

**RESOLUTION NO. 12-1027**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, TO APPROVE AWARD OF CONTRACT FOR ITB 2012-49, CONSTRUCTION OF YOUTH CLUB CENTER AT PARK EAST, IN THE AMOUNT OF \$1,078,560 TO J.B. BUILDERS & CONTRACTORS, INC. D/B/A BALLARENA CONSTRUCTION; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS 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; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the "Town") issued an Invitation to Bid ("ITB") No. 2012-49 on August 30, 2012, for Construction of Youth Club Center at East Park; and

**WHEREAS**, the Town Manager, has determined that J.B. Builders & Contractors, Inc. d/b/a/ Ballarena Construction ("Ballarena"), is the lowest responsive and responsible bidder, and recommends Award of Contract ITB 2012-49 to same; and

**WHEREAS**, Ballarena will be responsible for furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment and services necessary for the construction of the new Youth Club Center at East Park located at 6075 Miami Lakes Drive.

**WHEREAS**, the Town Council approves the recommendations of the Town Manager and authorizes the Town Manager to enter into contract with Ballarena, for Award of Contract ITB 2012-49, for Construction of Youth Club Center at East Park, in an amount not to exceed \$1,078,560.

**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 incorporated herein by this reference.

**Section 2. Approval of the Contract.** The Town Council hereby approves the award of ITB No. 2012-49, to Ballarena, in an amount not to exceed of \$1,078,560, for Construction of Youth Club Center at East Park.

**Section 3. Authorization of Town Officials.** The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract, in an amount not to exceed \$1,078,560, for Construction of Youth Club Center at East Park.

**Section 4. Authorization of Fund Expenditure.** The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract from the Capital Projects Fund.

**Section 5. Execution of the Contract.** The Town Manager is authorized to execute the Contract with Ballarena for park improvements on behalf of the Town for Construction of Youth Club Center at East Park, in an amount not to exceed \$1,078,560, in substantially the form attached hereto.

**INTENTIONALLY LEFT BLANK**

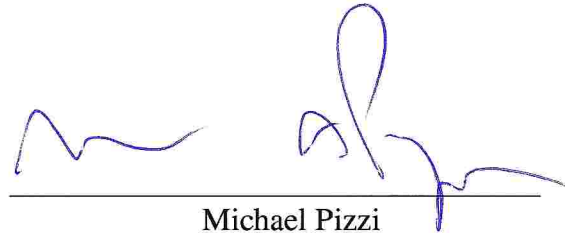
**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

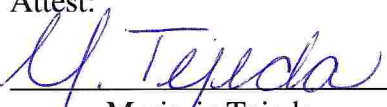
**PASSED AND ADOPTED** this 9<sup>th</sup> day of October, 2012.

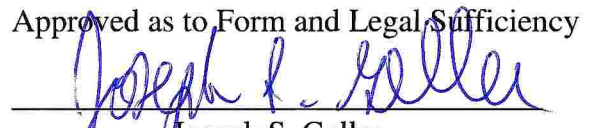
Motion to adopt by Michael Pizzi, second by Nick Perdomo.

**FINAL VOTE AT ADOPTION**

Mayor Michael Pizzi	<u>YES</u>
Vice Mayor Ceasar Mestre	<u>YES</u>
Councilmember Mary Collins	<u>YES</u>
Councilmember Tim Daubert	<u>YES</u>
Councilmember Nelson Hernandez	<u>YES</u>
Councilmember Nick Perdomo	<u>YES</u>
Councilmember Richard Pulido	<u>YES</u>

  
\_\_\_\_\_  
Michael Pizzi  
MAYOR

Attest:  
  
\_\_\_\_\_  
Marjorie Tejada  
TOWN CLERK

Approved as to Form and Legal Sufficiency  
  
\_\_\_\_\_  
Joseph S. Geller  
Greenspoon Marder PA  
TOWN ATTORNEY

**CONSTRUCTION OF YOUTH CLUB CENTER  
AT EAST PARK**

**ITB No. 2012-49**

**The Town of Miami Lakes Council:**

**Mayor Michael Pizzi  
Vice Mayor Ceasar Mestre  
Councilmember Mary Collins  
Councilmember Timothy Daubert  
Councilmember Nelson Hernandez  
Councilmember Nick Perdomo  
Councilmember Richard Pulido**

Alex Rey, Town Manager  
The Town of Miami Lakes  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

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**SECTION 1**  
**NOTICE TO BIDDERS**  
**TOWN OF MIAMI LAKES**  
**CONSTRUCTION OF YOUTH CLUB CENTER**  
**AT EAST PARK**

**ITB 2012-49**

The Town of Miami Lakes (the "Town") will be accepting sealed Bids for the Town's **CONSTRUCTION OF YOUTH CLUB CENTER AT EAST PARK** ("Project"). Bidders are to submit three (3) Bids, with original signatures, signed in blue ink together with a copy of the Bid on a CD-ROM. **Sealed Bids, including the CD-ROM must be received by the Town of Miami Lakes, Town Clerk at 15150 NW 79<sup>th</sup> Court, Miami Lakes, Florida by 2:00 P.M. on September 28, 2012.**

**Scope of Work:**

This Project consists of a Base Bid and nine (9) Bid Deductive Alternates. The Base Bid consist of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment and services necessary for the construction of the new Youth Club Center at East Park located at 6075 Miami Lakes Drive. The Work includes demolition of the existing clubhouse building, construction of a new, 1-story building approximately 3,700 SF, a half basketball court, 2 picnic shelters, selective removal of existing trees and installation of new trees, relocation of the existing irrigation, installation of a chain linked fence to enclosed dumpster area, selective demolition of miscellaneous concrete slabs, light poles, picnic shelters, and existing surface parking lot and drives. Install rubberized playground surface at existing playground, five (5') foot asphalt walkways, all in accordance with the Drawings

**Minimum Qualification Requirements:**

Prospective Bidder shall hold a current certified license as a General Contractor, from the State of Florida. Bidder must also possess a minimum of five (5) years' experience and have successfully completed at least five (5) projects of a similar size, scope, and complexity during the past five (5) years. The Bidder must self-perform thirty percent (30%) of the primary physical construction Work.

The Town will consider a Bid as responsive where a Bidder has less than the stipulated minimum number of years of experience in instances where the Bidder has undergone a name change and such change of name has been filed with the State of Florida. This is the sole exception to the experience requirement.

**A Non-Mandatory Pre-Bid Conference will be held on September 12, 2012 at 10:00 am in the Town Hall Conference Room, which is located at 15150 NW 79<sup>th</sup> Court, Miami Lakes, FL 33016.**

Bid Documents may be obtained by visiting the Town's website at [www.miamilakes-fl.gov](http://www.miamilakes-fl.gov) and selecting "Contractual Opportunities". Any further inquiries regarding the Project may be directed exclusively via e-mail to Roxana Tejada, at [tejedar@miamilakes-fl.gov](mailto:tejedar@miamilakes-fl.gov). **It is the sole responsibility of all firms to ensure the receipt of any addendum and it is recommended that firms periodically check the Town's Procurement webpage for updates and the possible issuance of addenda.**

All Bids shall be submitted in accordance with the Instructions to Bidders. **Any Bids received after the specified time and date will not be considered.** The responsibility for submitting a Bid before the stated time and date is solely and strictly the responsibility of the Bidder.

*Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this purchase.*

**SECTION 2**  
**INSTRUCTIONS TO BIDDERS**

**2.1 DEFINITION OF TERMS**

**Basis of Design** means a specific manufacturer's product that is named; including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

**Bid** means the Submittal tendered by a Bidder in response to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Invitation to Bid ("ITB") at the time of submittal.

**Bid Form** means the form that contains the goods or services to be purchased and that must be completed and submitted with the Bid.

**Bidder** means any person, firm incorporated or unincorporated business entity, acting directly or through an authorized representative, tendering a Submittal in response to this solicitation.

**Change Order** means a written document ordering a change in the Contract price or Contract time or a material change in the Work. A Change Order must comply with the Contract Documents.

**Completed Project** means that the applicable regulatory authority has issued a Certificate of Completion.

**Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Contract price or time.

**Construction Schedule** means a schedule, as defined and required by the Contract Documents.

**Contract** means the ITB and the Bid documents that have been executed by the Bidder and the Town subsequent to approval of award by the Town.

**Contract Documents** means the Contract as may be amended from time to time, any and all plans, specification, bonds, addendum, clarifications, directives, change orders, payments and other such documents issued under or relating to the Contract.

**Contractor** means the person, firm, or corporation with whom the Town has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to the Work under the Contract.

**Cure** means the action taken by the Contractor promptly, after receipt of written notice from the Town of a breach of the Contract Documents, which shall be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach.

**Cure Period** means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of a written Notice to Cure from the Town identifying the deficiencies and the time to Cure.

**Days** mean calendar days unless otherwise specifically stated in the Contract Documents.

**Design Documents** means the construction Plans and specifications included as part of the ITB prepared by the Consultant for this Project under a separate agreement with the Town.

**Drawings or Plans** means the graphic and pictorial portions of the Work, which serve to show the design, location and dimensions of the Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings.

**Field Directive** means a written direction from the Consultant or Project Manager directing the Contractor to proceed with Work requested by the Town, which is minor in nature and typically should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work under a Work Order and submitted all documentation required by the Contract Documents.

**Inspector** means an authorized representative of the Town assigned to make necessary inspections of materials and the Work performed by the Contractor. The Town, at its sole discretion may hire a professional consultant to perform the inspections.

**Materials** mean goods or equipment incorporated in a Project, or used or consumed in the performance of the Work.

**Notice of Award** means the written letter to the Contractor notifying the Contractor that it has been awarded the Contract.

**Notice to Proceed** means a written letter or directive issued by the Town Manager or designee acknowledging that all conditions precedent to award have been met and directing that the Contractor may begin Work.

**Project or Work** as used herein refers to all reasonably necessary and inferable construction and services required by the Contract Documents whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations, including completion of the construction in accordance with the Drawings and Specifications. The Work may constitute the whole or a part of the Project.

**Project Manager** means the individual assigned by the Town Manager to manage the Project.

**Request For Information (RFI)** means a request from the Contractor seeking an interpretation or clarification relative to the Contract Documents. The RFI, which shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is required. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

**Subcontractor** means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes materials not so worked.

**Submittal** means the documents submitted by the Bidder in response to this ITB.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Contract Documents, and is fit for use in its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, with regulatory authority or which have jurisdiction over the Work, have conducted all final inspections, and approved the Work. Beneficial use or occupancy shall not be the sole factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of completion has been issued.

**Town** means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.

**Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or his designee.

## **2.2 GENERAL REQUIREMENTS**

The ITB and any addendum that may be issued constitute the complete set of specification requirements and Bid forms. The Bid Form page(s), and all forms contained in the ITB shall be completed, signed, and submitted in accordance with the requirements of Section 1. All Bids must be typewritten or filled in with pen and ink, and must be signed in blue ink by an officer or employee having authority to bind the company or firm. Errors, corrections, or changes on any document must be initialed by the signatory of the Bid. Bidder shall not be allowed to modify its Bid after the opening time and date.

## **2.3 PREPARATION OF BID**

The Bid Form contains multiple line items and the Bidder must provide prices for all line items and must provide the price for the total Bid amount. Failure to include pricing on all line items as well as the total Bid amount shall result in the Bid being found non-responsive.

**Bidder must use the blank Town forms provided herein.** The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the Town's forms, or fully complete the required forms may result in a determination that the Bid is non-responsive.

**Bidder must submit a price on the Base Bid and all Bid Options. Failure to submit a Bid with prices for all items in the Bid Form will result in the Bid being rejected as non-responsive.**

A Bid will be considered non-responsive if it is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid is to include the furnishing of all labor, materials, equipment, all overhead/indirect expenses and profit, necessary for the completion of the Work, except as may be otherwise expressly provided in the Contract Documents.

Joint venture firms shall not be considered for award under this ITB.

## **2.4 BID PREPARATION AND RELATED COSTS**

All cost involved with the preparation and submission of a Bid to the Town or any work performed in connection therewith, shall be the sole responsibility of the Bidder(s). No payment shall be made for any Bid received, or for any other effort required of or made by the Bidder prior to commencement of Work as defined by a contract duly approved by the Town Council or Town Manager, as applicable. The Town shall bear no responsibility for any cost associated with any judicial proceedings resulting from the ITB process.

## **2.5 PRE-BID CONFERENCE**

A **Non-Mandatory** pre-proposal conference will be held on September 12, 2012 at 10:00 A.M. The conference will be held at Town Center Conference Room, located at 15150 NW 79<sup>th</sup> Court Miami Lakes, FL 33016. Prospective Bidders should attend this meeting to obtain information relative to the ITB. Attendees are requested to sign-in and provide the requested

information at the time of sign-in. Failure to attend or sign-in will not result in a Bidder's Response being rejected as non-responsive.

## **2.6 PERFORMANCE OF THE WORK**

**Bidder must be capable of self- performing thirty (30%) percent of the primary physical construction Work.** By submitting a Bid the Bidder certifies that it will meet these requirements. As part of the Bid, the Bidder is to include the form entitled "Questionnaire". Failure to complete and submit this form or to meet this requirement shall result in the Bid being deemed non-responsive. If the Contractor is deemed to not meet this requirement during the performance of the Work, the Contractor shall be in default of the Contract Documents.

## **2.7 EXAMINATION OF CONTRACT DOCUMENTS AND THE SITES**

It is the responsibility of each Bidder, before submitting a Bid in response to this ITB to:

- Carefully review the ITB, including any Addendum and notify the Town of any conflicts, errors or discrepancies.
- Visit the sites to become familiar with conditions that may affect costs, progress, or performance of the Work.
- Take into account federal, state and local, including, without limitation, the Town's Code, and Miami-Dade County and the State of Florida's statutes laws, rules, regulations, and ordinances that may affect a Bidder's ability to perform the Work.
- Study and carefully correlate Contractor's observations with the requirements of the ITB.

The submission of a Bid in response to this solicitation shall constitute an incontrovertible representation by Bidder that it will comply with the requirements of the Contract Documents and that without exception, the Bid is premised upon performing and furnishing the Work required under the Contract Documents and that the Contract Documents are sufficient in detail to indicate and convey understanding of all terms and conditions for performance of the Work.

## **2.8 INTERPRETATIONS AND CLARIFICATIONS**

All questions about the meaning or intent of the ITB, drawings, or specifications shall be directed in writing and submitted by e-mail to Roxana Tejada, at [tejedar@miamilakes-fl.gov](mailto:tejedar@miamilakes-fl.gov). Interpretation or clarifications considered necessary by the Town in response to such questions will be issued by means of addenda. All addenda will be posted on the Town's website, [www.miamilakes-fl.gov](http://www.miamilakes-fl.gov). It is the sole responsibility of the Bidder to obtain all addenda by visiting the Town's website. Written questions must be received no less than ten (10) days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.

