

RESOLUTION NO. 08-618

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE SELECTION OF PORTLAND SERVICES, LLC FOR THE CONSTRUCTION OF THE COMMUNITY CENTER AT ROYAL OAKS PARK; APPROVING THE CONTRACT BETWEEN PORTLAND SERVICES, LLC AND THE TOWN; AUTHORIZING THE TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") issued an Advertisement for Bids (the "Advertisement") for the construction of the Community Center at Royal Oaks Park on November 15, 2007; and

WHEREAS, on January 28, 2008, all bids were publicly opened and read, and the Town received twelve (12) Responsive and Responsible Bids from construction firms which were reviewed by the Town Manager; and

WHEREAS, after reviewing all bids submitted to the Town, the Town Manager recommends the selection of Portland Services, LLC; and

WHEREAS, the Town Council finds that approval of Portland Services, LLC, along with the Contract, 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 above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Portland Services, LLC. Portland Services, LLC, is hereby

selected to construct the Community Center at Royal Oaks Park within the Town of Miami Lakes.

Section 3. Approval of Contract. The Contract for construction of the Community center at Royal Oaks Park between the Town and Portland Services, LLC (the "Contract"), a copy of which is attached as Exhibit "A," 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 4. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract.

Section 5. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract.

Section 6. Execution of Contract. The Town Manager is authorized to execute the Contract on behalf of the Town, to execute any required agreements and/or documents, including any agreements required by Miami-Dade County Water and Sewer Authority, to implement the terms and conditions of the Contract and to execute any extensions and/or amendments to the Contract, subject to the approval as to form and legality by the Town Attorney.

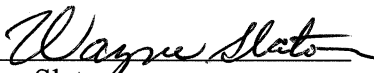
Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12th day of February, 2008.

Motion to adopt by Mary Collins, second by Nancy Simon.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	yes
Vice Mayor Nancy Simon	yes
Councilmember Roberto Alonso	yes
Councilmember Mary Collins	yes
Councilmember Robert Meador	yes
Councilmember Michael Pizzi	yes
Councilmember Richard Pulido	yes




Wayne Slaton
MAYOR

ATTEST:



TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



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

AIA Document A101™ – 1997

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the _____ day of _____
in the year of _____
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Town of Miami Lakes, Florida
15700 NW 87 Avenue
Miami Lakes, FL 33014

and the Contractor:
(Name, address and other information)

Portland Services, LLC
13250 SW128 Street, Unit #111
Miami FL 33196

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

The Project is:
(Name and location)

Royal Oaks Park Community Center
16500 NW 87 Avenue
Miami Lakes, FL 33014

The Architect is:
(Name, address and other information)

M.C. Harry & Associates, Inc.
2780 SW Douglas Road, Suite 302
Miami, FL 33133

The Owner and Contractor agree as follows.

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Inst.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement of the Work will be fixed in a notice to proceed issued by the Owner.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

Not Applicable

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 365 calendar days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Million, Two Hundred Forty-eight Thousand, Six Hundred Thirty-seven and 73/100 Dollars (\$ 2,248,837.73), subject to additions and deductions as provided in the Contract Documents.

(Base Bid A \$1,647,000 + Base Bid B \$402,137.73 + Owner Allowance \$150,000 + Alternate #1 \$39,000 + Alternate #3 \$10,500)

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner;
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

Alternate #1 Emergency Generator and enclosure as defined in the Contract Documents
Alternate #3 Plaza of concrete pavers as defined in the Contract Documents

§ 4.3 Unit prices, if any, are as follows:

Unit prices shall be as stated on the bid form submitted with the bid.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows-

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ^{tenth} day of a month, the Owner shall make payment to the Contractor not later than the ^{tenth} day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Not applicable

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

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ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations of the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative is:
(Name, address and other information)

§ 7.4 The Contractor's representative is:
(Name, address and other information)

*Ernesto Lopez, President.
1305 SW 120 St.
MIAMI, FL- 33176*

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____ and are as follows:

Document	Title	Pages
Section 00800	Supplementary Conditions	00800-1 through 00800-__

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
See Attachment No. 1 - List of Specifications		

§ 8.1.5 The Drawings are as follows, and are dated _____ unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
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See attachment No. 2 - List of Drawings.

