



VILLAGE OF KEY BISCAINE

Village Council

Joe I. Rasco, Mayor
Oscar Sardinas, Vice Mayor
Michael F. Bracken
Franklin H. Caplan
Edward London
Nancy Stoner
Fernando A. Vazquez

SPECIAL COUNCIL MEETING

TUESDAY, JANUARY 28, 2025
6:00 PM

1. CALL TO ORDER/ROLL CALL OF MEMBERS

2. PLEDGE OF ALLEGIANCE

3. PUBLIC COMMENTS:

If you would like to speak during public comments, please fill out a blue request form available at the Council Chamber entrance and submit it to the Village Clerk prior to the start of the meeting. When your name is called, please come forward to the podium and state your name and address. (If applicable, please state if you are a hired consultant or Village employee and/or engaged in lobbying activities and/or representing an organization.) Unless otherwise provided by Council, members of the public will have three (3) minutes to speak.

4. DISCUSSION:

- 4.A. RESILIENT INFRASTRUCTURE ADAPTATION PROGRAM (RIAP) ZONE 1 -
INFORMATION AND CRITICAL DECISIONS (VILLAGE MANAGER)

PRESENTATION

5. ORDINANCE:

- 5.A. A CAPITAL PROJECT AUTHORIZING ORDINANCE OF THE VILLAGE OF KEY BISCAINE, FLORIDA, **SELECTING CSR HEAVY CONSTRUCTION, INC. FOR DESIGN-BUILD SERVICES RELATING TO THE INSTALLATION OF ARTIFICIAL TURF AT THE ST. AGNES ATHLETIC FIELD PROJECT IN AN AMOUNT NOT TO EXCEED \$1,768,827; PROVIDING FOR AUTHORIZATION;**

MISSION: TO PROVIDE A SAFE, QUALITY COMMUNITY ENVIRONMENT FOR ALL ISLANDERS THROUGH RESPONSIBLE GOVERNMENT.

January 28, 2025

www.keybiscayne.fl.gov

PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE. (PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)
FIRST READING

RECOMMENDATION: APPROVAL

TAB 1

6. RESOLUTION:

- 6.A. A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, **APPROVING A FIFTH AMENDMENT TO THE AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD WITH THE ARCHDIOCESE OF MIAMI**; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE. (PARKS, RECREATION AND OPEN SPACES DIRECTOR TODD HOFFERBERTH)

RECOMMENDATION: APPROVAL

TAB 2

7. OTHER BUSINESS/GENERAL DISCUSSION

NONE

8. SCHEDULE OF FUTURE MEETINGS/EVENTS:

STATE OF THE VILLAGE ADDRESS

WEDNESDAY, FEBRUARY 5, 2025, 6:00 P.M., ISLAND ROOM
KEY BISCAYNE COMMUNITY CENTER

REGULAR COUNCIL MEETING

TUESDAY, FEBRUARY 11, 2025, 6:30 P.M., COUNCIL CHAMBER

REGULAR COUNCIL MEETING

TUESDAY, MARCH 18, 2025, 6:30 P.M., COUNCIL CHAMBER

REGULAR COUNCIL MEETING

TUESDAY, APRIL 8, 2025, 6:30 P.M., COUNCIL CHAMBER

9. ADJOURNMENT

I. ANY PERSON WISHING TO ADDRESS THE VILLAGE COUNCIL ON AN ITEM ON THIS AGENDA IS ASKED TO REGISTER WITH THE VILLAGE CLERK PRIOR TO THAT ITEM BEING HEARD. PRIOR TO MAKING A STATEMENT, PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

II. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS WHO ARE DISABLED AND WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE VILLAGE CLERK, 88 WEST MCINTYRE STREET, KEY BISCAYNE, FLORIDA 33149, TELEPHONE NUMBER (305) 365-5506, NOT LATER THAN TWO BUSINESS DAYS PRIOR TO SUCH PROCEEDINGS.

III. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE VILLAGE COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED (F.S.286.0105).

IV. IN ACCORDANCE WITH VILLAGE CODE SECTION 2-161, ADOPTING SECTION 2-11.1(s) OF THE MIAMI-DADE COUNTY CODE, ANY PERSON ENGAGING IN LOBBYING ACTIVITIES, AS DEFINED THEREIN, MUST REGISTER AT THE VILLAGE CLERK'S OFFICE BEFORE ADDRESSING THE COUNCIL ON THE ABOVE MATTERS OR ENGAGING IN LOBBYING ACTIVITIES.

THE ABOVE MEETINGS ARE HELD IN THE COUNCIL CHAMBER, 560 CRANDON BOULEVARD AND ARE SUBJECT TO CHANGE. ZONING MEETINGS AND SPECIAL COUNCIL MEETINGS WILL BE SCHEDULED ON AN AS NEEDED BASIS. PLEASE VISIT www.keybiscayne.fl.gov TO VIEW THE MEETING SCHEDULE.



Resilient Infrastructure and Adaptation Program

Zone 1 60% Design Update

Special Council Meeting
January 28th, 2025

Presentation Purpose



- Present Zone 1 60% Design, Milestones, and Financing Plan
- Make Critical Program and Zone 1 Decisions



Who We Are

The Village of Key Biscayne is **1.25 square miles**, sits prominently on a **barrier island** off the coast of Miami, and is a **thriving and vibrant community** minutes from downtown Miami. With more than 14,890 residents, our international community treasures our roots as a **haven** for those seeking an **island lifestyle**. Incorporated in 1991, the community purposefully created a **local government** to give **voice to our residents**, to guide our collective future, and to **collaborate with neighboring municipalities** and agency partners.



15,000 residents - 25% growth from 2010-2023



1,400 single-family homes or duplexes



Median household income of \$167,990



6,000 condominium units



7,000,000+ visitors per year



1,000+ business and professional licenses

What We Cherish



Threats Stress Our Vulnerabilities

Threats

We cannot change our threats.

- Rainfall-induced flooding
- Tidal flooding
- Groundwater flooding
- Storm surge
- Coastal erosion
- Wind
- Extreme heat

Vulnerabilities

We can adapt or mitigate to reduce our vulnerabilities

- We are a low-lying barrier island with a largely unprotected shoreline.
- We have an aging stormwater system in need of upgrades.
- We have exposed electrical and telecommunications infrastructure.
- We are built out with limited space for new infrastructure.
- We have regulations that are incompatible with our resiliency goals.

Risks

Without action, these are our risks.

- Increase in damage leads to decrease in property value.
- Increase in insurance costs and decrease in insurability.
- Decline in economic activity.
- Increase in infrastructure cost with a declining tax base.
- Decrease in quality of life.