## **2.9 POSTPONEMENT OF BID OPENING DATE**

The Town reserves the right to postpone the date for receipt and opening of Bids and will make a reasonable effort to give at least five (5) calendar days' notice prior to the Bid opening date, of any such postponement to prospective Bidders. Any such postponement will be announced through the issuance of an addendum posted to the Town's website.

## **2.10 ACCEPTANCE OR REJECTION OF BIDS**

The Town reserves the right to reject any and all Bids or portions of any Bid, with or without cause, to waive technical errors and informalities, or to cancel or re-issue this solicitation. The Town also reserves the right to reject the Bid of any Bidder who has failed to previously perform under a contract or who is in arrears to the Town.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after the Bid opening date. A Bidder may not withdraw its Bid unilaterally before the expiration of one hundred twenty (120) days from the date of bid opening. A Bidder may withdraw its Bid after the expiration of one hundred twenty (120) calendar days from the date of Bid opening by delivering written notice of withdrawal to the Town's Procurement Manager prior to award of the Contract. Once the Town makes the award, the Bid cannot be withdrawn under this Article.

## **2.11 WITHDRAWAL OF BID**

A Bidder may withdraw its Bid at any date and time prior to the date and time the Bids are scheduled to be opened.

## **2.12 OPENING OF BIDS**

Bids will be publicly opened at the appointed time and place stated in the ITB. Late Bids will not be opened. Town staff is not responsible for the premature opening of a Bid if the Bid is not properly sealed, addressed and labeled. Bidders or their authorized agents are invited to be present at the Bid opening. Subsequent to the Bid opening information on the Bid Submittals will be made available in accordance with Florida Statute 119.071, Paragraph (b) of subsection (1), item 2, as amended. Review of the Bid Submittals by Town staff will determine the lowest responsive and responsible Bidder.

## **2.13 AWARD OF CONTRACT**

The Award of the Contract will be to the lowest responsive and responsible Bidder based on the Base Bid or the Base Bid less any or all Bid Deductive Alternates selected by the Town. The selection of any or all Bid Options shall be at the sole discretion of the Town. The Town may require demonstration of competency and, at its sole discretion, conduct site visit(s) and inspections of the Bidder's place of business, require the Bidder to furnish documentation and/or require the Bidder to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The Town shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, knowledge of the trade work to be performed, the quantity of Work being performed by the Contractor and past performance on Town and other contracts. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Bidder and the Town Manager is satisfied that the Bidders are qualified to perform the Work.

Any Bidder who, at the time of submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency, the Bid may be declared non-responsive. Any Bidder who has filed a lawsuit against the Town or where the Town has filed a lawsuit or won a court judgment against a Bidder, such Bidder may be declared non-responsive.

The Town shall post the Town Manager's award recommendation on the Town's website at [http://www.miamilakes-fl.gov/c-our\\_govt/admin-procurement.php](http://www.miamilakes-fl.gov/c-our_govt/admin-procurement.php).

If the Town accepts a Bid, the Town will notify the Bidder(s) that it is the apparent awardee and that award is conditioned upon executing the Contract, and submission and approval of the required insurance certificates. The Town will provide a written notice of award upon the Bidder meeting these requirements.

If the successful Bidder(s) forfeits the Award by failing to meet the conditions as stated above, the Town may, at the Town's sole option, award the Contract to the next lowest Responsive and Responsible Bidder or reject all Bids or re-issue the ITB.

#### **2.14 COLLUSION**

Where two (2) or more related parties, as defined in this Article, each submit a response to an ITB, such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submission under such ITB. Related parties shall mean employees, officers or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Bidder have a direct or indirect ownership interest in another Bidder for the same project(s). ITB responses found to be collusive shall be rejected.

#### **2.15 BIDDER IN ARREARS OR DEFAULT**

Bidder represents and warrants that the Bidder is not in arrears to the Town and is not a defaulter as a surety or otherwise upon any obligation to the Town. Bidder further warrants that the Bidder has not been declared "not responsible" or "disqualified" by or debarred from doing business with any state or local government entity in the State of Florida, the Federal Government or any other State/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Bidder's responsibility or qualification to receive public agreements. The Bidder considers this warrant as stated in this Article to be a continual obligation and shall inform the Town of any change during the term of the Contract.

#### **2.16 PUBLIC ENTITY CRIMES ACT**

In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had 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 the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.



## SECTION 3

### GENERAL TERMS AND CONDITIONS

#### 3.1 INTENTION OF THE TOWN

It is the intent of the Town to describe in the ITB the Project to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract. Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor shall comply therewith. TOWN shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

#### 3.2 TIME IS OF THE ESSENCE

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents.

The date and period of time set forth in the Notice to Proceed for the commencement, commencement and completion of the Work was included because of its importance to the Town.

#### 3.3 NOTICES

Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice shall remain until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Alex Rey  
Town Manager  
Town of Miami Lakes  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

Mr. Gary Fabrikant  
Procurement Manager  
Town of Miami Lakes  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

For Contractor:

Jorge Ballarena

President

J.B. Builders, Inc. D/B/A Ballarena Construction

3727 SW 8<sup>th</sup> Street, Suite 105

Coral Gables, Florida 33134

~~jb@ballarena.com~~

*jb@bellarenagroup.com*

(305) 441-9118

During the Work the Contractor shall maintain continuing communications with designated Town representative(s). The Contractor shall keep the Town fully informed as to the progress of the Work under the Contract.

### **3.4 PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract Documents by reference and a term, statement, requirement, the specifications or any plans, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents the priorities stated below shall govern;

- Revisions and Change Orders to the Contract shall govern over the Contract
- The Contract Documents shall govern over the Contract
- The Special Conditions shall govern over the General Conditions of the Contract
- Addendum to an ITB shall govern over the ITB

In the event that Drawings and specifications are provided with a Work Order the priorities stated below shall govern:

- Scope of Work and Specifications shall govern over Plans and Drawings
- Schedules, when identified as such shall govern over all other portions of the Plans
- Specific notes shall govern over all other notes, and all other portions of the Plans, unless specifically stated otherwise
- Larger scale drawings shall govern over smaller scale drawings
- Figured or numerical dimensions shall govern over dimensions obtained by scaling
- Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern

### **3.5 INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Contract, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The Contractor expressly understands and agrees that any insurance protection

required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The Contractor agrees and recognizes that the Town shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under this Agreement. The Contractor shall defend the Town or provide for such defense at its own expense, at the Town's option.

This indemnification obligation shall survive the expiration or termination of this Contract.

The Town has provided specific consideration for the indemnification of \$10.00 from the sums due to the Contractor under this Contract.

### **3.6 INSURANCE**

Without limiting any of the other obligations or liabilities of Contractor, the Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in the State of Florida, be rated "B" as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, The insurance carrier shall have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

- a. Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000 each accident and a waiver of subrogation. The policies must include:
  - Waiver of subrogation
  - Statutory State of Florida
  - Limit of Liability
- b. Employer's Liability:** Limit for each bodily injury by an accident shall be \$1,000,000 policy limit for each accident, per employee, including bodily injury caused by disease.
- c. Comprehensive Business Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages

to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$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 Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

**d. Commercial General Liability ("CGL").** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

- Products and/or Completed Operations for contracts, with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
- Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- CGL Required Endorsements
  - Employees included as insured
  - Contingent Liability/Independent Contractors Coverage
  - Contractual Liability
  - Waiver of Subrogation
  - Premises and/or Operations
  - Explosion, Collapse and Underground Hazards (if not specifically covered under the policy)
  - Loading and Unloading
  - Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

Town is to be expressly included as an **Additional Insured** pursuant to endorsement number CG 2010 11/85 or its equivalence.

- e. Umbrella Policy:** Contractor shall provide a \$1,000,000, per occurrence, coverage with a \$1,000,000 aggregate limit. The policy shall provide excess coverage on CGL, Business Automobile, and Employer's liability.
- f. Certificate of Insurance:** Contractor shall provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically cite this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.
- g. Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town shall be named as additional insured under the CGL, business automobile insurance and umbrella policies. Town shall be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

### **3.7 PERFORMANCE AND PAYMENT BOND**

Contractor shall within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to Town the completion and performance of the Work covered in the Contract Documents as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project(s). Each Bond shall be with a Surety, which is qualified pursuant to Article 3.8, Qualification of Surety.

Each Bond shall continue in effect for one year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract value, or an

additional bond shall be conditioned that Contractor will, upon notification by Town, correct any defective or faulty work or materials which appear within one year after Final Completion of the Project.

The Town must be listed as an Obligee.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, Contractor shall ensure that the bond(s) referenced above shall be recorded in the public records and provide Town with evidence of such recording.

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, which may be in the form of cash, money order, certified check, cashier's check or an unconditional letter of credit. Such alternate forms of security shall be subject to the prior approval of Town and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by Town for one year after completion and acceptance of the Work.

### **3.8 QUALIFICATIONS OF SURETY**

Each Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

The Surety shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety shall provide Town with evidence satisfactory to Town, that such excess risk has been protected in an acceptable manner.

The Town will accept a surety bond from a company with a rating of "B+" or better and a Financial Size Category of "Class II", provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the Town shall review and either accept or reject the surety company based on the financial information available to the Town. A surety company that is rejected by the Town may be substituted by the Bidder with a surety company acceptable to the Town, only if the Bid amount does not increase.

### **3.9 GENERAL REQUIREMENTS**

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not employee(s) or agent(s) of the Town or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of the Contract a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Town Manager or designee, should the Town Manager or designee make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses necessary to perform the Work, in a competent and professional manner.

The Contractor shall at all times cooperate with the Town, or the Consultant (if any) and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Consultant (if any) and other agencies authorized by the Town, shall have full access to the Project site at all times.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

### **3.10 RULES AND REGULATIONS**

The Contractor shall comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor shall be familiar with all federal, state and local laws, rules, regulations, codes, and ordinances that affect the Work.

### **3.11 SITE INVESTIGATION AND REPRESENTATION**

The Contractor acknowledges that it has satisfied itself as to the nature and location(s) of the Work under the Contract Documents including the general and local conditions, particularly those bearing upon availability of installation, transportation, disposal, handling and storage of materials, and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the Town for their accuracy or completeness. No request for additional compensation or Contract time resulting from encountering utilities not shown will be considered.

It shall be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., by hand excavation or other appropriate measures before performing any Work. The Contractor shall call Sunshine State One Call of Florida, Inc. and other appropriate agencies, as applicable, prior to the commencement of any excavation or digging to determine the locations of existing utilities prior to the commencement of any Work. The Contractor is responsible for any and all claims resulting from the damage caused to any utilities, identified or not.

Should the Contractor identify any utilities, structures, etc., which will or may be encountered during the performance of the Work, the Town shall be consulted immediately in order for a decision to be made on the potential relocation or other action(s) to be taken as it relates to the Work.

Should the Town direct the Contractor to relocate any utilities that would be impacted by any Work then the Town shall compensate the Contractor for such relocation in accordance with the Change Order provisions of the Contract.

The Contractor shall not purposefully disrupt or disconnect any type of utility whatsoever without first obtaining the prior written approval of the Town or applicable utility owner. Requests for any disconnection, including those required of other utilities must be in writing and received by the Town at least seventy-two (72) hours prior to the time of the requested interruption. The Town may require that the Contractor notify, in writing, any property owners to be impacted by service interruptions to their utilities.

Any failure by the Contractor to familiarize itself with any utilities that may impact the performance of the Work shall not relieve Contractor from responsibility for properly estimating the difficulty or cost of performing the Work and shall not entitle the Contractor to any additional compensation.

### **3.12 METHOD OF PERFORMING THE WORK**

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract Documents shall be made upon that basis.

The Contractor shall comply with the manufacturer's requirements for the handling, delivery and storage of all equipment and materials. Contractor shall inspect all equipment and materials immediately prior to installation and shall not install any damaged or defective items.

Contractor shall comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents.



The Contractor shall familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

The Work to be performed shall be done in such a manner so as not to interfere with the normal Town operations. The manner in which the Work is performed shall be subject to the approval of the Project Manager, whom if necessary, shall have the authority to require changes in the manner in which the Work is performed. There shall be no obstruction of Town services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager twenty-four (24) hours in advance of the interruption of Town operations.

If the Project Manager reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager, the Project Manager shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the Town. (3) The Town at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Contractor.

Where materials are transported in the performance of the Work, vehicles shall not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged curbing, drainage, grass areas, sidewalks or other areas shall be repaired at the expense of the Contractor to the satisfaction of the Project Manager.

Depending on the nature of the Work the Project Manager may require a staging plan be submitted to and approved by the Project Manager prior to the start of the Work issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

### **3.13 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS AND DATA**

Contractor shall verify all dimensions, quantities and details shown on any plans, specifications or other data received from Project Manager and shall notify the Project Manager of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished to the Project Manager. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager.

### **3.14 SUPPLEMENTAL DRAWINGS AND INSTRUCTIONS**

The Project Manager or Consultant shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Contract Documents Price or this Contract Documents Time, unless a Change Order is issued in accordance with the Contract Documents.

Project Manager or Consultant shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

### **3.15 SHOP DRAWINGS AND SUBMITTALS**

Contractor shall submit Shop Drawings as required by the Contract Documents. The purpose of the Shop Drawings is to show, in detail, the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with Contract Documents.

Within five (5) calendar days after Town's award of the Contract, Contractor shall submit to Project Manager or Consultant a complete list and submittal log of items for which Shop Drawings are to be submitted and shall identify the critical items and all submittal dates. Approval of this list by Project Manager or Consultant shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

After the approval of the list of items required in above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show its signed approval thereon. Contractor shall submit three (3) sets of shop drawings.

Some shop drawings as either denoted in the Contract Documents or by the Florida Building Code (Code) or Florida Statute, such as structural drawings, require that they be

prepared by a licensed engineer. It is the sole responsibility of the Contractor to ensure that the Shop Drawings meet all Code requirements.

In addition to all shop drawings required by the Contract Documents the Contractor must provide shop drawings for; all drainage structures including catch basins, drainage pipe, ballast rock, and exfiltration trench filter fabric.

If the Shop Drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.

Project Manager or Consultant shall review and accept or reject with comments, Shop Drawings within fourteen (14) calendar days from the date received. Project Manager's or Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents and not indicated on the Shop Drawings. No Work called for by Shop Drawings shall be performed until said Shop Drawings have been approved by Project Manager and/or Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Project Manager and/or Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Documents references, drawing number(s), specification section number(s) and the shop drawing numbers of related work. Shop drawings must be complete in every detail, including location of the Work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other work, cutting, fitting, drilling and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown.

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Project Manager and/or Consultant are entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Contractor. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

Contractor shall keep one set of Shop Drawings marked with Project Manager's and/or Consultant's approval at the job site at all times.