§ 8.1.8 The Addenda, if any, are as follows:

Number	Date	Pages
1	November 28, 2007	
2	December 5, 2007	
3	December 19, 2007	
4	January 21, 2008	
5	January 24, 2008	

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, instructions to bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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SECTION 00800
SUPPLEMENTARY CONDITIONS

INTENT

- 1.01 These Supplementary Conditions amend and supplement the General Conditions defined in Section 00700 and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.
- 1.02 The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

**MODIFICATIONS TO AIA DOCUMENT A101 - OWNER-CONTRACTOR AGREEMENT
FORM**

3.01 ARTICLE 3 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A. Add the following Paragraphs:

1. 3.4: If the Contractor shall neglect, fail, or refuse to complete the Work by the Substantial Completion Date and the Final Completion Date, subject to any proper extension granted by the Owner, then the Contractor agrees to pay to the Owner, or to cause the Contractor's surety to pay to the Owner, the amounts specified in Paragraph 3.5 below, not as a penalty, but as liquidated damages for the damages ("Liquidated Damages") that would be suffered by the Owner as a result of delay for each and every calendar day that the Contractor shall have failed to complete the Work by the Substantial Completion Date or the Final Completion Date. The amounts are fixed and agreed upon by and between the Contractor and the Owner because of the difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and the amount is agreed to be the amount of damages that the Owner would sustain. The amount may be retained by the Owner from retainage without further notice from Owner.

2. 3.5: Pursuant to Paragraph 3.4 above, if the Contractor shall neglect, fail, or refuse to complete the Work by the Substantial Completion Date and the Final Completion Date, subject to any proper extension granted by the Owner, then the Contractor shall agree to pay to the Owner, or to cause the Contractor's surety to pay to the Owner, Liquidated Damages in the amount of (a) Five Hundred and 00/100 Dollars (\$500.00) per diem commencing upon the first day following expiration of the Substantial Completion Date and continuing until the actual date of Substantial Completion, and (b) Five Hundred and 00/100 Dollars (\$500.00) per diem commencing upon the first day following expiration of the Final Completion Date and continuing until the actual date of Final Completion. Notwithstanding the foregoing, the Contractor shall not be simultaneously liable for Liquidated Damages under both (a) and (b) above.

3.02 ARTICLE 7 - MISCELLANEOUS PROVISIONS

A. Delete Paragraph 7.2, and substitute the following:

1. Payments due and unpaid under the Contract shall not bear interest.

MODIFICATIONS TO AIA DOCUMENT A201 - GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

4.01 ARTICLE 1.1 - BASIC DEFINITIONS

A. Add the following subparagraphs:

1. 1.1.8 PRODUCTS
Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components required for reuse.
2. 1.1.9 FURNISH or SUPPLY
To supply and deliver, unload, inspect for damage.
3. 1.1.10 INSTALL
To unpack, assemble, erect, apply, place, finish, cure, protect, clean, and ready for use.
4. 1.1.11 PROVIDE
To furnish or supply, plus install.

4.02 ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

A. Add the following sentence to the end of Subparagraph 4.2.3:

1. In no event shall Owner or its representatives have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, since these are solely Contractor's responsibility except as provided in Subparagraph 3.3.1. Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

B. Add the following Sub-subparagraph 4.2.4.1:

1. 4.2.4.1: Copies of all notices required under this Contract delivered by one party to the Architect shall be simultaneously delivered to the other party. Upon request of Owner, Contractor will also furnish Owner with copies of any other items delivered to the Architect.

C. Add the following Subparagraph 4.2.14:

1. 4.2.14: Notwithstanding any other provision of this Contract to the contrary, the Architect shall have no authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or the Contract Time. In the event any such deviation is sought, prior written approval from Owner must be obtained.

- D. Add the following sentence to the end of Sub-subparagraph 4.3.7.2:
1. Abnormal weather conditions not reasonably anticipated shall mean weather conditions which prevent work on the Project and which have a direct effect on the Contractor's predefined critical work sequence. Contractor's schedule shall take into consideration normal seasonal weather conditions number of precipitation-days per month (as defined by the National Weather Service 30-year average) along with muddy site days directly related to the precipitation days-indicated.
- E. Subparagraph 4.4.3 is hereby deleted in its entirety.
- F. Paragraph 4.5 and all subparagraphs are hereby deleted in their entirety and replaced with the following:
1. 4.5: This Contract 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 Contract may be brought against any of the parties in the courts of the State of Florida, County of Miami-Dade, or if it has or can acquire jurisdiction in the United States District Court of the Southern District of Florida and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action. 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. Pending resolution of any dispute arising under this Contract, other than termination hereof, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments in accordance with the Contract Documents, except for performance and payment related to the disputed matter.
- G. Paragraph 4.6 and all subparagraphs are hereby deleted in their entirety.