Vulnerability Assessment

Rainfall flooding impact with anticipated sea-level rise



WITHOUT RIAP IMPROVEMENTS



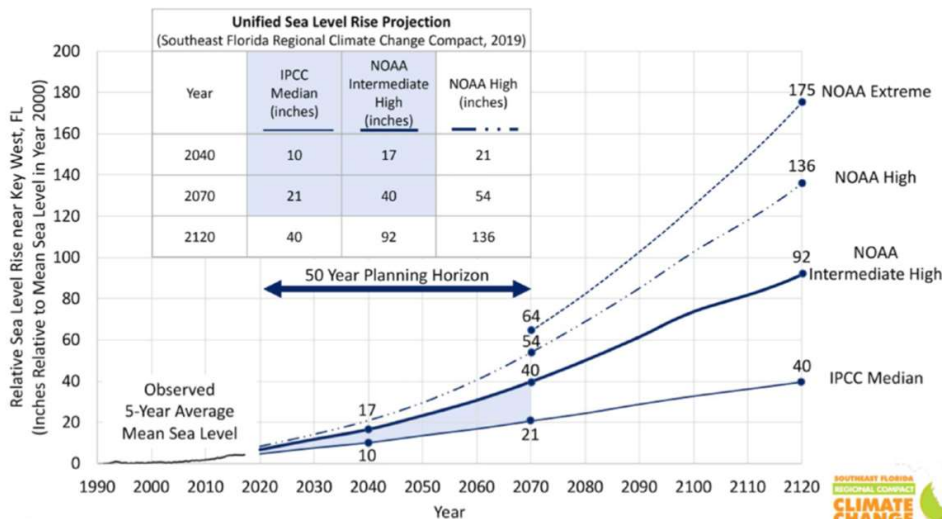
WITH RIAP IMPROVEMENTS

Depth of flooding in inches
from a 10-Year Storm in 2060



Sea Level Projections

NOAA Intermediate High



Mitigating the Risks

Program Purpose

To protect our residents, their property and the island's quality of life from the impending increase in flooding, rising sea levels, and environmental changes by building a stronger, more resilient community.



Lines of Effort



The Village has five critical Lines of Effort that guide how we will implement infrastructure projects and change policies and regulations to support our resilience efforts. These Lines of Effort are aligned with our Resilient Infrastructure Strategy and Resilient Infrastructure Integration and Implementation Plan.



Shoreline Protection

The Village, in partnership with the U.S. Army Corps of Engineers (USACE) and Miami-Dade County, is developing solutions to protect both the ocean and bayside shorelines.



Stormwater System Upgrades

The Village is working with internationally recognized engineering firms to redesign and rebuild our aged, disconnected and ineffective stormwater drainage system.



Roadway Improvements

The Village will redesign and rebuild roadways to optimize the stormwater drainage system to reduce flooding and improve water quality while building a streetscape that improves traffic flow, safety, and beauty.



Utility Hardening

The Village is working with Florida Power & Light, telecommunication firms, and Miami-Dade Water and Sewer District to underground utility systems and replace aged water and sewer lines.



Supporting Policies & Regulations

The Village is updating its critical policies, building standards, zoning regulations, and ordinances to weave adaptation for resilience into everything we build.

Commitment To Our Residents



Develop a comprehensive Resilient Infrastructure and Adaptation Program that protects our way of life and **Elevates our Island Paradise**.



CLEAR COMMUNICATIONS

Meaningfully include residents in the conversation.



SOLUTIONS-DRIVEN

Focus on solutions that preserve our environment.



THOUGHTFUL PLANNING

Plan and execute projects to minimize disruption.



MAXIMUM BENEFIT

Pursue external funding to maximize the investment in our community.



DEVELOP PARTNERSHIPS

To include the best talent, technologies, and practices.

Community Benefits



Reduced Chronic Flooding



Protected Shoreline And Boundaries



Enhanced Quality Of Life



Strengthened Readiness For Storms And Emergencies



Increased Service Reliability, Safety, And Aesthetics

Program End State



Protected homes and personal property bolsters property values and interest in community investment



Stabilization of insurance cost and increase in insurability



Minimized business disruption and continued economic viability



A growing tax base that enables continued infrastructure investment and maintenance



Improvement in resident safety and quality of life

Program Decision Points

Decisions	Decision Date	Implication	Cost Implications	Slide
Number of Outfalls	Mar 18th	Progressive Level of Service	Reduces \$1.6M	14
Number of Pumps	Mar 18th	Progressive Level of Service	Reduces \$2M	16
Driveway Harmonization Materials	Jan 28th	Type of Replacement Materials	Increase \$726K	23
Add Entire Phase 1 Undergrounding to Zone 1 Project	Feb 11th	Underground Utilities Beyond Zone 1 Boundaries	Increase \$12M	24
FPL ROW Agreement	Feb 11th	Location of Transformers/Switches	TBD	25
Phase 2 Undergrounding	Mar 18th	Underground Utilities in North of Village	Increase \$15M	26
Residential Utility Connections	Mar 18th	Village or Resident Responsibility	Increase \$500K	27
5G Telecom Conversion	Mar 18th	Transform Telecom with Conditions	TBD cost increase and redesign delay	28
Design JPA with WASD	Feb 11th	Cost Sharing	Decrease TBD	29
Construction JPA with WASD	Jul '25	Cost Sharing	Decrease \$2 -\$4M	29