### **3.16 PRODUCT DATA AND SAMPLES**

Contractor shall submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor shall supplement manufacturer's standard data to provide information unique to the Work.

Contractor shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

Contractor shall submit a draft of all product data, warranty information and operating and maintenance manuals at 50% completion of construction.

Contractor shall submit samples to illustrate the functional characteristics of the product(s). Submittals shall be coordinated for different categories of interfacing Work. Contractor shall include identification on each sample and provide full information.

### **3.17 DIFFERING SITE CONDITIONS**

In the event that during the course of the Work on a Project the Contractor encounters subsurface or concealed conditions at the Project site which differ materially from those shown in the Contract Documents, and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of its discovery, notify the Project Manager and/or Consultant in writing of the existence of the aforesaid conditions. Project Manager or the Consultant shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Project Manager or the Consultant, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Project Manager or Consultant shall recommend an equitable adjustment to cost of the Work or the time to complete the Work, or both. If the Project Manager and Contractor cannot agree on an adjustment in the Contract Price and/or Contract Time, the adjustment shall be referred to the Town's Procurement Manager for determination. Should the Town's Procurement Manager determine that the conditions of the Project site are not so materially different to justify a change in the terms of the Contract Documents, the Director shall so notify the Project Manager, Consultant, and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

No request by Contractor for an equitable adjustment to the Contract Documents under this provision shall be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed

if made after the date certified by Consultant or Project Manager as the date of substantial completion.

### **3.18 PROTECTION OF PROPERTY, UTILITIES, AND THE PUBLIC**

The Contractor shall continuously maintain adequate protection of all its Work from all losses or damage and shall protect public and private property, and utilities from injury or loss arising in connection with the Work, and take all necessary precautions to prevent accidents, injuries, or damage to persons or property on or near the Work.

Contractor shall be responsible to restore all areas impacted by the Work, including by not limited to swale areas, existing structures, driveways and approaches, landscaping, drainage, and lighting to pre-existing conditions to the satisfaction of the Project Manager.

### **3.19 COORDINATION OF THE WORK**

Operations and events/programs will be ongoing at the site where the Work will be performed. Prior to the commencement of the Work, the Project Manager will make every effort, based on available information, to notify the Contractor of any ongoing operations or events/programs scheduled at the Project site that may require coordination. The Contractor shall be solely responsible for coordinating the Work to minimize any potential adverse impacts. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Contractor shall notify the Project Manager in writing of any Work that will impact ongoing operations or scheduled events/programs. Such notification shall be provided to the Project Manager at least 72 hours in advance of the Contractor performing any such Work.

### **3.20 ACCESS TO THE PROJECT SITE**

Town shall provide, as may be indicated in the Contract Documents or Work Order, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by Town for the use of Contractor.

Contractor shall provide, at Contractor's own expense and without liability to Town, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to the Town copies of written permission obtained by Contractor from the owners of such facilities.

### **3.21 SAFETY PRECAUTIONS**

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

- All employees on the Project(s) site(s) and other persons who may be affected thereby;
- All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

- Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

The Contractor shall comply with the OSHA "Federal Right to Know" Regulation regarding informing employees of toxic substances in the workplace, providing training, and emergency procedures.

Contractor must adhere to applicable environmental protection guidelines for the duration of the Work. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Town, Miami-Dade County, State of Florida), which bear on the performance of the Work

All open trenches or holes shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager.

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration. Contractor shall immediately report to the Project Manager every accident to persons and shall furnish in writing full information, including witness statements, regarding any and all accidents.

Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Project Manager has issued the Contractor a notice of Final Acceptance.

### **3.22 LABOR AND MATERIALS**

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified in a Work.

### **3.23 VEHICLES AND EQUIPMENT**

Contractor shall have on hand at all times clean and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. The Town may require the repair or replacement of equipment as reasonably necessary.

### **3.24 PROJECT MANAGEMENT**

Contractor shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, but is not limited to: obtaining bids from subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that subcontractors comply with the requirements of the Contract Documents; performing the Work in accordance with the Contract Documents to the satisfaction of the Project Manager; paying all subcontractors; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion, as applicable.

Contractor shall have a competent English speaking Superintendent full time on the Project site, who shall represent Contractor and all directions given to the Superintendent shall be as binding as if given to Contractor. The Superintendent shall not be changed except with the prior written consent of Project Manager. Contractor will provide properly licensed personnel where such personnel are required by any rule, regulations, or law. Contractor shall give efficient supervision to the Work, using its best skill and attention.

The Project Manager and the Contractor shall meet at least as determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

### **3.25 SUBCONTRACTORS**

Contractor is solely responsible for all acts and omissions of its Subcontractors. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town. Contractor is responsible for the timely payment of its Subcontractors and suppliers as required by Florida Statute Chapter 218.735. Failure to comply with these payment requirements will place the Contractor in default of the Contract.

Contractor shall not employ any subcontractor against whom Town may have a reasonable objection.

Contractor shall utilize the Subcontractors identified in its Bid submission. The replacement, addition, or deletion of any Subcontractor(s) shall be subject to the prior written approval of the Project Manager or designee.

### **3.26 AUTHORITY OF THE PROJECT MANAGER**

The Town Manager hereby authorizes the Project Manager to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under the Contract Documents.

The Contractor shall be bound by all determinations or orders of the Project Manager and shall promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with

the Project Manager's determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager shall have authority to act on behalf of the Town to the extent provided by the Contract, unless otherwise modified in writing by the Town. All instructions to the Contractor shall be issued in writing. All instructions to the Contractor shall be issued through the Town Manager, Project Manager.

The Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

All interpretations and recommendations of the Project Manager shall be consistent with the intent of the Contract Documents.

The Project Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever, in their opinion, it is considered necessary or advisable to ensure the proper completion of the Work the Project Manager has authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed or completed.

The Project Manager's authority to act under this paragraph, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

The Project Manager will not be responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

### **3.27 INSPECTION OF THE WORK**

The Project Manager, Inspectors, other Town representatives, and inspectors representing the Town and other public entities having jurisdiction over the Work shall at all times have access to the Work

Should the Contract Documents, or any laws, ordinances, or any public authority require any of the Work to be tested, Contractor shall provide timely notice of readiness of the Work for testing and timely notice shall be given of the date fixed for such testing so that the appropriate representatives of the Town, DERM, or other entities can be present for such testing. Contractor shall be responsible for making arrangements for all tests and for all associated costs for all required testing. The original copies of all testing reports are to be sent directly to the Project Manager by the testing firm, with a copy to the Contractor.

The Town, at its sole discretion may conduct testing in addition to the required testing. In such instances the Town shall pay all testing costs unless the tests determine that the material, Work, or equipment is not compliant with the requirements of the Contract Documents. In such instances the Contractor shall reimburse the Town for all incurred



testing cost and the Contractor shall be responsible for any costs associated with re-testing to ensure compliance.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager or Consultant.

### **3.28 TOWN LICENSES, PERMITS AND FEES**

In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee the Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Contract are as follows:

- 1) Contractor shall have and maintain during the term of this Contract all appropriate Town licenses. Fees for which shall be paid in full in accordance with the Town's Fee structure for such licenses. THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.
- 2) During the performance of this Contract there may be times when the Contractor will be required to obtain a Town permit for such Work. It is the responsibility of the Contractor to insure that the appropriate Town permits to perform such work as may become necessary during the performance of the Work have been obtained. Any fees related to Town required permits in connection with this Contract will be the responsibility of the Contractor and will be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

### **3.29 TAXES**

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

### **3.30 REMOVAL OF UNSATISFACTORY PERSONNEL**

Contractor shall at all times enforce strict discipline and good order among its employees and subcontractors at the Project(s) site(s) and shall not employ on the Project any unfit person or anyone not skilled in the Work to which they are assigned.

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor shall respond to the Town within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town shall make the final determination as to the removal of unsatisfactory personnel

from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

### **3.31 UNCOVERING FINISHED WORK**

The Project Manager's, right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager shall notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract Documents, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as additional Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor. Such expenses shall also include repayment to the Town for any and all expenses or costs incurred by it, including employee salaries or related cost, in connection with such uncovering, taking down, replacing and restoration at the Project site.

### **3.32 DEFECTIVE OR NON-COMPLIANT WORK**

The Town Manager, Project Manager, or Consultant shall have the authority to reject or disapprove Work that is found to be defective or not in compliance with the requirements of the Contract. If required, Contractor shall promptly either correct all defective or non-compliant Work or remove such defective Work and replace it with non-defective/non-compliant Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections.

Re-examination of any of the Work may be ordered by the Project Manager or Consultant, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, the Town shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

Should Contractor fail or refuse to remove or correct any defective or non-compliant Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by the Town Manager or designee, the Town Manager or designee shall have the authority to cause the defective/non-compliant Work to be removed or corrected, or make such repairs or corrections as may be necessary at Contractor's expense. Any expense incurred by the Town in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond, if required by the Contract Documents. In the event of failure of Contractor to make all necessary repairs promptly and fully, the Town Manager or designee may declare the Contractor in default.

If, within the warranty period required by the Contract Documents, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Should the Contractor fail to take such action the Town may take

any necessary and appropriate action and hold the Contractor liable and responsible for all costs. The Town may take any action allowed under this Contract or in law to recover all such costs. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

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

### **3.33 FIELD DIRECTIVE**

The Project Manager or Consultant may at times issue Field Directives to the Contractor based on visits to the Project Site. Such Field Directive(s) shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within 48 hours, notify the Project Manager that the work covered by the Field Directive is outside the scope of the Work. At that time the Field Directive may be rescinded or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the Project Manager that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive, in accordance with the requirements of Article 3.38. At no time shall the Contractor refuse to comply with the Field Directive. Failure to comply with the Field Directive may result in a determination that the Contractor is in default of the Contract.

### **3.34 CHANGE ORDERS**

Without invalidating the Contract Documents and without notice to any Surety (if any), the Town reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete the Work in a manner satisfactory to the Town. The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract Documents and all such changes shall be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

Any changes to the Contract must be contained in a written document, executed by the both parties. However, under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

In the event satisfactory adjustment cannot be reached and a Change Order has not been issued, the Town reserves the right, at its sole option to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work.

Where the Town directs the Contractor to proceed on a time and materials basis, Contractor shall maintain detailed records of all labor and material costs for review by the Town. In addition, the Contractor shall be entitled to a combined profit and overhead rate

that shall not be in excess of ten (10%) percent of the direct labor and material costs, unless the Procurement Manager determines that the complexity and risk of the Change Order Work is such that an additional factor is appropriate. The final amount to be paid to the Contract for Change Order Work shall be subject to negotiation between the Town and the Contractor.

Failure by the Contractor to proceed with Change Order Work when so directed by the Town Manager or designee may result in the Contractor being found in default of the Contract.

### **3.35 FORCE MAJEURE**

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, then, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the Town within two (2) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required; this **Does Not Include** inclement weather except as permitted by Florida law and do not include the acts or omissions of Subcontractors or suppliers.

### **3.36 EXTENSION OF TIME**

Any reference in this section to the Contractor shall be deemed to include suppliers, and permitted Subcontractors, whether or not in privity of contract with the Contractor for the purpose of this article.

If the Contractor is delayed at any time during the progress of the Work beyond the Contract Time and/or Notice to Proceed (NTP) by the neglect or failure of the Town or by a Force Majeure, then the Contract Time set forth in the Contract shall be extended by the Town subject to the following conditions:

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;
- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

**Note:** A delay meeting all the conditions of the above, shall be deemed an Excusable Delay.

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the

Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay shall be made within five (5) calendar days after the time when the Contractor knows or should have known of any cause for which it may claim an extension of time and shall provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Contractor to furnish such additional information or documentation, as the Project Manager shall reasonably deem necessary or helpful in considering the requested extension.

The Contractor shall not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall be obligated to continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike or interference of public origin which may delay the Project, the Contractor shall promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same shall have been granted. The Town shall be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction shall be obtained and move to dissolve the same or otherwise, as the Town may deem proper.

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Article 3.40, Excusable Delay, Non-Compensable, the Contractor shall not be entitled to a separate extension for each one of the causes, only one period of extension shall be granted for the delay.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, shall not waiver the Town's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

### **3.37 EXCUSABLE DELAY, NON-COMPENSABLE**

Excusable Delay is either (i) caused by circumstances that could not be foreseen and are beyond the control of Contractor, its subcontractors, or suppliers, or is (ii) caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the Town.

Then Contractor shall be entitled only to a time extension and no compensation for the delay.

Contractor is entitled only to a ~~time~~ time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 3.35 and Article 3.36.

Failure of Contractor to comply with Article 3.35 and Article 3.36, as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

### **3.38 CLAIMS**

Any claim for a change in the Contract time for completion of any Work, the Contract Term, or Contract price shall be made by written notice by Contractor to the Town representatives identified in Article 3.3 within ten (10) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Town Manager or designee allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes shall be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract shall be waived if not submitted in strict accordance with the requirements of this Article.

The Contract time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made as provided in this Article. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by Town, fires, floods, labor disputes beyond the control of the Contractor, epidemics, abnormal weather conditions (if applicable), or acts of God.

The Contractor 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 or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Town. Contractor shall be entitled only to extensions of the Contract time for completion of the Work, as the sole and exclusive remedy for such resulting excusable delay.

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the

Town or any of its representatives and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work due to an Excusable Delay as defined in Article 3.42. The Contractor alone specifically assumes the risk of such delays, including, without limitation: delays in processing or approving any submittals to the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor shall not receive monetary compensation for Town delay(s).

Failure of Contractor to comply with this Article as to any particular event of claim shall be deemed conclusively to constitute a waiver of any and all claims resulting from that particular event.

### **3.39 DISPUTES AND MEDIATION**

Contractor understands and agrees that all disputes between it and the Town upon an alleged violation of the terms of this Contract by the Town shall be submitted for resolution in the following manner.

Initial effort(s) should be made by the Contractor to resolve any issues with the Project Manager or other Town representative(s) it works within in the coordination and performance of the Work.

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager identified in Article 3.3, Notices, of the claim or dispute

The Contractor shall submit its dispute in writing, with all supporting documentation, to the Procurement Manager, as identified in Article 3.3, Notices. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute the Contractor shall submit their dispute in writing within five (5) calendar days of the written finding being issued by the Procurement Manager to the Town Manager. Failure to submit such appeal in the stated timeframe of the written finding shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager shall review the issues relative to the claim or dispute and issue a written finding.

Appeal to the Town Manager for resolution is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the Contractor be entitled to compensation hereunder, the Town Manager's decision may be subject to approval by the Town Council. Contractor shall not be entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Council if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired in an instance where Town Manager's decision is subject to Town Council for approval; or

(iii) Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Term, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator shall be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

#### **3.40 CONTINUING THE WORK**

Contractor shall continue to perform all Work under the Contract Documents during all disputes or disagreements with Town, including disputes or disagreements concerning a request for a Change Order and Work shall not be delayed or postponed pending resolution of any disputes or disagreements without the prior written approval of the Project Manager.

#### **3.41 FRAUD AND MISREPRESENTATION**

The Town may terminate this Contract, or any other contract(s) with the Town, with any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the Town through fraud, misrepresentation or material misstatement. Such person, individual, corporation, entity, or affiliate shall be responsible for all direct or indirect costs associated with termination or cancellation of the contract(s).

#### **3.42 STOP WORK ORDER**

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town shall either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 3.50, Termination for Convenience.



If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time to complete any Work under the Contract or extending the Contract Term to the extent that, in the opinion of the Town Manager or designee, the Contractor may have been delayed by such suspension. In the event the Town Manger or designee determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor, or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time or Contract Term or (Time) as a result of the issuance of a Stop Work Order.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, Excusable Delay, and shall not give rise to a claim for compensable delay.

### **3.43 HURRICANE PREPAREDNESS**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, shall immediately respond by taking all precautions necessary to secure any Work threatened by storm events, regardless of whether the Contractor has been given notice of same by Project Manager or other Town representative.

Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

### **3.44 CLEANING UP; TOWN'S RIGHT TO CLEAN UP**

Contractor shall at all times keep the Work site(s) free from accumulation of excess materials, waste materials or rubbish caused by its operations. At the completion of Work at a work site(s), Contractor shall remove all its excess materials, waste materials and rubbish from and about the Project(s) as well as any tools, equipment, machinery and surplus materials or supplies. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Town may do so and the cost incurred shall be charged to Contractor. Any combustible waste materials must be removed from the work site(s) at the end of each day.

Should the Contractor leave any open trenches at any time that Work is not being performed, the Town may have the open trenches covered and deduct any cost incurred from any outstanding payments due or to become due to the Contractor. The Town may also invoice the Contractor for all costs incurred in mitigating any open trenches.

### **3.45 SET-OFFS, WITHHOLDING, AND DEDUCTIONS**

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

- Any amount of any claim by a third party;
- Any Liquidated Damages, and/or;
- Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town shall notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act

### **3.46 CONTRACTOR DEFAULT**

#### **a. Event of Default**

An event of default shall mean a breach of the Contract by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include but not be limited to, the following:

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services, materials, or supplies provided to Contractor ;
- The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- The Contractor has failed to obtain the approval of the Town where required by the Contract Documents;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work.

#### **b. Notice of Default-Opportunity to Cure**

Where an Event of Default ("Default") occurs under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town; or, the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs

incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Town Manager or designee may also suspend any payment or part thereof or order a Work stoppage until such time as the issue(s) concerning compliance are resolved.

c. Termination for Default

Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Contract. Contractor understands and agrees that termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination.

In the event of termination by the Town Manager or designee, the Town Manager or designee may immediately take possession of all applicable documentation and data, material, equipment, and supplies to which it is entitled to under the Contract or by law.

Where the Town erroneously terminates the Contract for default, the terminations shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

**3.47 TERMINATION FOR CONVENIENCE**

In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice shall state the date upon which Contractor shall cease all Work under the Contract, and if applicable vacate the Project(s) site(s).

Upon receipt of such notice, unless otherwise directed by the Town,

the Contractor shall, Stop all Work on the date specified in the notice (“the Effective Date”) and;

- Take such action as may be necessary for the protection and preservation of the Town’s materials and property;
- Cancel all cancelable orders for materials and equipment;
- Remove all materials, supplies or equipment that may be used by the Contractor on the Work;
- Assign to the Town and deliver to the Town, at a site(s) specified by the Town, any non-cancelable orders for materials and equipment that can not otherwise be used by the Contractor on other work;
- Take no action that shall increase the amounts payable by the Town under the Contract Documents; and take reasonable measures to mitigate the Town’s liability under the Contract Documents; and
- All documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to

timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Contractor for the actual cost, or the fair and reasonable value, as substantiated by invoice documentation, of any non-cancelable material(s) and equipment that cannot be used elsewhere by the Contractor in the performance of its work.

In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the Contractor. Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

**3.48 TOWN MAY AVAIL ITSELF OF ALL REMEDIES**

The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

**3.49 COMPLIANCE WITH APPLICABLE LAWS**

The Contractor shall comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

**3.50 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT**

Contractor shall not unlawfully discriminate against any person, shall provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contact. Contractor shall comply with all applicable Federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

**3.51 INDEPENDENT CONTRACTOR**

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

**3.52 THIRD PARTY BENEFICIARIES**

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this

Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.

### **3.53 ASSIGNMENT OR SALE OF CONTRACT**

The performance of this Contract shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Contract.

Any transference without Town approval shall be cause for the Town to terminate this Contract for default and the Contractor shall have no recourse from such termination.

Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

### **3.54 MATERIALITY AND WAIVER OF BREACH**

Town and Contractor agree that each requirement, duty, and obligation set forth in the Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

### **3.55 DEFENSE OF CLAIMS**

Should any claim be made or any legal action brought in any way relating to the Work under the Contract, the Contractor shall diligently render to the Town any and all assistance which the Town may require of the Contractor.

### **3.56 FUNDS AVAILABILITY**

Funding for this Contract is contingent on the availability of Town funds and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

### **3.57 ACCESS TO AND REVIEW OF RECORDS**

Town shall have the right to inspect and copy, at Town's expense, the books, records, and accounts of Contractor which relate in any way to the Contract. The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes and Town shall have the right to immediately terminate this Contract for the refusal by the

Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Contract for a period of five (5) years from the date of termination.

**3.58 ROYALTIES AND PATENTS**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

**3.59 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN**

In the event the Contractor may be deemed to have a cause of action against the Town, no action shall lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Town or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if the Contract is terminated under the provisions of the Contract, unless such action is commenced within six (6) months after the date of such termination by the Town.

**3.60 APPLICABLE LAW AND VENUE OF LITIGATION**

This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions the sole venue shall be Miami-Dade County, Florida.

**3.61 NON-EXCLUSIVE CONTRACT**

It is the intent of the Town to enter into a Contract with all successful Bidder(s) that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, as it sees fit, including but not limited to: award of other contracts, use of another contractor, or perform the Work with its own employees.

**3.62 SEVERABILITY**

In the event any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the Court becomes final.

**3.63 CONTRACT DOCUMENTS CONTAINS ALL TERMS**

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral

or otherwise, regarding the subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**3.64 ENTIRE AGREEMENT**

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

## **SECTION 4**

### **SPECIAL TERMS AND CONDITIONS**

#### **4.1 SCOPE OF WORK**

This Project consists of a Base Bid and nine (9) Bid Deductive Alternates. The Base Bid consists of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment and services necessary for the construction of the new Youth Club Center at East Park located at 6075 Miami Lakes Drive. The Work includes demolition of the existing clubhouse building, construction of a new, 1-story building approximately 3,700 SF, a half basketball court, 2 picnic shelters, selective removal of existing trees and installation of new trees, relocation of the existing irrigation, installation of a chain linked fence to enclosed dumpster area, selective demolition of miscellaneous concrete slabs, light poles, picnic shelters, and existing surface parking lot and drives. Install rubberized playground surface at existing playground, five (5') foot asphalt walkways, all in accordance with the Drawings

Bid Deductive Alternates are described on Plan sheet AS 1.0 and contained in the Drawings.

#### **4.2 REFERENCE STANDARDS**

Reference to the standards of any technical society, organization or body shall be construed to mean the latest standard adopted and published at the date of the award of the Contract, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract Documents the same as if herein repeated in full and in the event of any conflict between any of these standards and those specified, the most stringent shall govern unless otherwise stated.

#### **4.3 TIME FOR PERFORMANCE OF THE WORK**

The playground area including the installation of the playground equipment must meet the Substantial Completion requirements within two hundred forty (240) Days of the issuance of the Notice To Proceed. Final Completion shall be within thirty (30) Days of Substantial Completion.

#### **4.4 CONTRACT TERM**

This Agreement shall be effective upon execution by both parties and shall continue until expiration of the warranty period.

#### **4.5 HOURS FOR PERFORMING WORK**

All Work shall be performed in accordance with the hours set forth in the Town's noise Ordinance No. 04-50.

Any Work to be performed outside these hours will require the prior written approval of the Town Manager. A Work Order may establish different working hours than those stated herein.



#### **4.6 PROGRESS PAYMENTS**

Contractor may make application for payment for Work completed during the Project at intervals of not more than one invoice per month or upon completion and Final Acceptance of the Work. Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed. All applications shall be submitted in triplicate and the Contractor shall only use the Town's Contractor Payment Application Form or an invoice format approved by the Town. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated Project schedule as required by Article 4.9 and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the Project Manager. Each application for payment shall be submitted in duplicate for approval.

Ten percent (10%) of all monies earned by Contractor shall be retained by Town until Final Acceptance by the Town. Any interest earned on retainage shall accrue to the benefit of Town. All requests for retainage reduction shall be in writing in a separate stand-alone document.

The Town shall not pay more than five (5%) of the Total Contract price as retainage should a schedule of values be required of the contractor

Town may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- Defective Work not remedied.
- Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or Town because of Contractor's performance.
- Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- Damage to another contractor not remedied.
- Liquidated damages and costs incurred by Town and/or Consultant for extended construction administration.
- Failure of Contractor to provide any and all documents required by the Contract Documents.

Contractor may be paid for materials or equipment purchased and stored at the Project(s) Site(s) or another location, subject to the sole discretion and approval of the Project Manager. Where a payment request is made for materials or equipment not incorporated in the Project, but delivered and suitably stored at the site or at some other location agreed upon in writing, the written documentation must be submitted at the time of request for payment. Payment shall be conditioned upon submission by the Contractor of paid invoices and an executed Material Purchased/Stored On-Premises form to establish the Town's title to such materials or equipment, or otherwise protect the Town's interest, including applicable insurance in the name of Town and transportation to the Project site.

Contractor retains sole liability to replace such stored materials or equipment as a result of damage or loss for any reason.

#### **4.7 INVOICES**

Contractor shall provide the Town with one invoice for progress payments in accordance with Article 4.6 above. Multiple invoices will not be accepted and the Town will not make payment based on statements of accounts. Unless otherwise approved in writing in advance the Contractor must use the invoice form provided by the Town. At a minimum the invoice must contain the following information:

- Name and address of the Contractor
- Contract number
- Purchase Order Number
- Date of invoice
- Invoice numbers (Invoice numbers cannot be repeated)
- Description of Work performed or installed, including location(s) where the Work was performed
- Unit prices of Work performed
- Quantities of Work Performed or installed
- Extended prices
- Total value of the invoice

Failure to include the above information will delay payment. Payments will not be made based on statements of accounts.

The Town will take action to pay, reject or make partial payment on an invoice in accordance with the Florida Local Government Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished or where the Work has not been accepted by the Town. If there is a dispute with regard to an invoice, the Town will pay the amount not in dispute and reject the remainder that is in dispute.

The Contractor shall be compensated at the prices specified in the Bid Form of the Contract.

All payment(s) shall be made in accordance with the State of Florida Local Government Prompt Payment Act.

#### **4.8 LIQUIDATED DAMAGES**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract or any approved extension of time the Contractor may be granted by the Town. In the event of a delay in completion beyond the timeframe set forth in the Contract, the Contractor shall pay to the Town two hundred fifty dollars (\$250.00) for each and every calendar day of Unexcused Delay, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified in writing of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the Project.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder,

shall be less than the amount of liquidated damages due the Town, the Contractor shall pay the difference upon demand by the Town. Should the Contractor fail to compensate the Town for any liquidated damages, the Town shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

The Town shall notify the Contractor that it is incurring liquidated damages.

#### **4.9 PROJECT SCHEDULE**

Contractor shall submit a proposed Project schedule as follows:

- Schedule identifying the schedule for each location. The proposed Project schedule shall be submitted within ten (10) calendar days of the Notice of Award and such submittal shall be subject to the Project Manager's review. Subsequent to such review of said schedule the Contractor shall establish said schedule as the baseline schedule.
- All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.
- All Project Schedules shall be prepared in Microsoft Project 2007 or earlier unless otherwise approved by the Project Manager. At the time of submission of schedules, Contractor shall submit a hard copy as well as an electronic version. Electronic versions shall not be submitted in a .pdf format.

Subsequent to review of the initial schedule submission the Contractor shall establish the reviewed schedule as the "baseline schedule". Contractor shall then prepare and submit all updates to the schedules utilizing the tracking mode within Microsoft Project.

In addition to the Project Schedule the Contractor shall provide a two (2) week look-ahead schedule that reflects the Work to be performed during the two (2) week period. The look-ahead schedule shall be provided to the Project Manager and Consultant every other Thursday prior to the start of the two-week period. This schedule will, at a minimum, include the area(s) where Work is to be performed and the Work to be performed in the area(s).

#### **4.10 RELEASE OF LIENS/SUBCONTRACTOR'S STATEMENT OF SATISFACTION**

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Town upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor shall, starting with the second (2<sup>nd</sup>) invoice, provide the Project Manager Partial or Final Releases of Lien/Subcontractor's Statement of Satisfaction for the Project. As an option the Contractor may also submits a Consent of Surety authorizing the release of payment Failure to submit such documentation shall result in rejection of the application for payment. The Town may, in its sole discretion withhold any payments for any Work performed by the Contractor where a requested Final Release of Lien has not been submitted. A conditional Release of Lien will not be accepted by the Town.

#### **4.11 PURCHASE AND DELIVERY, STORAGE AND INSTALLATION**

All materials shall be F.O.B. delivered. The Contractor shall be solely responsible for the purchase, delivery, and installation of all equipment and material(s) not provided by the Town. Contractor shall make all arrangement for delivery. Contractor shall be solely liable receiving, inspecting, accepting, and for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, FDOT, Miami-Dade County, and Town rules and regulations.

Contractor is responsible for the protection of all equipment and material(s) from adverse weather conditions, damage, deterioration, and theft until the Work has been accepted by the Town.

#### **4.12 TOWN FURNISHED DRAWINGS**

The Town has furnished design drawings for this Project. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the Town prior to commencement. This shall also apply to any revisions or omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI).

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project(s), should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and the Contractor agrees to abide by the Project Manager's or Consultant's interpretation and perform the Work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

The Contractor shall have no basis for any claim for additional costs resulting from their failure to identify any required revisions, omissions and/or errors, not identified in writing to the Project Manager prior to commencing the Work.

#### **4.13 WORK STAGING AND PHASING**

The Work to be performed shall be done in such a manner so as not to interfere with the normal Town operations of the Project site or facility. The manner in which the Work is performed shall be subject to the approval of the Project Manager, whom if necessary, shall have the authority to require changes in the manner in which the Work is performed. There shall be no obstruction of Town services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager 24 hours in advance of the interruption of Town operations.

The Contractor shall familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

A staging plan may be submitted to and approved by the Project Manager prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

#### **4.14 SUBSTITUTIONS**

No Substitutions of the Property identified in Exhibit B are permitted. Substitutions are permitted for Property not furnished by the Town and identified in Exhibit B.

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Project Manager if sufficient information is submitted by Contractor to allow Project Manager to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Project Manager from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Project Manager for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated.

The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager in evaluating the proposed substitute. The Project Manager may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Project Manager, if the Contractor submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager shall be the same as those provided herein for substitute materials and equipment.

The Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute. Project Manager and the Town shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Town's and the Project Manager's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. The Town and the Project Manager may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Town and the Project Manager rejects the proposed substitute, at their discretion, the Town may require the Contractor to reimburse the Town for the charges of the Consultant for evaluating the proposed substitute.

#### **4.15 REQUEST FOR INFORMATION**

The Contractor shall submit a Request for Information (RFI) where the Contractor believes that the Contract Document's specifications are unclear or conflict. All requests must be submitted in a manner that clearly identifies the specification section or drawing detail, if furnished, where clarification or interpretation is being requested. As part of the RFI, Contractor shall include its recommendation for resolution. The Town shall respond in writing.

#### **4.16 WARRANTY**

Contractor warrants to the Town that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager or Consultant, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract Documents.

All Work shall have a one (1) year warranty on labor from the date of Final Acceptance and the Contractor shall provide such written warranty prior to the Town issuing final payment. Contractor shall provide a minimum written warranty of one (1) year on all equipment, parts, or material unless the manufacturer provides a longer warranty except for all equipment, materials or parts provided by the Town. Where the manufacturer of the equipment, parts, or material provides a warranty greater than one (1) year or the time frame stipulated in a Contract, then the manufacturer's warranty term shall take precedence. Contractor shall be required to provide the Project Manager a copy of the manufacturer's warranty prior to the Town issuing final payment. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

All warranties, expressed and/or implied, shall be provided to the Town for material and equipment covered by the Contract Documents. All material and equipment furnished shall be fully guaranteed by the Contractor against factory defects and workmanship. At no expense to the Town, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Contract Documents may supersede the manufacturer's standard warranty. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

Should the Contractor fail to perform any required warranty work the Town, at its sole discretion, may have the work performed by others, and deduct such costs from any monies due the Contractor from the Town. Where such funds are not available, the Town will bill the Contractor and Contractor shall reimburse the Town within thirty (30) calendar days. The Town may take any necessary and appropriate action provided under this Contract or with law to collect such payment due the Town.

#### **4.17 ACCESS TO WATER AND UTILITIES**

The Contractor is responsible for providing all water and power that may be required for the performance of the Work, including the use of a generator. The use of a generator may be subject to the prior approval of the Town's representative should the Work be in a primarily residential neighborhood.

The Town may at its sole discretion provide access to Town utilities and/or water should such be available at the Work site. However, the Contractor is responsible to ascertain the location and accessibility of utilities and potable water sources required for the Work.

#### **4.18 PROGRESS MEETINGS**

The Town shall conduct a pre-construction conference prior to the commencement of the Work. Contractor shall hold progress and coordination meetings as required by the Project Manager or Consultant, to provide for the timely completion of the Work.

#### **4.19 STAGING SITE**

The Contractor is solely responsible for making all arrangements for any staging site(s) that may be necessary for the performance of the Work and the Contractor shall be responsible for all site(s) security and any loss, damage or theft to its equipment and materials. The Contractor shall install fencing, gates and take all other measures, as necessary, to make

said site secure. The Project Manager at its sole discretion may make a staging site(s) available for use by the Contractor. Contractor shall not utilize the Staging Site for worker's parking or the parking of other vehicles, except for delivery and pickup purposes, without the prior written approval of the Project Manager. If such site is made available by the Town, the Town assumes no responsibility or liability, and the Contractor shall be responsible for any loss, damage or theft to its equipment and materials. The Contractor shall also be responsible for restoring the site(s) to its pre-existing condition prior to the Contractor's use of the site(s).

#### **4.20 PROJECT SITE FACILITIES**

The Contractor shall arrange for all Project site facilities as may be necessary to perform the Work.

Contractor's, Subcontractor's, supplier's, materialmen's personnel shall not use the Town office or public restrooms that may be available at the Project(s) site without the prior consent of the manager of the facility or the Project Manager where there is no manager of a facility. The Contractor shall provide and maintain at its own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Contractor, his employees or his Subcontractors shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

The Contractor shall furnish an adequate supply of drinking water for its and its Subcontractors' employees.

There shall be adequate provisions made by the Contractor to ensure all disposable materials are properly disposed of and do not create a nuisance to the Town or the public. The location of the temporary facilities shall be subject to the approval of the Project Manager.

Contractor is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager.

The Contractor shall be required to obtain all necessary permits required for any Project site facilities. Contractor shall also be responsible to maintain such facilities in a safe and working condition.

All such facilities remain the property of the Contractor and the Contractor shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

#### **4.21 SUBSTANTIAL COMPLETION, PUNCH LIST, & FINAL COMPLETION**

The Work shall be substantially complete when the Project Manager, in the reasonable exercise of his/her discretion determines that the Work is complete and there are no material and/or substantial variations from the Contract Documents and the Work is fit for



its intended purpose. Upon Substantial Completion, the Project Manager and the Contractor shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. Where the Work requires the Contractor to obtain a Certificate of Completion no request for Substantial Completion inspection is to be submitted until the Contractor has obtained the Certificate(s) of Completion. The Project Manager or Consultant shall schedule the date and time for any inspection and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the Project Manager and the Contractor confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Town.

The Project Manager or Consultant, and the Contractor shall agree on the time reasonably required to complete all remaining Work included in the Punch List.

Upon Substantial Completion and the receipt and acceptance of any required documentation, including warranty documents, the Project Manager shall determine that a Project has achieved Final Completion and authorize final payment.

The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

#### **4.22 ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager shall, within ten (10) calendar days, make an inspection thereof. If Project Manager find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment **shall** be issued by Project Manager, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor shall deliver to the Project Manager a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, and the final bill of materials, if required, and payment application.

Contractor shall deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the final invoice.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and Project Manager so certifies, Town shall, upon such certification of Consultant, and without terminating the Contract Documents, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

#### **4.23 OWNERSHIP OF THE WORK**

The Contractor is solely responsible for all Work materials, supplies, and equipment, prior to final written acceptance. Contractor shall be liable for all damage, theft, safety, transport and maintenance, until the Town issues final acceptance. The Contractor is responsible for the protection, and maintenance of all of its own tools, equipment, and vehicles.

#### **4.24 RECORD SET**

Contractor shall maintain in a safe place one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the Project Manager, in good order and annotated to show all changes made during construction. The record documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. The record documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, the Record Set shall be delivered to the Project Manager by the Contractor. The Record Set of Drawings shall be submitted in both hard copy and as electronic plot files.

#### **4.25 AS-BUILT DRAWINGS**

During the Work, Contractor shall maintain records of all deviations from the Drawings as approved by the Project Manager or Consultant and prepare two copies of As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Town and to certify in writing that the As-Built Record Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or

below the concrete floor. Indicate the size, depth and voltage in each conduit.

To record actual construction, Contractor shall legibly mark on-site structures and site Work as follows:

- Depths of various elements of foundation in relation to finish first floor datum.
- All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Actual installed pipe material, class, etc.
- Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.
- Field changes in dimensions and details.
- Changes made by Project Manager's or Consultant's written instructions or by Change Order.
- Details not on original Contract Drawings.
- Equipment, conduit, electrical panel locations.
- Project Manager's or Consultant's schedule changes according to Contractor's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

- Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.
- Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Approved Shop Drawings: Provide record copies for each process, equipment, piping, electrical system and instrumentation system.

As-built documents shall be updated monthly as a condition precedent to payment. A final survey signed and sealed by a surveyor shall be provided to the Town at no additional cost, including digital I (CAD and PDF) versions.

For construction of new building, or building additions, field improvements, and or roadway improvements as-built drawings shall be signed and sealed by a Florida Licensed Registered Land Surveyor.

#### **4.26 NDPES REQUIREMENTS**

Contractor shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the Bid price. For further information on compliance requirements for NPDES and SWPPP visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for

obtaining, completing and paying for any required NPDES application or permits that may be required.

**4.27 PROJECT SIGNAGE**

Contractor shall furnish and install a Project sign at each of the Project Site in accordance Project Manager's requirements.

**SECTION 5**

**BID FORM**

Bid submittal of J.B. BUILDERS & CONTRACTORS, INC. DBA BALLARENA CONSTRUCTION  
(Name of Bidder)

3727 S.W. 8<sup>th</sup> ST. Ste 105 CORAL GABLES FL. 33134  
(Address)

Submitted on: 9/28/12  
(Date)

to furnish all Work as stated in the ITB and Contract Documents for the

**Construction of Youth Club Center at East Park  
Bid No: 2012-49**

To: Town of Miami Lakes, Florida  
Attn: Town Clerk  
Town Hall  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

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The undersigned, as Bidder, hereby declares that the only person or persons interested in this Bid, as principal(s) are named herein and that no other person than herein mentioned has any interest in this Bid or in the Contract to be entered into or which the Work pertains; that this Bid is made without connection with any other person, company, firm, or parties making a Bid; and that the Bid is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the geographic location(s) of the Work, performed sufficient investigations, and informed itself fully of the suitability of the Work and all conditions pertaining to the place where the Work is to be done; that it has examined the ITB and all of the Contract Documents and all addenda thereto issued prior to Bid opening, as acknowledged in its Bid; and that it has satisfied itself about the Work to be performed; and that it has submitted the Bid Guaranty, if required; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

The Bidder had determined based on its business and profession expertise that the Work can be performed and completed in accordance with the Contract Documents.

The Bidder agrees, if this Bid is accepted, to timely execute a contract with the Town, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to complete the Work.

The Bidder also agrees to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid guaranty, if required, accompanying the Bid shall be forfeited if Bidder fails to execute said Contract, or fails to furnish the required Performance Bond, if required by the Contract Documents, or fails to furnish the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

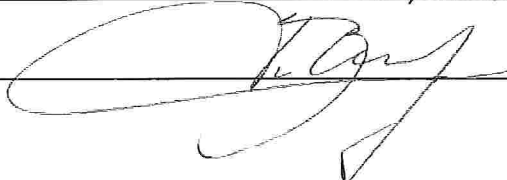
In the event of arithmetical errors, the Bidder agrees that these errors are errors which may be corrected by the Town. In the event of a discrepancy between the price Bid in figures and the price Bid in words, the price in figures shall govern. Bidder agrees that any unit price listed in the Bid is to be multiplied by the stated quantity requirements in order to arrive at the extended value and the unit price shall prevail over the extended value.

<u>Bid Item No.</u>	<u>Description</u>	<u>Price</u>
1	Base Bid	1,015,436.36
	<u>Bid Deductive Alternates (As described on Plan Sheet AS 1.0 and contained in the Drawings)</u>	
Alternate 1	Basketball Court, Associated Sidewalk & Lighting	\$ 25,800.00
Alternate 2	North Portion of Parking Lot, Roadway, Sidewalk & Associated Bollard Lighting	\$ 11,866.00
Alternate 3	Berm Grass Seating Area	\$ 3,125.00
Alternate 4	Picnic Shelters	\$ 21,771.00
Alternate 5	Drop Off Area with Bollards & Connecting Sidewalks	\$ 61,588.00
Alternate 6	Poured in Place Playground Surfacing	\$ 26,960.00
Alternate 7	Landscape Ground Cover	\$ 5,700.00
Alternate 8	Curved Wall Ledge stone Veneer Culture Stone	\$ 5,700.00
Alternate 9	Window Types E & G at Clerestory Level	\$ 1,500.00

**Failure to include prices for the Base Bid and all Bid Deductive Alternates shall result in the rejection of the Bid Submittal as non-responsive.**

TOTAL BASE BID AMOUNT \$ 1,015,436.36

Firm's Name: JTB BUILDERS & CONTRACTORS INC, DBA BALUARENA CONSTRUCTION

Signature: 

Printed Name/Title: Jorge Ballarena - President

Town/State/Zip: CONAL GABLES - FLORIDA - 33134

Telephone No.: 305-441-9118

E-Mail Address: jb@ballarenagroup.com

Social Security No. or F.E.I.N. No.: 20-0753807

**END OF SECTION**

ADDENDUM ACKNOWLEDGEMENT FORM

Part I: Listed below are the dates of issue for each Addendum received in connection with this Bid:

Addendum No. <u>1</u>	Dated <u>9/4/12</u>
Addendum No. <u>2</u>	Dated <u>9/5/12</u>
Addendum No. <u>3</u>	Dated <u>9/10/12</u>
Addendum No. <u>4</u>	Dated <u>9/19/12</u>
Addendum No. <u>5</u>	Dated <u>9/21/12</u>
Addendum No. <u>6</u>	Dated <u>9/24/12</u>
Addendum No. <u>7</u>	Dated <u>9/24/12</u>
Addendum No. <u>8</u>	Dated <u>9/25/12</u>
Addendum No. <u>    </u>	Dated <u>    </u>

8 No Addendum issued for this ITB

Firm's Name: TBBUILDERS & CONTRACTORS INC. DBA BALLARENA CONSTRUCTION

Signature: 

Printed Name/Title: Jorge Ballarena - President



**CERTIFICATE OF AUTHORITY  
(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of J.B. BUILDERS & CONTRACTORS INC. DBA Ballarena Constr., a corporation organized and existing under the laws of the State of FLORIDA, held on the 28 day of 09, 2012, a resolution was duly passed and adopted authorizing (Name) Jorge Ballarena as (Title) President of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation. I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 28, day of 09, 20 12.  
President: [Signature]  
Secretary: \_\_\_\_\_  
Print: Jorge Ballarena

**CERTIFICATE OF AUTHORITY  
(IF PARTNERSHIP)**

N/A

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the to execute bids on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_.  
Partner: \_\_\_\_\_  
Print: \_\_\_\_\_

**CERTIFICATE OF AUTHORITY  
IF JOINT VENTURE)**

N/A

Joint ventures must submit their joint venture agreement indicating that the person signing this Bid is authorized to sign Bid documents on behalf of the joint venture and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

**CERTIFICATE OF AUTHORITY  
(IF INDIVIDUAL)**

N/A

I HEREBY CERTIFY that, I (Name) \_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_ (If Applicable) have executed and am bound by the terms of the Bid to which this attestation is attached.

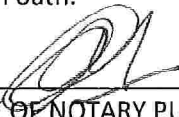
IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_\_\_\_.  
Signed: \_\_\_\_\_  
Print: \_\_\_\_\_

NOTARIZATION

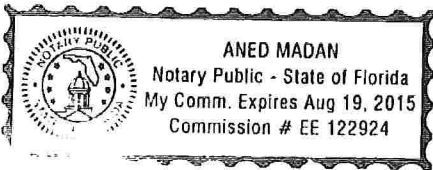
STATE OF FLORIDA )

COUNTY OF MIAMI - DADE ) SS:

The foregoing instrument was acknowledged before me this 28 day of SEPTEMBER, 2012, by Jorge Ballarena, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did not) take an oath.

  
\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

Aned Madan  
\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC



**SECTION 6**  
**BID FORM ATTACHMENTS**

**QUESTIONNAIRE**

This Questionnaire must be submitted with the Bid, The Town may, at its sole discretion, require that the Bidder submit additional information not included in the Questionnaire. Such information must be submitted within seven (7) Calendar Days of the Town's request. Failure to submit the Questionnaire or additional information upon request by the Town shall result in the rejection of the Bid as Non-Responsive. Additional pages may be used following the same format and numbering. Some information may not be applicable apply. In such instances insert "N/A".

By submitting its Bid, the Bidder certifies the truth and accuracy of all information contained herein.

**A. Business Information**

1. How many years has your company been in business under its current name and ownership? 7

a. Professional Licenses/Certifications (include name and number)\* Issuance Date

<u>CERTIFIED GENERAL CONTRACTORS EGC1509527</u>	<u>8/3/05</u>
<u>CERTIFIED GSBE LEVEL 1 CERT. NO. 14062</u>	<u>11/24/10</u>

(\*include active certifications of small or disadvantage business & name of certifying entity)

b. Date company licensed by the State of Florida or Miami-Dade County: 8/3/05

c. State and Date of Incorporation: FLORIDA - 4/28/05

c. What is your primary business? GENERAL CONTRACTOR  
(This answer should be specific)

CIVIL, HORIZONTAL AND VERTICAL CONSTRUCTION

d. Name of Qualifier, license number, and relationship to company:  
JORGE BALLARENA

e. Names of previous Qualifiers during the past five (5) years including, license numbers, relationship to company and years as qualifier for the company  
N/A

2. Name and Licenses of any prior companies

Name of Company	License No.	Issuance Date
<u>N/A</u>		

3. Type of Company:

Corporation  "S" Corporation  LLC  Sole Proprietorship  Other: \_\_\_\_\_

(Corporations will be required to provide a copy of their corporate resolution prior to executing a contract)

4. Company Ownership

a. identify all owners of the company

Name	Title	% of ownership
Jorge Ballarena	President	100

b. Is any owner identified above an owner in another company?  Yes  No  
If yes, identify the name of the owner, other company names, and % ownership

INTERNATIONAL GROUPS DEVELOPER - JORGE BARRARENA  
100%

c. Identify all individuals authorized to sign for the company, indicating the level of their authority (check applicable boxes and for other provide specific levels of authority)

Name	Title	Signatory Authority			
		All	Cost	No-Cost	Other
Jorge Ballarena	President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation for Other: \_\_\_\_\_

5. Employee Information

Total No. of Employees: 12 Number of Managerial/Admin. Employees: 6

Number of Trades Personnel and total number per classification:

(Apprentices must be listed separately for each classification)

(2) Equipment Operators, (2) Foremen, (8) pipelayers.

6. Has any owner or employee of the company ever been convicted of a federal offense or moral turpitude: If yes, please explain:

NO

7. Insurance & Bond Information

a. Insurance Carrier name & address: GIL, GARDEN, AVENTRANI INSURANCE GROUP / 10689 N. KENDALL DR. STE 208, MIAMI, FL 33176

b. Insurance Contact Name, telephone, & e-mail: MARTA BARRIONUEVO / 305-630-4777 / javetrani@ggaig.com

c. Insurance Experience Modification Rating (EMR): 0.95  
(if no EMR rating please explain why)

d. Number of Insurance Claims paid out in last 5 years & value: NONE

e. Bond Carrier name & address: ALTER SURETY GROUP INC. 5979 N.W. 151 ST. STE 104 MIAMI LAKE, FL 33014

f. Bond Carrier Contact Name, telephone, & e-mail: WARREN ALTER warren@altersurety.com

g. Number of Bond Claims paid out in last 5 years & value: NONE

8. Have any claims lawsuits been file against your company in the past 5 years, If yes, identify all where your company has either settle or an adverse judgment has been issued against your company. Identify the year basis for the claim or judgment & settlement unless the value of the settlement is covered by a written confidentiality agreement.

NO

9. To the best of your knowledge is your company or any officers of your company currently under investigation by any law enforcement agency or public entity. If yes, provide details:

NO

10. Has your company been assessed liquidated damages or defaulted on a project in the past five (5) years?  Yes  No (If yes, provide an attachment that provides an explanation of the project and an explanation.

11. Has your company been cited for any OSHA violations in the past five (5) years? If yes, please provide an attachment including all details on each citation,  Yes  No
12. Provide an attachment listing all of the equipment, with a value of \$3,000 or greater, owned by your company. *SEE ATTACHMENT A-12*
13. Provide an attachment listing of all equipment that your company does not own but plans to rent, lease, or borrow for the performance of the Work *SEE ATTACHMENT A-13*

**B. Project Management & Subcontract Details**

1. Project Manager for this Project:

a. Name: JORGE BALLARENA

b. Years with Company: 7

c. Licenses/Certifications: CGC 1509587

d. Last 3 projects with the company including role, scope of work, & value of project:

VETERANS PARK - OVERVIEW OPERATIONS, DRAINAGE, PARKS \$ 807,000.00

M600 AMPHITHEATER - OVERVIEW OPERATION, DRAINAGE, PARKS \$ 745,000.00

SENIOR CENTER SWEETWATER - OVERVIEW OPERATION, DRAINAGE, PARKS \$ 773,937.00

2. Subcontractors:

Name	Trade/Work to be performed	% of Work	License No.
<u>FLORIDA LANN PLUMBING</u>	<u>PLUMBING</u>	<u>5</u>	<u>CFE 1427860</u>
<u>LATITE ROOFING</u>	<u>ROOFING</u>	<u>5</u>	<u>CC 1324510</u>
<u>REAL HEAT &amp; COOLING</u>	<u>A/C</u>	<u>6</u>	<u>CC 09M000549</u>
<u>COLONIAL WINDOWS</u>	<u>EXT. OPENING</u>	<u>10</u>	<u>N/A</u>
<u>SOUTH FLORIDA ELECTRIC</u>	<u>ELECTRICAL</u>	<u>15</u>	<u>CC 08E000164</u>

3. Certified Playground Installer or Inspector (If any)

Name of Company/Person	Certifying Entity/Company	Certification No. (if any)
	<u>N/A</u>	

4. Scope of actual Work to be performed by your company and the corresponding percentage of the work: (This does not include such items as insurance \* bonds, dumpsters, trailers, and other similar non-construction work items)

CIVIL IMPROVEMENT 100% (SHEEL, INTERIOR AND EXTERIOR, FINISH).



**A-12 EQUIPMENT OWNED BY BALLARENA CONSTRUCTION**

1. **Equipment # 1:** Backhoe Loader (\$90,000)
2. **Equipment # 2:** Skid Steer (\$40,000)
3. **Equipment # 3:** Roller Compactor (\$40,000)

**A-13 EQUIPMENT TO BE RENTED BY BALLARENA CONSTRUCTION**

1. **Equipment # 1:** Excavator
2. **Equipment # 2:** Safe Trench Plate

5. Asphalt Plant: (provide the company name, address, contact name, phone no. & e-mail address)

*H & R PAVING, INC. 1957 NW 110 Ave Miami / Pedro GONZALEZ / 305-961-3805 / abel@hrpaving.com*

C. Current and Prior Experience: *SEE ATTACHMENT @ 1*

1. Current Experience including current under projects or contracts, recently awarded, or pending award (Provide an attachment to this questionnaire that lists all such contracts or projects, including the owner's name, title and value of project, scope of work, projected or actual start date, projected completion date.
2. Prior contracts or projects of a similar size, scope, and complexity: Provide an attachment to this Questionnaire that includes contracts or projects the Bidder considers of a similar, size, scope and complexity that the Town should consider in determining the Bidders responsiveness and responsibility. This attachment must include the contracts or projects that meet the minimum number of contracts or projects identified by the bid solicitation. Information provided must include the owner's name , address and contract person, including telephone & e-mail, title of contract or project, location of project, scope, initial value and final cost of the contract or project, projected and final timeframes for completion in calendar days. A reference letter is to be completed by the owner of the Project and submitted as part of the Bid submission. *SEE ATTACHMENT @ 2*

D. Bidder's References


Bidders are to include a minimum of five (5) references from contracts or projects listed in C.2 above. The attached form is to be used and is to be included with the Bid submission. The Town, at its sole discretion may allow the Bidder to submit the references after the specified date for Bid submission.



ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA            }  
  }        SS:  
COUNTY OF MIAMI-DADE    }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Miami Lakes, its elected officials, and \_\_\_\_\_ or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By:   
Title: President

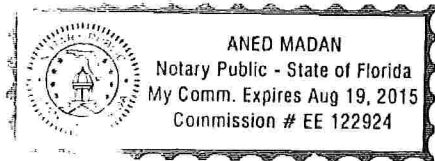
Sworn and subscribed before this

28 day of SEPTEMBER, 2012

  
Notary Public, State of Florida

Aned Madan  
(Printed Name)

My commission expires: 8/19/15



**NON-COLLUSIVE AFFIDAVIT**

State of FLORIDA }  
                  MIAMI } SS:  
County of DADE }

JORGE BALLARENA being first duly sworn, deposes and says that:

- a) He/she is the PRESIDENT (Owner, Partner, Officer, Representative or Agent) of F.B BUILDERS & CONTRACTORS INC. DBA Ballarena Construction, the Bidder that has submitted the attached Proposal;
- b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- c) Such Proposal is genuine and is not collusive or a sham Proposal;
- d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;
- e) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, **owners, employees or parties in interest, including this affiant.**

Signed, sealed and delivered in the presence of:

Witness

Witness

By:

Jorge Ballarena

(Printed Name)

President

(Title)

NON-COLLUSIVE AFFIDAVIT (CONTINUED)


ACKNOWLEDGMENT

State of FLORIDA )  
                  MIAMI ) SS:  
County of DADE )

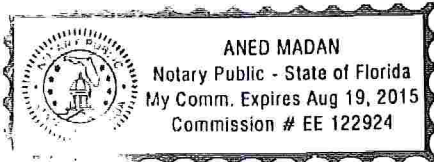
BEFORE ME, the undersigned authority, personally appeared Jorge Ballarín to me well known and known by me to be the person described herein and who executed the foregoing Affidavit and acknowledged to and before me that \_\_\_ executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this 28 day of SEPTEMBER, 2012.

My Commission Expires: 8/19/15



\_\_\_\_\_  
Notary Public State of Florida at Large



SWORN STATEMENT ON PUBLIC ENTITY CRIMES

SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Miami Lakes

by JORGE BALLARENA - PRESIDENT  
[print individual's name and title]

for J.B. BUILDERS & CONTRACTORS, INC. DBA Ballarena Construction  
[print name of entity submitting sworn statement]

whose business address is

3727 S.W 8<sup>th</sup> St. Ste 101

CORAL GABLES, FL 33134

and (if applicable) its Federal Employer Identification Number (FEIN) is 20-2759807

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: JORGE BALLARENA )

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

a. A predecessor or successor of a person convicted of a public entity crime; or

b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one

person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO

UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

  
\_\_\_\_\_  
Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this 28 day of SEPTEMBER 20 12.

Personally known JORGE BALLARENA

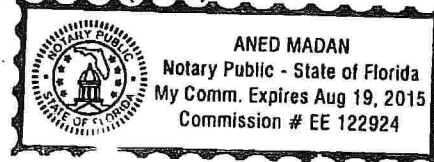
OR produced identification \_\_\_\_\_

Notary Public – State of FLORIDA

My commission expires 8/19/15

\_\_\_\_\_  
(type of identification)

Aned Madan   
\_\_\_\_\_  
(Printed, typed or stamped commissioned name notary public)



END OF SECTION



**SECTION 7**  
**CONTRACT EXECUTION FORM**

This Contract **2012-49** made this 18<sup>th</sup> day of October in the year **2012** in the amount of \$1,015,436.36 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and **J.B. Builders & Contractors, Inc. D/B/A Ballarena Construction**, hereinafter called the "Town,"

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By: 

Marjorie Tejada, Town Clerk

By: 

Alex Rey, Town Manager

By: 

Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

J.B. Builders & Contractors, Inc.  
D/B/A Ballarena Construction

By: 

By: 

Name: Jorge Ballarena

Title: President

(\* In the event that the Contractor is a corporation, there shall be attached the original of the corporate resolution in the form contained in this Section, of the board of the corporation, authorizing the officer who signs the Contract to do so in its behalf.





**CORPORATE RESOLUTION**

WHEREAS, J.B. Builders & Contractors, Inc. desires to enter into a contract with the Town of Miami Lakes for the purpose of performing the work described in the contract to which this resolution is attached; and

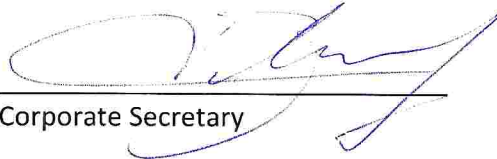
WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the President,  
(type title of officer)

Jorge Ballarena, is hereby authorized  
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the Town of Miami Lakes upon the terms contained in the proposed contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this 16<sup>th</sup> day of October, 20 12.

  
\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)



**Town of Miami Lakes**

**ITB 2012-49**

**Title: East Park Youth Club Center**

**Addendum #1**

**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Contract Specifications**

1. Sections of the Specifications state that the Town will perform testing or provide a testing laboratory. As stated in Article 3.27 of the ITB the Contractor is responsible for "making arrangements for all tests and for all associated costs for all required testing". This Article also allows the Town to arrange for additional testing as determined by the Town. All reference to testing in the Contract Specifications are hereby revised to be consistent with Article 3.27.
2. All commencement points for warranties stated in the Contract Specifications are hereby change to be consistent with Article 4.16, which stipulates that all warranties commence upon Final Acceptance.
3. All requirements for Mockups are hereby deleted.
4. Section 02151-1, 1.2A, "Quality Assurance" is hereby deleted. Bidders are to refer to Article 3.9 of the ITB.
5. Section 02200-1. 1.4A, "Site Information" – The word "Sum" is hereby changed to "Price" to be consistent with the ITB defined terms.
6. Section 0221-2, 1.03, "Job Conditions" is hereby deleted. Bidders are to refer to Articles 3.11 and 3.18 of the ITB.
7. Section 02510-9, "Project Record Documents" is hereby deleted. Bidders are to refer to Articles 4.26 and 4.27 of the ITB
8. Section 03200-1, 1.3A, "Submittals" – The reference to "Section 01340" is hereby deleted. Bidders are to refer to Articles 3.15 and 3.16.

The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and returned by no later than the date and time for receipt of the Bid Submittal.

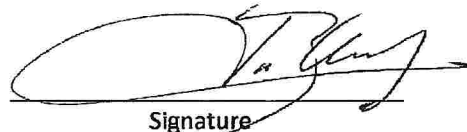
Acknowledgement:

Jorge Ballarena  
Name of Signatory

President  
Title

9/13/12  
Date

Gary Fabrikant, Procurement Manager

  
Signature

JTB BUILDERS & CONTRACTORS INC.  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Date Issued: September 3, 2012



**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #2**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Requests for Information/Clarification:**

1. **Question:** Is there a budget for the Youth Club Center at East Park Project?

**Answer:** The total budget is \$1,200,000, including hard and soft costs.

The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and returned by no later than the date and time for receipt of the Bid Submittal.

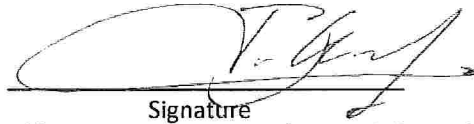
**Acknowledgement:**

Jorge Ballarena  
Name of Signatory

President  
Title

9/10/12  
Date

Gary Fabrikant, Procurement Manager

  
Signature  
JTB BUILDERS & CONTRACTORS INC.  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Date Issued: September 05, 2012

**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #3**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Invitation to Bid Modifications**

1. Found in Section 1, Page 1 are the Minimum Qualification Requirements:

Prospective Bidder shall hold a current certified license as a General Contractor, from the State of Florida. Bidder must also possess a minimum of five (5) years' experience and have successfully completed at least ~~five (5)~~ **three (3)** projects of a similar size, scope, and complexity during the past ~~five (5)~~ **six (6)** years. The Bidder must self-perform thirty percent (30%) of the primary physical construction Work. Park West Community Center West Building Renovations ITB No. 2012-32. The Town will consider a Bid as responsive where a Bidder has less than the stipulated minimum number of years of experience in instances where the Bidder has undergone a name change and such change of name has been filed with the State of Florida. This is the sole exception to the experience requirement.

The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and returned by no later than the date and time for receipt of the Bid Submittal.

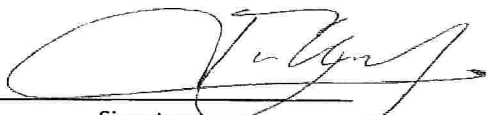
Acknowledgement:

Jorge Ballarena  
Name of Signatory

President  
Title

9/10/12  
Date

Gary Fabrikant, Procurement Manager

  
Signature  
JB BUILDERS & CONTRACTORS INC.  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Date Issued: September 10, 2012

**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #4**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Invitation to Bid Specifications**

1. On the Town's Website, under Park West Project, see 'Specifications Part II (Date Posted: 9/17/2012)' for details. Sections Listed Below have been added to the Specifications:
  - Section 15010 Mechanical General Provisions,
  - Section 15090 Supports, Anchors and Seals,
  - Section 15400 Plumbing,
  - Section 15410 Piping (Plumbing),
  - Section 15421 Drains, Floor Sinks and Cleanouts,
  - Section 15440 Plumbing Fixtures, Trim and Supports,
  - Section 15458 Water Heaters,
  - Section 15670 Air Cooled Condensing Units,
  - Section 15855 Air Handling Units,
  - Section 15861 Fans,
  - Section 15890 Ductwork,
  - Section 15990 Testing, Adjusting and Balancing (by Contractor),
  - Section 16010 Electrical General Provisions,
  - Section 16112 Raceways and Conduits,
  - Section 16120 Wire and Cable,
  - Section 16131 Outlet, Pull, and Junction Boxes,
  - Section 16140 Wiring Devices,
  - Section 16450 Grounding,
  - Section 16470 Panelboards,
  - Section 16475 Overcurrent Protective Devices,
  - Section 16510 Lighting Fixtures and Lamps,
  - Section 16530 Exterior Lighting,
  - Section 16535 Emergency Lighting Units, and
  - Section 16741 Telephone Systems.



**Requests for Information/Clarification:**

1. Please clarify if there is any local preference for this project?
  - Information regarding local preference is within the Procurement Ordinance, which can be found on the Town's website, under Contractual Opportunities.
2. Plans note one surface-mount cabinet and one semi-recessed cabinet. However, section 10520 Fire Protection specialties on the spec notes in Paragraph 2.4C state the cabinet mounting is suitable for semi-recessed or recessed. Please advise.
  - Provide two semi-recessed fire extinguisher cabinets.
3. Structural sheets S-2.1 show all section in plan and we found that it has 2 marked the same, 2/S3.0, one on the east side of the building next to 1/S3.0 and the other is on the north side of the building next to 7/S3.1. We also found section markers as 2/S3.0 was meant to be 2/S3.1?
  - Detail calls outs 2/S3.0 on sheet S-2.1 on the east side and north of the buildings are correct.
4. Is not any specific detail on RWL location, material and connection; can we have more information?
  - Response: Refer to drawing
5. On Playground, indicate new surface as an Alternate # 6, the rest of the area is existing or is part of base Bid number?
  - Response:
6. Addendum 3 for this project refers to ITB 2012-32 which is the Park West – West Park Building Improvements. Is this a typo or does the information apply to this project as well?
  - Response: The sentence referring to Park West Community Center West Building is hereby deleted.
7. Is there a bid bond form or should our bonding agency provide a bond on their company letterhead? If yes what is the bid bond percent?
  - Response: All requirements are contained in the ITB.
8. Is this project prevailing wage? Please confirm that Prevailing Wages are not applicable to this project.
  - Response: Prevailing wage rates are a Miami-Dade County requirement for their solicitations. This is not a solicitation issued by Miami Dade County.
9. Please advise if the low bidder will need to submit a Performance & Payment Bond prior to entering into a Contract with the Town of Miami Lakes.
  - Response: Refer to Article 3.7
10. The base bid is to include all work per plans and specifications
  - Response: Refer to Scope of Work in Section 1 and in Article 4.1.
11. The alternates identified on Sheet AS1.0 (Alternates No. 1 thru 9) are all deductive (credit amount) alternates.
  - Response: Refer to Scope of Work in Section 1 and in Article 4.1. and the Bid Form in Section 5.
12. Please confirm that the contractor will be responsible to pay for the cost of all permits required for this project as noted on Article 3.27 of the Invitation to Bid.
  - Response: Refer to Article 3.28.
13. Please advise if soil or concrete testing will be required for this project. If so, please advise as to the following:
  - i. Please provide specifications for the soil testing required.
  - ii. Please provide specifications for the concrete testing required.

iii. Please clarify if the contractor will be required to pay for the soil and concrete testing.

- Response: Refer to Article 3.27

14. Please confirm that Builder's Risk Insurance is not required for this project. If Builder's Risk Insurance is required, please advise as to the required value for the policy.

- Response: Builder's risk Insurance is required as stated in Exhibit 1 to this addendum.

15. The Project Manual and Specifications (posted on the Town's website) do not include specifications for Division 15 and 16, however they are noted on the Index of the project manual and specifications.

Please advise if there are Division 15 and 16 specifications for this project. If so, please provide them.

- Response: Refer to Addendum #4

**Invitation to Bid Modifications**

1. Section 4.3 TIME FOR PERFORMANCE OF THE WORK

The ~~playground area including the installation of the playground equipment~~ **Project** must meet the Substantial Completion requirements within two hundred forty (240) Days of the issuance of the Notice To Proceed. Final Completion shall be within thirty (30) Days of Substantial Completion.

2. Article 2.6 is revised as follows:

Bidder must ~~be capable of~~ self-performing thirty (30%) of the primary physical construction Work.

3. See 'Exhibit 1' for specifications as to Builder's Risk Insurance that has been as a requirement to this Invitation to Bid.

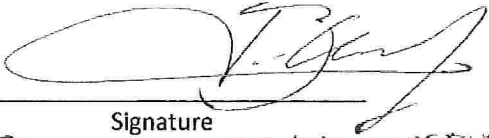
The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and returned by no later than the date and time for receipt of the Bid Submittal.

Acknowledgement:

Jorge Ballarena  
Name of Signatory

President.  
Title

9/19/12  
Date

  
Signature

JOB BUILDERS & CONTRACTORS, INC.  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Gary Fabrikant, Procurement Manager

Date Issued: September 19, 2012

**Exhibit 1**  
**Construction of Youth Club Center at East Park**  
**ITB No. 2012-49**  
**Builder's Risk Insurance**

The following insurance requirement is added to ITB 2012-49:

**Builder's Risk Insurance**

Causes of loss: All Risk-Specific Coverage Project Location

Valuation: Replacement Cost Deductible: \$10,000, All other Perils 5% maximum on Wind, Town shall be included as an Additional Insured.

- Limit/Value equal to 100% of Bid value
- Coverage Extensions:
  - Materials, supplies and similar property owned by others for which you are responsible.
  - Full coverage up to policy limits for equipment breakdown.
  - Temporary storage/transit coverage.
  - Full coverage up to policy limits for site preparation, re-excavation, re-preparation and re-grade in the event of a loss.
  - Fences, scaffolding, construction forms coverage and signs
  - Valuable papers coverage for blueprints, site plans and similar documents.
  - Trees, shrubs, sod, plants while at premises.
  - Flood, including inundation, rain, seepage and water damage.
  - Earthquake
  - New ordinance or law; reimbursement for any resulting loss of value to the undamaged portion, and required demolition expenses, including construction necessary to repair, rebuild or re-construct damaged parts.
  - Temporary structures, cribbing and false work built or erected at construction site.

**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #5**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Invitation to Bid Specifications**

1. On the Town's Website, under Park West Project, see 'Specifications Part III (Date Posted: 9/21/2012)' for details. Sections Listed Below have been added to the Specifications:
  - Section 02362 TERMITE CONTROL
  - Section 02790 PLAYGROUND AREA SURFACES
2. On the Town's Website, under Park West Project, see 'Revised Sheet M (Date Posted: 9/21/2012)'.

**Requests for Information/Clarification:**

1. Please advise if the new addition will require soil treatment. If so, please provide specifications for identifying the requirements of the soil treatment (i.e.: warranty, types of treatment required, etc.).
  - Response: Soil treatment is required for this project as indicated in general note 8 in the drawings cover sheet. See Specifications Part III link.
2. Please provide specifications for the rubber pour-in-place playground surface.
  - Response: See attached specifications section 02790 Playground Area Surfaces
3. Sheet A1.5 identifies a new 4" concrete slab for the new picnic shelter. Please advise if this slab requires reinforcing. If so, please specify the reinforcing for this slab.
  - Response: New slab requires reinforcing as indicate in detail 4 on sheet S3.3.
4. Please advise if the new bollards at the drop off areas will require paint. \
  - Response: New bollards are to be primed and painted (color tbd).
5. Please clarify if the detectable warning at the drop off areas where the new bollards are to be installed are required thru-out the entire length of the proposed concrete slab.
  - Response: Yes detectable warning to be installed is required thru-out the entire length of the drop off area since the slab is flush with the roadway as shown on the Civil drawings.
6. The specification section 07620 is specifying aluminum for the sheet metal flashings. The detail drawings on sheet A5.3 are calling for stainless steel. Which is correct?
  - Response: Material for the sheet metal flashing is Aluminum.
7. The specification section 07620 is specifying aluminum for the sheet metal flashings. Sheet A5.3, Detail 7A and 7B is calling for Metal Era "Anchor Tite" metal edge which is aluminum. Please confirm that this detail correct?
  - Response: Detail is correct.
8. Sheet C1 identifies a note on the north side of the property along N.W. 151 Street, which states "Existing Gate to be Adjusted". Please clarify the extent of the work required to the existing gate.

Response: Existing chain link gate to be adjusted to accommodate new overall width of roadway. Sheet C1 identifies an existing irrigation valve north of the existing building that is to be relocated. Please provide the location of where this existing irrigation valve that is to be relocated.

- Response: The existing irrigation valve is to be relocated approximately 2' to 3' north in the green area as shown on sheet C2.

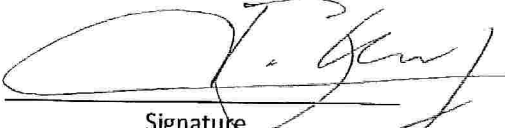
9. Please clarify if each Room Number noted on the Finish Schedule on Sheet A5.1 requires a permanent room sign as per Detail 1/Sheet A5.1.

- Response: A permanent room sign is to be provided for each room.

10. Note #9 on Sheet C1 requires the Contractor to relocate any irrigation sprinkler lines in the area of the new building. The bid documents do not include any irrigation drawings or any as-built drawings identify the location of the existing irrigation lines and sprinkler heads. As such, contractors have no way of knowing the extent of the work required. Please provide an irrigation drawing depicting the extent of the irrigation system relocation work required, or please consider setting an allowance for this item so that all bidders may carry the same cost for the extent of this work, which is unknown at this time.

- Response: Contractor to cap irrigation line preferably at the pump.

Jorge Ballarena  
Name of Signatory  
President  
Title  
9/24/12  
Date

  
Signature  
J.B BUILDERS & CONTRACTORS INC  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Gary Fabrikant, Procurement Manager

Date Issued: September 21, 2012

**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #6**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Requests for Information/Clarification:**

- 1) Please advise as to the earthwork requirements for the new slabs for the picnic shelters (i.e.: 6" base over 12" stabilized sub-grade, etc.).
  - Response: To be same as building, refer to geotechnical recommendations.
- 2) Please provide a detail showing how the downspouts will connect/terminate at the storm drainage line (i.e.: will storm drainage line need to be installed 2'-0" above finish grade, 4'-0" above finish grade, will storm drainage line need to be painted, etc.)
  - Response: Stainless steel overflow scupper, downspout conductor head and downspout. Stainless steel downspout to transition to Civil PVC pipe/drain line at grade. Provide backer rod & sealant at connection all around.
- 3) Sheet A5.1 identifies Paver type PAV-2 is TBD (to Be Determined). Please know that the prices for pavers vary depending on the size and color of the paver desired. Please specify the paver size and color that is desired for paver mark PAV-2, or consider providing all bidders with a material allowance for the paver material that has not yet been determined.
  - Response: Provide paver type PAV-2 from "Wausau" pattern Munich I, hardscape, colors to be selected from standard manufacturer's color.
- 4) Please advise if paver type PAV-2 is to be set on a bed of sand or with thinset on a concrete slab.
  - Response: Pavers type PAV-2 are to be set on a bed of 6" granular sand over a 12" limerock sub-grade, no concrete slab.
- 5) Sheet A5.1 identifies that the Porcelain Tile Color is TBD (To Be Determined), and the specifications do not identify the porcelain tile desired for this project. Please know that the prices for porcelain tile colors/types vary depending on the size and color of tile desired. Please specify the porcelain tile color and type desired, or consider providing all bidders with a material allowance for the porcelain tile material that has not yet been determined.
  - Response: Provide Porcelain tile by DalTile Colorbody, Porcelto, colors to be selected from price group (2) 12"x12" tile or equal.
- 6) Section F on Sheet C-6 requires a 6" concrete slab with W.W.M. under the pavers south of the building and enclosed courtyard. Per Sheet A1.0 the pavers south of the building and the enclosed courtyard is paver type PAV-1B as confirmed by the note that states "PAV-1B over compacted sand, see civil for slopes". Please advise if a 6" concrete slab is required under the pavers south of the building and the enclosed courtyard.
  - Response: Pavers type PAV-1B are to be set on a bed of 6" granular sand over a 12" limerock subgrade, no concrete slab.

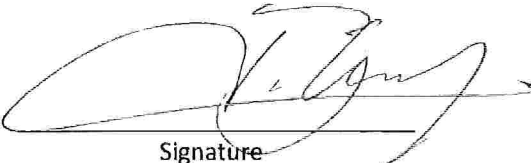
- 7) Sheet C4 identifies a note which states "Proposed Monument Sign (Bid Alternate)" at the entrance of the parking area along Miami Lakes Drive. There is no reference to this alternate on the Bid Form or on Sheet AS1.0. Furthermore, there are no specifications or drawings detailing a new monument sign. If this alternate applies please provide specifications for the proposed monument sign (if new) and provide clarification as to what bid alternate number this work applies to (please provide a revised bid form if this work is applicable to this project).
- Response: Reference to "Proposed Monument Sign (Bid Alternate)" on sheet C4 is to be deleted. A Monument Sign is not part of this project.
- 8) Please confirm that the building signage identified on Sheet A2.0 may be provided with Cast Aluminum letters with a depth of 1-1/2".
- Response: Cast Aluminum letter with a depth of 1-1/2" for the building signage is acceptable.
- 9) Please provide plan reference for Details 6, 7, 8, 9, & 10 on Sheet A5.4. Please confirm that these details apply to the counters with a sink at Multipurpose Room #2 (Room #111) and Multipurpose Room #1 (Room #101).
- Response: Millwork Elevation #1, detail 6/A5.4 is in Multipurpose room #2. Millwork Elevation #2, detail 7/A5.4 is in Multipurpose room #1.
- 10) Please confirm that shelving is not required in the storage rooms or closets. If shelving is required, please provide a plan identifying the extent of the shelving and the amount of rows required.
- Response: Shelving is not required in the storage rooms and closets.
- 11) Please provide a detail for the 6" concrete curbs required at the planters in the open courtyard showing the depth of the curbs and reinforcing, if required.
- Response: Concrete curbs at the planters to be 6" wide by 8" deep with 2 #5 continuous.
- 12) The manufacturer of the 8' x 8' wood slat benches has informed us that the benches cannot be surface mounted and must have footings. Please confirm that the footings for these benches are to be provided per manufacturer requirements.
- Response: Footings for wood benches are to be provided per manufacturer requirements.
- 13) Sheet A1.5/Detail 1 for the half basketball court requires the surface to be coated with Laykold Acrylic Resurfacer, colors to be selected by the owner. The Laykold Acrylic resurface is a base coat treatment. A Laykold Colorcoat Concentrate is used as the finishing acrylic treatment over the Acrylic Resurfacer (where the Owner will choose the color). Please advise as to the following:
- Please confirm that the Laykold Colorcoat Concentrate is to be applied over the Acrylic Resurfacer.
  - Please advise as to how many coats of the Laykold Acrylic Resurfacer will be required.
  - Please advise as to how many coats of the Laykold Colorcoat Concentrate will be required.
  - Response: To be Laykold Colorcoat System to be installed as per manufacturers recommendations. Final colors to be determined by owner. Provide 2 coats as needed of Laykold Acrylic Resurfacer, 2 coats of Laykold ColorCoat Concentrate and 2 coats as needed for the Game Lines.
- 14) Please advise if a concrete band will be required around PAV-3 at the open courtyard (Room # 001). If so, please provide a detail showing the width and depth of the concrete band and if it will require reinforcing.
- Response: A concrete band 6"wide x8" deep with 2 #5 is required around the open courtyard room #01.
- 15) Please advise if a concrete band will be required at the north end of where Paver PAV-1B is to be installed. If so, please provide a detail showing the width and depth of the concrete band and if it will require reinforcing.
- Response: A concrete band 6"wide x 8"deep with 2 #5 to be provided on north end to terminate pavers.

- 16) Please advise if a concrete band is required between the tube steel columns of the pergola trellis. If so, please provide a detail showing the width and depth of the concrete band and if it will require reinforcing.
- Response: Refer to detail 1 on sheet A5.5 and overall floor plan sheet A1.0, a concrete band is required between the tube steel columns along column line "D".
- 17) Please clarify if Paver type PAV-3 is to be installed over compacted sand or over a concrete slab.
- Response: PAV-3 is to be installed over compacted sand over a limerock base, no concrete slab.
- 18) Please clarify if the entire park is to receive new sod, or only those areas damaged during construction.
- Response: As per landscaping notes on sheet AS1.0, provide new sod at all areas disturbed by construction.
- 19) Sheet AS1.0 requires a 25'-0" flag pole. Specification Section 10350, Part 2.2, B., requires the exposed height of the flag pole to be 35'-0" for the American Flag and 30'-0" for State and City Flags. Please clarify the height of the flag pole required for this project and confirm that only one flag pole is required.
- Response: Provide one 25'-0" flag pole.
- 20) Page 53 of the ITB states the undersigned further agrees that the bid guaranty if required, accompanying the Bid shall be forfeited if Bidder fails to execute said contract. Addendum No. 4 states all bid requirements are stated in the ITB. Can you please clarify with a direct answer if we need to provide a bid bond for this project?
- As stated in Addendum No. 4, all bid requirements are stated in the ITB. If a Bid Bond requirement is not stated, it is because a Bid Bond is not a requirement.

Jorge Ballarena  
Name of Signatory

President  
Title

9/24/12  
Date

  
Signature

VB BUILDERS & CONTRACTORS INC.  
DBA BALLARENA CONSTRUCTION  
Name of Bidder

Gary Fabrikant, Procurement Manager

Date Issued: September 24, 2012



**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #7**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

Addendum 5 states that the Specifications Part III for Section 02362, Section 02790 and Revised Sheet M were under the Town's Park West Project on the Town's Website. The correct location is the information has been posted under the Town's East Park Youth Center Project.

Jorge Ballarena  
Name of Signatory  
President  
Title  
9/28/12  
Date

  
Signature  
J.B. BUILDERS & CONTRACTORS, INC.  
DBA Ballarena Construction  
Name of Bidder

Gary Fabrikant, Procurement Manager

Date Issued: September 21, 2012


**Town of Miami Lakes**  
**ITB 2012-49**  
**Title: East Park Youth Club Center**  
**Addendum #8**  
**Bid Opening Date: September 28, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-49. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents.

**Requests for Information/Clarification:**

1. Sheet S3.3 detail & detail 3 call for auger cast pier footing at the trellis and picnic shelters. There are no specifications for auger cast piles or footing. Will auger cast footing be required for the picnic tables and trellis or will cast in place footings be acceptable. Please clarify and provide specs if necessary.
  - Response: There are no auger cast piles in this project, all foundations are cast in place. The auger cast piers for the trellis and picnic shelter columns are cylindrical footing cast in place.

Jorge Ballarena  
Name of Signatory  
President  
Title  
9/24/12  
Date

  
Signature  
JB BUILDERS & CONTRACTORS, Inc.  
DBA Ballarena Construction  
Name of Bidder

Gary Fabrikant, Procurement Manager

Date Issued: September 25, 2012



**ALTER SURETY GROUP, INC.**  
**Bond Department**

**Public Works Bond**  
**in compliance with Florida Statute Chapter 255.05**

Bond Number	3211559
Contractor Address & Phone No.	JB Builders & Contractors, Inc 3727 SW 8 <sup>th</sup> Street, Suite 105 Coral Gables, FL 33134 305-441-9118
Surety Address & Phone No.	Bankers Insurance Company 11101 Roosevelt Blvd. N. St. Petersburg, Florida 33716 727-823-4000
Owner Name Address & Phone No.	Town of Miami Lakes 15150 NW 79 <sup>th</sup> Court Miami Lakes, FL 33016 305-364-6100
Contract/Project Number	ITB 2012-49
Project Name	Construction of Youth Club Center at East Park
Project Location	6075 Miami Lakes Drive, Miami Lakes, Florida
Legal Description And Street Address	Same as Above
Description of Work	Construction of Youth Club Center

This bond is given to comply with section 255.05 Florida Statutes and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes. Any provision of this bond which conflict with or purports to grant broader or more expanded coverage in excess of the minimum requirements of the application statute shall be deemed deleted herefrom. This bond is a statutory bond, not a common law bond.

**This is the *front page* of the bond.**  
**All other page(s) are deemed subsequent to this page regardless of any page number(s) that may be pre-printed thereon.**

**FORM OF PERFORMANCE BOND** (Page 1 of 2)

JB Builders & Contractors, Inc.  
BY THIS BOND, We 3727 SW 8th Street, Suite 105, Coral Gables, FL 33134 as Principal,  
Bankers Insurance Company, 11101 Roosevelt Blvd. N.,  
hereinafter called Contractor, and St. Petersburg, FL 33716, as Surety, are bound

to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of  
One Million Fifteen Thousand  
Four Hundred Thirty Six and 36/100 Dollars (\$1,015,436.36) for the payment whereof Contractor  
and Surety bind themselves, their heirs, executors, administrators, successors and assigns,  
jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, ITB No: **2012-49**, awarded the 11th day of October, 2012, with Town which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the Contract between Contractor and Town for construction of **East Park Youth Center**, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays Town all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Town sustains as a result of default by Contractor under the Contract; and
3. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.
4. Whenever Contractor shall be, and declared by Town to be, in default under the Contract, Town having performed Town obligations hereunder, the Surety may promptly remedy the default, or shall promptly:
  - 4.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or

**FORM OF PERFORMANCE BOND** (Page 2 of 2)

4.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if Town elects, upon determination by Town and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Town, 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 paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Town to Contractor under the Contract and any amendments thereto, less the amount properly paid by Town to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Town named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this 11th day of October, 2012.

WITNESSES:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

IN THE PRESENCE OF:

*[Signature]*  
*[Signature]*  
*[Signature]*

Contractor

JB Builders & Contractors, Inc.

\_\_\_\_\_  
(Name of Corporation)

By:

*[Signature]*  
(Signature)

*Jorge Alvarez - President*  
(Print Name and Title)

INSURANCE COMPANY: Bankers Insurance Company

By:

*[Signature]*  
Agent and Attorney-in-Fact

Address: 11101 Roosevelt Blvd. N.  
(Street)

St. Petersburg, FL 33716  
(City/State/Zip Code)

Telephone No.: (727) 823-4000

JB Builders & Contractors, Inc.

BY THIS BOND, We 3727 SW 8th Street, Suite 105, Coral Gables, FL 33134 as Principal, hereinafter Bankers Insurance Company, 11101 Roosevelt Blvd. N., called Contractor, and St. Petersburg, FL 33716, as Surety, are bound to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of One Million Fifteen Thousand Four Hundred Thirty Six and 36/100 Dollars (\$ 1,015,436.36) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, No. 2012-49, awarded the 11th day of October, 2012, with Town which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Pays Town all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Town sustains because of default by Contractor under the Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to Contractor a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

**FORM OF PAYMENT BOND** (Page 2 of 2)

- 2.3. No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this 11th day of October, 2012.

Contractor

ATTEST:

JB Builders & Contractors, Inc.

(Name of Corporation)

\_\_\_\_\_  
(Secretary)

By:

[Signature]  
(Signature)

(Corporate Seal)

Jorge Collares - President.  
(Print Name and Title)

11th day of October, 2012.

IN THE PRESENCE OF:

INSURANCE COMPANY: Bankers Insurance Company

[Signature]  
[Signature]  
[Signature]

By:

[Signature]  
Agent and Attorney-in-Fact

Address: 11101 Roosevelt Blvd. N.  
(Street)

St. Petersburg, FL 33716  
(City/State/Zip Code)

Telephone No.: (727) 823-4000



# Power of Attorney

3211559

## Bankers Insurance Company

**KNOW ALL MEN BY THESE PRESENTS**, that **BANKERS INSURANCE COMPANY**, a corporation duly organized under the laws of the State of Florida, and having its principal office in the City of St. Petersburg, Pinellas County, Florida, does hereby nominate, constitute and appoint:

\* Warren M. Alter and/or David T. Satine \*

of the City of   Miami Lakes  ,   Dade   County, State of   Florida  , its true and lawful Attorney-in-fact, with full power and authority hereby conferred upon him/her to make, execute, seal and deliver for and on its behalf, as Surety, as its act and deed, any and all bonds, undertakings consent or Agreement not exceeding the sum of   Three Million and xx/100 dollars   ----- \$3,000,000.00 which this Company may be authorized to write.

This Power of Attorney is granted and is signed and sealed under and by the authority of the following resolutions adopted by the Board of Directors of Bankers Insurance Company, and now in force to-wit:

**BE IT RESOLVED**, that the Chairman of the Board, President and any Vice President of the Corporation are hereby authorized to execute Powers of Attorney, qualifying the Attorney(s)-in-Fact named in the Powers of Attorney to execute, on behalf of the Corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the Corporation are hereby authorized to attest the execution of any such Power of Attorney.

**BE IT FURTHER RESOLVED**, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, any and such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

**IN WITNESS WHEREOF**, Bankers Insurance Company has caused these presents to be executed by their duly authorized officers as of this   1<sup>st</sup>   day of   July  ,   2010  .

ATTEST:

  Nancy C. Haire    
Nancy C. Haire, Assistant Secretary

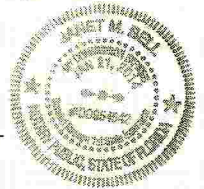
BANKERS INSURANCE COMPANY

By:   David K. Meehan    
David K. Meehan, President

STATE OF FLORIDA    )  
COUNTY OF PINELLAS )

The foregoing instrument was acknowledged before me   1<sup>st</sup>   day of   July  ,   2010   by David K Meehan and Nancy C. Haire, as President and Assistant Secretary, respectively, of Bankers Insurance Company, a Florida corporation, on behalf of the corporation.

  Janet M. Bell    
(NOTARY PUBLIC)



I, the undersigned, Assistant Secretary of Bankers Insurance Company do hereby certify that the original Power of Attorney, of which the foregoing is a full, true and correct copy, is in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affix the corporate seal of the Corporation this   10<sup>th</sup>   day of   October  ,   20     12  

(SEAL)

  Nancy C. Haire    
Nancy C. Haire, Assistant Secretary