4.03 ARTICLE 7 - CHANGES IN THE WORK

- A. Paragraph 7.2 and all subparagraphs are hereby deleted and replaced with the following:
1. 7.2 CHANGE ORDERS
 2. 7.2.1: From time to time, Owner 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 "A-7.2.1" and executed by an authorized representative of the Owner ("Change Order"), shall be binding on the Owner.

3. 7.2.2: Owner may order changes in the Work by initiating a change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the Contractor shall prepare a statement setting forth in detail, with a suitable detailed breakdown by trades and work classifications with respect to a change in the scope of the construction and a detailed breakdown of the time and expenses related to the design phase, the Contractor's estimate (the "Contractor's Estimate") of the changes in the Contract Sum attributable to the changes set forth in such Change Order Request and proposed adjustments, if any, to the Substantial Completion Date resulting from such Change Order Request. If the Owner and the Contractor agree on a cost ("Agreed Cost"), a Change Order shall be processed by the Owner and/or Design Consultant and delivered to the Contractor for signature. Contractor shall not commence changes in the Work until it receives Owner's written Notice to Proceed or the Change Order is executed. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the Contract Sum, the Substantial Completion Date, subject to performance thereof and payment therefore pursuant to the terms of this Contract and such Change Order. Work provided by unit price may be increased or decreased in quantity as directed by the Owner approval, provided that the basis for adjustment of the Contract Sum shall be the unit prices agreed upon by the Owner upon the date of this Contract.
4. 7.2.3: In the event the Owner and the Contractor cannot agree on any adjustment in the Contract Sum, extensions to the Contract Time, or adjustment to the Substantial Completion Date, the Contractor shall nevertheless proceed to perform the Work required by Owner's Change Order Request upon receipt of Owner's written Notice to Proceed. The Contractor shall keep separate records of all costs and time required to perform the Work required by the Change Order Request, and an equitable adjustment will be made upon agreement between the Contractor and Owner. The Contractor shall submit its time and material costs that accrue as a result of the Change Order Request on a weekly basis. If the Owner does not approve such submittals within seven (7) days following submission, the Contractor may cease the work related to such Change Order Request until the parties agree upon the terms and conditions of such Change Order Request.
5. 7.2.4: In the event that changes in the Work are required on an emergency basis in order to protect the health and safety of the public, the Contractor shall proceed at the written direction of the Owner's authorized agent without a written Change Order from Owner. The Contractor shall keep separate records of all costs and time required to perform the Work. After review and approval by the Owner, the Contractor shall invoice Owner in accordance on a time and materials basis. In the event that the work can be stopped without any further harm to the public but additional Work is necessary, the Contractor shall deliver the Contractor's Estimate to the Owner as soon as practical and the requirements of Paragraphs 7.2 or 7.3 shall be met before the Contractor resumes the changes to the Work.

6. 7.2.5: It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications, and Addenda. No adjustment in the Contract Sum or the Substantial Completion Date, shall be made unless (a) such refinement or detailing results in changes in the scope, quality, function and/or intent of the Plans and Specifications, and Addenda not reasonably inferable or anticipatable by a Contractor of the Contractor's experience and expertise, (b) the Contractor advises Owner in writing within ten (10) calendar days of the Contractor's receipt of said refinements and details that an adjustment is required, and (c) Owner agrees to the adjustment.
7. 7.2.6: Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement and release by the Contractor of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

4.04 ARTICLE 7.3 - CONSTRUCTION CHANGE DIRECTIVES

A. Add the following subparagraph:

1. 7.3.10: The Contract identifies the overhead and profit fees applicable for Changes in the Work, whether additions to or deductions from the Work on which the Contract Sum is based and identifies the fees for subcontract work for changes (both additions and deductions) in the Work. The Contractor shall apply fees in accordance with Subparagraph 7.3.6.