Shaping Efforts

Agreements:

- Easements – Outfalls, pump stations, transformers
- Joint Powers Authority – WASD water & sewer lines and DERM/DTPW Crandon Blvd stormwater lines

Policies and Legislation:

	Right of way/private property harmonization responsibilities
	Utility connection responsibilities
	Bond repayment authorization
	County flood criteria adoption
	Freeboard Building height Lot elevation standards
	Impervious materials requirements
	Seawalls/bulkhead guidelines
	Single family home incentives

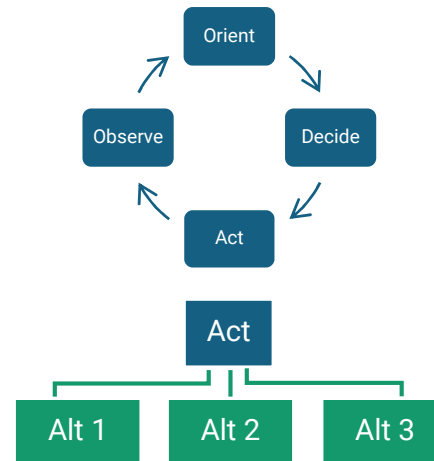
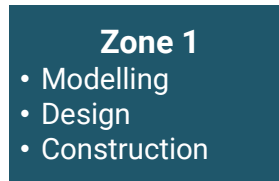
Permitting:

- Multiple Agencies
- Pre-Permitting
- Design Permitting
- Construction Permitting

COMPLETE	ISSUES	NOT STARTED
ON TIME	PROBLEMS	

Main Effort

Stormwater, Roadways & Utilities



DECISION CRITERIA

1. Requirements
2. Cost
3. Value – Cost/Benefit
4. Funding Availability
5. Resource Availability
6. Environmental Considerations
7. Dependency
8. Target of Opportunity
9. Community Disruption

Shoreline Protection

- USACE CSRM**
- Feasibility Study
 - Pre-Engineering and Design
 - Construction

Supporting Efforts

Projects:

	Garden District (Zone 8) Intermediate Stormwater Improvements
	Zone 8 Utility Undergrounding
	Stormwater Pump Generators
	Streetlight Coverage Expansion
	Holiday Colony (Zone 6) Flood Reduction Improvements

Programs:

- Annual Stormwater Systems Inspection, Maintenance & Repair
- Periodic Beach Renourishments

Studies:

- Off-Shore Barrier Reef Feasibility Study



Zone 1 Existing vs Proposed

- **Existing System**

- Gravity drainage to wells and outfalls
- Low lying roads
- No water quality treatment
- Overhead power and telecom lines



- **Proposed Design**

- Pump station to upsized outfalls
- New road design and curbing
- Inlet filtration and stormwater treatment unit
- Undergrounded power and telecom



Zone 1 Integrated Project

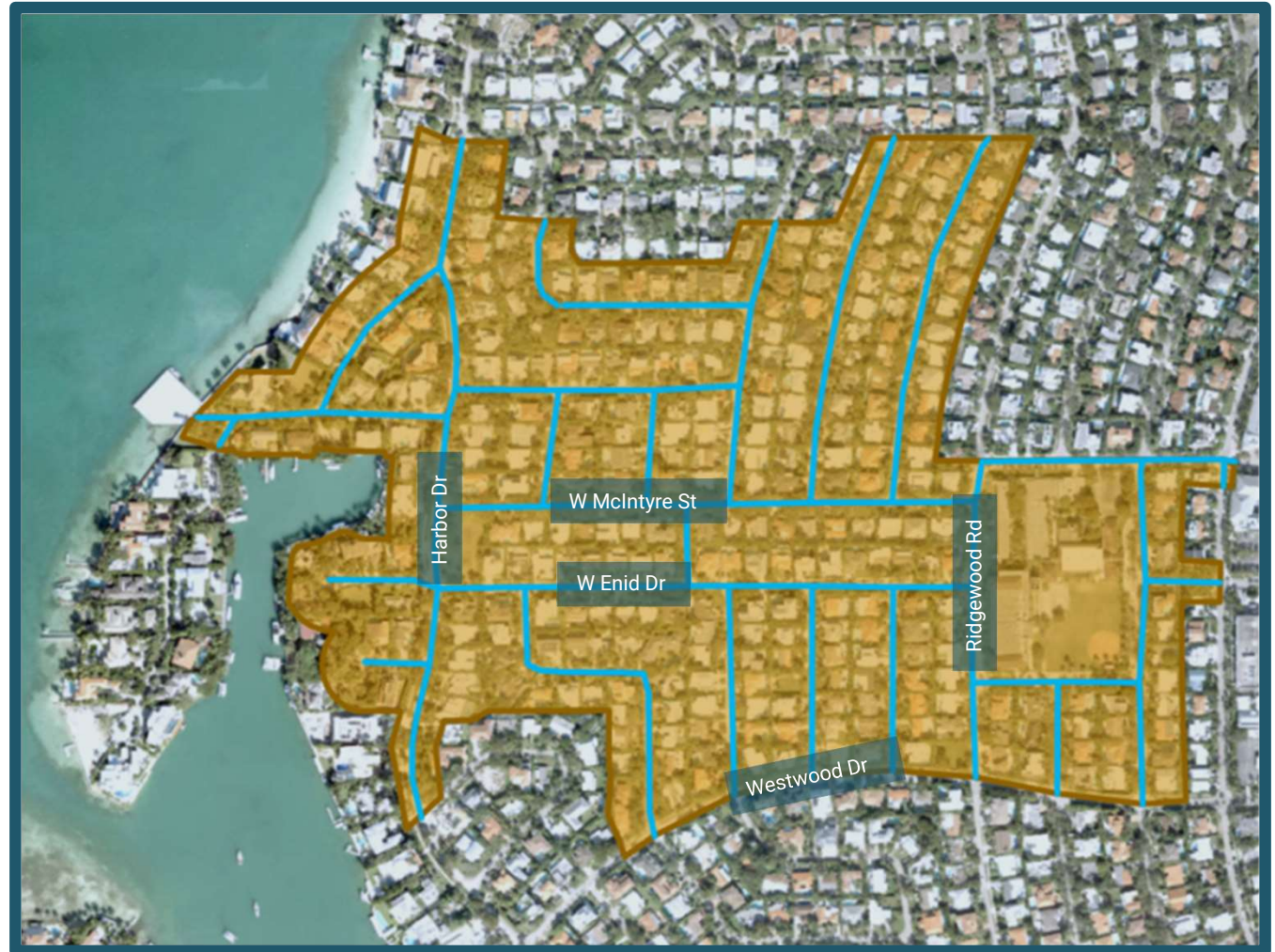
Purpose: To reduce roadway and property flooding to enable freedom of movement and improve safety, and to underground electrical and communication utilities to enhance user reliability.

Components:

- Outfalls
- Pump Station in Harbor Park
- Stormwater System
- Roadway Improvements
- Electrical Lines
- Communications
- Water / Sewer Pipes
- Fire Hydrants

Outcomes:

- Reduces frequency, depth, and duration of flooding
- Keeps roads passable for emergency vehicles
- Reduces potential damage to property
- Reduces resident and school disruption
- Improves electrical and communications utility reliability



Zone 1 Design Criteria



- **Interim Level of Service*:**
 - Depth: Maximum 12.5 inches
 - Location: Over low crown of road
 - Duration: No longer than 3.5 hours
- **Design Storm*:** SFWMD 10-year storm at 7 inches per 24 hours^
- **Follow Local Trends of More Frequent Rainstorms that are Shorter in Duration and Higher in Intensity**
- **Sea-Level Rise Projections*:** NOAA Intermediate High in 2070 with **27** inches increase from a 2020 baseline+
- **Final Level of Service*:**
 - Depth: Maximum 9 inches
 - Location: Over low crown of road
 - Duration: No longer than 1.25 hours
- **Pumping Capacity*:** Initially 1 inch per hour with built-in ability to go to 2 inches per hour^
- **Ensure Water Quality Improvements Meet Federal, State and County Regulations**
- **Account for Stormwater Run-off from 100 Feet of Adjacent Property**
- **Build for a 40 Year Design Life Accounting for Locally Projected Rising Sea-Level/Ground Water, Tidal Influence, and Low-lying Topography**
- **Integrate Roadway Improvements and Utility Undergrounding with Stormwater System across 77 acres**

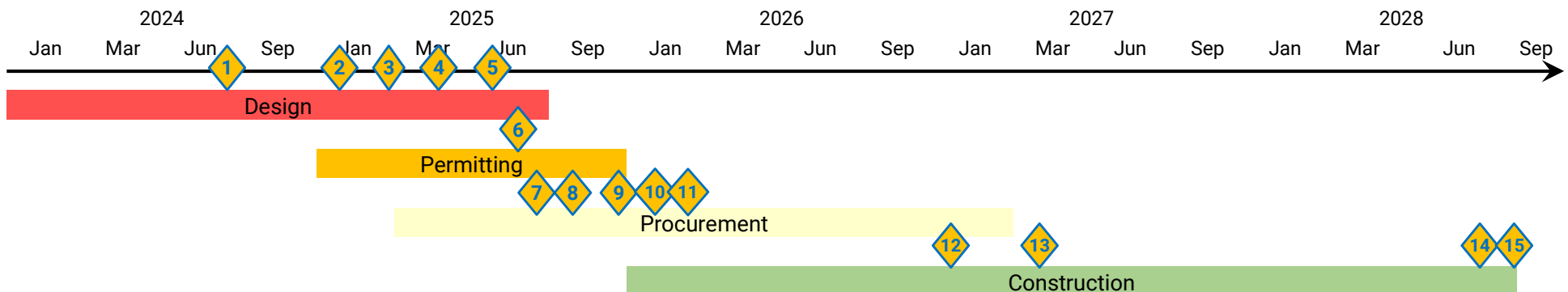
Zone 1 Timeline Slide

MILESTONES

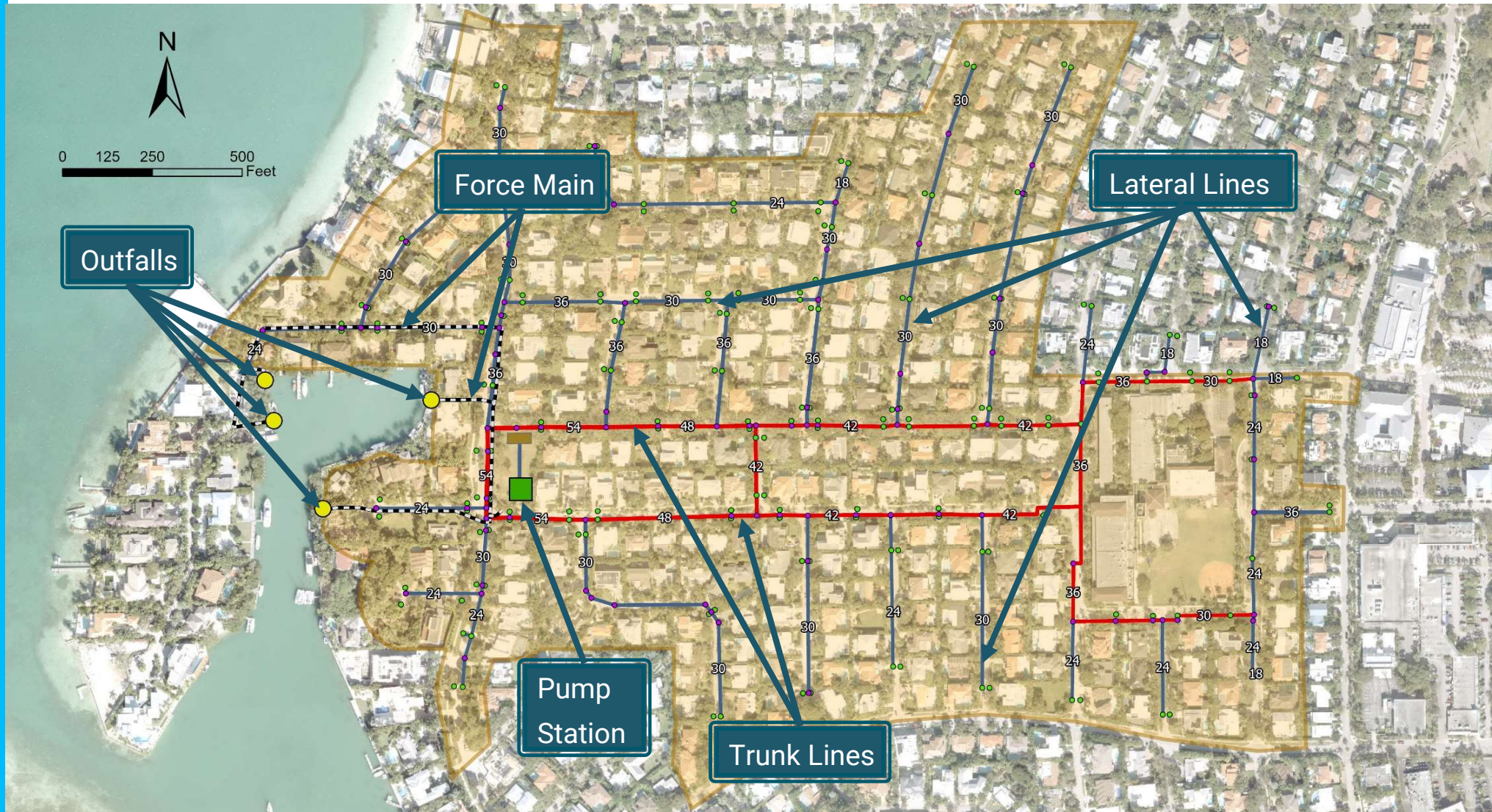
STATUS		NAME	START	FINISH
COMPLETE	1	30% Project Design	Apr '24	Jul '24
ON TIME	2	60% Project Design	Aug '24	Jan '25
ON TIME	3	Design WASD JPA Signed	Jul '24	Feb '25
ON TIME	4	90% Project Design	Jan '25	Mar '25
NOT STARTED	5	100% Design / Construction Documents	Mar '25	May '25
NOT STARTED	6	Permit Approval	Feb '25	Jun '25
ISSUES	7	Clean Water SRF Application	May '25	Jun '25
NOT STARTED	8	Procurement Documents Development	Feb '25	Aug '25
NOT STARTED	9	GOB Tranche 1	Jul '25	Oct '25
NOT STARTED	10	Procurement Process	Aug '25	Dec '25
NOT STARTED	11	Construction WASD JPA Signed	Aug '25	Jan '26
NOT STARTED	12	Outfalls Built	Jan '26	Dec '26
NOT STARTED	13	Pump Station Built	Jan '26	Feb '27
NOT STARTED	14	Utilities Undergrounded	Aug '26	Jul '28
NOT STARTED	15	Stormwater System Built	Aug '26	Aug '28

- