arch

Its: Attorney-In-Fact and  
Florida Resident Agent



Agreement, contract documents, plans, specifications and/or drawings, or the work to be performed thereunder.

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

PRINCIPAL

SURETY

RECREATIONAL DESIGN & CONSTRUCTION, INC.

FIDELITY & GUARANTY INSURANCE COMPANY

By:  CEO.

Name: Steven L. Siems

Title: C.E.O.

By: 

Name: Gerald J. Arch

Its: Attorney-In-Fact and  
Florida Resident Agent

**St Paul Surety**

St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company  
St. Paul Mercury Insurance Company  
Seaboard Surety Company

United States Fidelity and Guaranty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.  
St. Paul Medical Liability Insurance Company

Bond No. 400TA1609

**RIDER CONTAINING  
DISCLOSURE NOTICE OF TERRORISM COVERAGE**

This disclosure notice is required by the Terrorism Risk Insurance Act of 2002. No action is required on your part. This Disclosure Notice is incorporated in and a part of the attached bond.

You should know that, effective November 26, 2002, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by the Terrorism Risk Insurance Act of 2002. Under this formula, the United States reimburses 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

There is a cap on our liability to pay for such losses if the aggregate amount of insured losses under the Act exceeds \$100,000,000,000 during the applicable period for all insured and all insurers combined. In that case, we will not be liable for the payment of any amount which exceeds that aggregate amount of \$100,000,000,000.


The portion of your premium that is attributable to coverage for acts of terrorism is \$0.00.

**IMPORTANT NOTE: THE COST OF TERRORISM COVERAGE IS SUBJECT TO CHANGE ON ANY BOND THAT PREMIUM IS CHARGED ANNUALLY.**

SIGNED AND SEALED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SURETY: FIDELITY & GUARANTY INSURANCE COMPANY**

Signature:

  
**Gerald J. Arch**  
Attorney-in-Fact and  
Florida Resident Agent

Seaboard Surety Company  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company  
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 23739

Certificate No. 1943447

**KNOW ALL MEN BY THESE PRESENTS:** That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (*herein collectively called the "Companies"*), and that the Companies do hereby make, constitute and appoint

**G. W. Fitch, Gerald J. Arch, Michael A. Holmes, James F. Murphy, Michael Bonet, and Shawn A. Burton**

**Ft. Lauderdale Florida**

of the City of \_\_\_\_\_, State \_\_\_\_\_, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed and sealed this 13<sup>th</sup> day of February 2003.

Seaboard Surety Company  
St. Paul Fire and Marine Insurance Company  
St. Paul Guardian Insurance Company  
St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company  
Fidelity and Guaranty Insurance Company  
Fidelity and Guaranty Insurance Underwriters, Inc.



*[Signature]*  
PETER W. CARMAN, Vice President

*[Signature]*  
THOMAS E. HUIBREGTSE, Assistant Secretary

State of Maryland  
City of Baltimore

On this 13<sup>th</sup> day of February, 2003, before me, the undersigned officer, personally appeared Peter W. Carman and Thomas E. Huijbregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

**In Witness Whereof**, I hereunto set my hand and official seal.

My Commission expires the 1st day of July, 2006.



*[Signature]*

REBECCA EASLEY-ONOKALA, Notary Public



This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. on September 2, 1998, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that in connection with the fidelity and surety insurance business of the Company, all bonds, undertakings, contracts and other instruments relating to said business may be signed, executed, and acknowledged by persons or entities appointed as Attorney(s)-in-Fact pursuant to a Power of Attorney issued in accordance with these resolutions. Said Power(s) of Attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman, or the President, or any Vice President, or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the foregoing officers and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Attorney(s)-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and subject to any limitations set forth therein, any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached; and

**RESOLVED FURTHER**, that Attorney(s)-in-Fact shall have the power and authority, and, in any case, subject to the terms and limitations of the Power of Attorney issued them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by such Attorney(s)-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary of the Company.

I, Thomas E. Huijbregtse, Assistant Secretary of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc. do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



Thomas E. Huijbregtse, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 and ask for the Power of Attorney clerk. Please refer to the Power of Attorney number, the above-named individuals and the details of the bond to which the power is attached.