4.05 ARTICLE 7.5 - OWNER FURNISHED MATERIALS

A. Add the following subparagraph:

1. 7.5.1: Notwithstanding anything to the contrary contained in the Contract Documents, the Owner reserves the right to require the Contractor to assign to the Owner any of the Contractor's subcontracts, purchase orders or other agreements for the procurement of materials for the purpose of utilizing the Owner's sales tax exemption. Any materials purchased by the Owner pursuant to such an assignment are hereinafter referred to as "Owner Furnished Materials." The responsibilities of the Owner and the Contractor relating to such Owner Furnished Materials shall be governed and controlled in accordance with the terms and conditions of the Procedure for Owner Furnished Materials set forth in Exhibit "A-7.5.1". If the Owner elects to provide Owner Furnished Materials, the parties specifically acknowledge that the Contract Sum shall be subject to the additions and deductions made by Change Order in accordance with this Contract and the Procedure for Owner Furnished Materials.

4.06 ARTICLE 8 - TIME

A. Subparagraphs 8.1.2 and 8.1.3 are hereby deleted and replaced with the following:

1. 8.1.2: The date of commencement of the Work is the date of issuance of the Notice to Proceed. "Notice to Proceed" means written notification by the

Owner to the Contractor authorizing commencement of any phase of the Work as may be required by the Contract Documents in the form attached hereto as Exhibit "A-8.1.2"

2. 8.1.3: "Substantial Completion" shall be defined as Final Completion exclusive of minor items of unfinished work which do not preclude beneficial use of the Project. 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 Owner 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 indicating the Project can be used for the purposes and to the capacity required by the Contract Documents. The Contractor 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 Contractor requesting the Architect and the Owner to perform the Substantial Completion review, the Contractor shall inspect the Project and prepare a list of all deficient and unfinished work. The list shall be submitted to the Owner for review. At Substantial Completion, a Final Punch List will be prepared and provided to the Contractor. The Final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by the Contractor as a waiver by the Owner of the Contractor's obligation to complete all the Work in complete compliance with Contract Documents. If the Project is behind schedule, the Owner may direct the Contractor to expedite the Work at no additional cost to the Owner by whatever means the Contractor may use, including, without limitation, increasing manpower or working overtime to bring the Work back within the currently submitted and approved Progress Schedule.

4.05 ARTICLE 11.1 – CONTRACTOR'S LIABILITY INSURANCE

- A. Subparagraphs 11.1.1, 11.1.2 and 11.1.3 are hereby deleted and replaced with the following:

SEE EXHIBIT "A-11.1.1"

4.05 ARTICLE 11.4 – PROPERTY INSURANCE

- A. Paragraph 11.4 and all subparagraphs are hereby deleted in their entirety.

4.05 ARTICLE 11.5 - PERFORMANCE BOND AND PAYMENT BOND

- A. Add the following subparagraphs:
 1. 11.5.3: Provide bonds on AIA Document A312. Deliver bonds within 3 days after execution of the Contract.
 2. 11.5.4: The bond value requirements are as follows:
 - a. Provide a 100 percent Performance Bond.

b. Provide a 100 percent Payment Bond.

END OF SECTION 00800

Attachments:

Exhibit "A-7.2.1" Change Order

Exhibit "A-7.5.1" Procedure For Owner Furnished Materials

Exhibit "A-8.1.2" Notice To Proceed

Exhibit "A-11.1.1" Insurance Requirements

EXHIBIT "A-7.2.1"

CHANGE ORDER

CHANGE ORDER

TO: Town of Miami Lakes

PROJECT: Royal Oaks Park Community Center

CONTRACTOR: _____

DATE: _____

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

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

This Change Order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, and profit, and any damages of every kind that the Contractor may incur in connection with the above referenced changes in the Work, and any other effect on any of the Work under this Contract. The Contractor acknowledges and agrees that (a) the Guaranteed Maximum Price of \$ _____ under the Contract will be [unchanged] [changed] by this Change Order, and (b) the schedule for performance of Work will be [unchanged] [changed] by this Change Order. Contractor expressly waives any claims for any additional compensation, damages or time extensions in connection with the above-referenced changes. Except as herein or heretofore expressly modified, all terms of the Contract 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 Contract.

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

TOWN OF MIAMI LAKES
a Florida municipal corporation

CONTRACTOR

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT "A-7.5.1"

PROCEDURE FOR OWNER FURNISHED MATERIALS

PROCEDURE FOR OWNER FURNISHED MATERIALS

1. The Owner reserves the right to require the Contractor to assign to the Owner any of the Contractor's subcontracts, purchase orders or other agreements for the procurement of materials. Any materials purchased by the Owner pursuant to such an assignment are hereinafter referred to as "Owner Furnished Materials" and the responsibilities of the Owner and the Contractor relating to such Owner Furnished Materials shall be governed and controlled by the terms and conditions of this Procedure for Owner Furnished Materials ("Procedure").
2. The Contractor shall provide the Owner a list of all intended suppliers, vendors, and materialmen hereinafter referred to as "Supplier" for consideration with respect to the Owner Furnished Materials. This list shall be submitted within ten (10) days of receipt of the Owner's written request for such list. The Contractor shall include price quotations, specific descriptions of the materials to be supplied and the estimated quantities of the same.
3. Upon request by the Owner, and in a timely manner, the Contractor shall prepare Purchasing Requisition Request Forms which shall, in a form acceptable to the Owner Manager, specifically identify the materials which the Owner 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 Contractor;
 - 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 Contractor;
 - h. Any reduction in the Contractor'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 Contractor 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 Owner shall prepare a Purchase Order for each item of material which the Owner chooses to purchase directly. The Owner shall issue the Purchase Order directly to the Supplier. The

Owner's Purchase Order shall be accompanied by a copy of the Owner's Consumer's Certificate of Exemption and a certificate containing the Owner's name, address, exemption number, effective date and expiration date of the exemption, and the signature of the Owner'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 Contractor, 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 Owner for full value of the Purchase Order, unless such insurance costs were included in the quote provided to the Contractor. The Purchase Order shall also require the delivery of the Owner Furnished Materials on the delivery dates provided by the Contractor in the Purchasing Requisition Request Form.

5. The Contractor shall be responsible for all matters relating to the receipt of Owner 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 Contractor shall coordinate delivery schedules, sequence of delivery, loading, orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall remain liable for his or her negligence in meeting any of these obligations.
6. As Owner Furnished Materials are delivered to the Project Site, or such other Owner designated location, the Contractor shall visually inspect all shipments and verify that all necessary documentation accompanies the shipment and such shipment conforms to the Purchase Order. The Contractor shall verify the receipt and conformance of the shipment of Owner Furnished Materials in writing; the Supplier shall then forward the invoice to the Owner for payment.
7. The Contractor shall insure that Owner 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 Contractor shall promptly notify the Owner 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 Contractor shall be responsible for all damages should the Contractor fail to perform such inspection and otherwise incorporates such defective or nonconforming Owner Furnished Materials into the Project.
8. The Contractor shall maintain records of all Owner Furnished Materials it incorporates into the Project from the stock of Owner Furnished Materials in its possession. The Contractor shall account monthly to the Owner for any Owner Furnished Materials delivered into the Contractor's possession, indicating portions of all such materials which have been incorporated into the Project.
9. The Contractor 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 Contractor for resolution with the appropriate Supplier.

10. Notwithstanding the transfer of Owner Furnished Materials by the Owner to the Contractor's possession, the Owner shall retain legal and equitable title to any and all Owner Furnished Materials.
11. The transfer of possession of Owner Furnished Materials from the Owner to the Contractor shall constitute a bailment for the mutual benefit of the Owner and the Contractor. The Owner shall be considered the bailor and the Contractor the bailee of the Owner Furnished Materials. The Owner Furnished Materials shall be considered returned to the Owner 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 Owner shall purchase and maintain insurance sufficient to protect against any loss of or damage to the Owner Furnished Materials. Such insurance shall cover the full value of any Owner Furnished Materials not yet incorporated into the Project during the period between the time the Owner first takes title to any of such Owner Furnished Materials and the time when the last of such Owner Furnished Materials is incorporated into the Project or consumed in the process of completing the Project. The Owner shall be named as the insured party and shall receive all proceeds in case of loss.
13. The Owner 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 Owner Furnished Materials. The Contractor's sole and exclusive remedy shall be an extension of Contract Time in accordance with this Contract.
14. On a monthly basis, the Contractor shall review all invoices for Owner Furnished Materials delivered to the Project Sites, or other Owner designated locations, during that month and provide the Owner with an Advisory List indicating the Contractor's concurrence or objection to the Owner's issuance of payment, based upon the Contractor'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 above, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the Advisory List, the Owner 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 Owner of the Advisory List. The Contractor agrees to assist the Owner to immediately obtain partial or final release of waivers as appropriate.
15. If the Owner elects to provide Owner Furnished Materials, the Contractor shall, in accordance with the terms and conditions of this Contract, execute and deliver to the Owner a deductive Change Order Request. The deductive Change Order Request shall reference the full value of all Owner Furnished Materials to be provided by each Supplier from whom the Owner elected to purchase material directly, plus all sales taxes associated with such materials, plus any savings to the Contractor in the cost of Payment and Performance Bonds associated with such Owner Furnished Materials.
16. At the end of the Project, in accordance with the Contract, the Owner shall provide the Contractor with a deductive Change Order for the cost plus applicable sales taxes of

any Owner Furnished Materials not yet reflected in a previously executed Change Order. The Contractor shall return all unused Owner Furnished Materials to the appropriate Supplier and shall refund all associated monies to the Owner. If the Contractor is unable to facilitate such refund, the Owner shall provide a deductive Change Order for the cost plus applicable sales taxes of all unused and unreturned Owner Furnished Materials.

EXHIBIT "A-8.1.2"
NOTICE TO PROCEED

NOTICE TO PROCEED

Dated _____, 200_

TO:

ADDRESS:

PROJECT: Royal Oaks Park Community Center

CONTRACT: Contract for Construction

You are hereby notified that the Contract Times with respect to Construction Work under Section 8.1 of the General Conditions, of the above Contract for Construction will commence to run on _____, 20____. By that date, you are to start performing your obligations under the Contract Documents with respect to Construction Work. In accordance with the Contract, the following are certain dates relative to the Construction Work:

[Insert milestone dates as appropriate]

Before you may start any Work at the site, Section 8.1 of the Contract requires you and all Subcontractors and Subconstutants, as applicable, each deliver to the Owner, 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 "A-8.1.1"

INSURANCE REQUIREMENTS

I. Insurance to be provided by the Contractor.

Contractor shall provide or cause to be provided the following insurance. Prior to commencement of Work certificates of insurance shall be provided evidencing Contractor's compliance with these insurance requirements. Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of the Work is completed and accepted by the Owner (or for such duration as otherwise specified hereinafter), the insurance coverages set forth herein. Contractor shall require similar limits and coverage from all Subcontractors, or shall insure their activities hereunder:

1. Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence.
2. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:
 - (a) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.
 - (b) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
3. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. 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 Fifty Thousand Dollars (\$50,000.00) contractor shall maintain in force until at least three (3) years after completion of all work required under the Contract, 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 Contract, 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) Excepting Professional Liability and Workers Compensation policies, Owner is to be expressly included as "Additional Insured" with respect to liability arising out of operations of the Contractor for this project.
- 4. Contractor only, is to provide Umbrella/ Excess Liability with general aggregate of Ten Million Dollars (\$10,000,000).
- 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 Owner and Contractor as named insureds, with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00) 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 Owner. The Contractor shall not cancel (or permit any lapse under) any policy of required insurance. Each policy of required insurance shall: (i) contain the agreement of the insurer that the insurer shall not cancel or materially alter the same without thirty (30) days' prior written notice to Owner except in the case of non-payment by the Contractor for which ten (10) days' prior written notice will be provided to Owner; (ii) provide for third party vicarious liability; (iii) delete the insured versus insured exclusion with respect to

claims brought by the Owner; and (iv) be effective for a period from the date of this Contract 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 Contract 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 Owner at the times required by Subparagraph 8.1.2 of this Contract at which time the Contractor shall deliver to Owner a certificate of insurance naming Owner 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 Contractor to Owner under this Contract. Neither party shall be liable to the other for loss or damage covered by insurance to the extent that insurance proceeds are actually available with respect to such loss or damage and to the extent that the applicable policies of such insurance include the waiver or subrogation (which the parties shall obtain if available without additional premium). Contractor is responsible for the payment of all deductibles in connection with any claims made under the insurance policies required by this Contract. The cost of deductibles paid by Contractor shall be included in the Contract Sum.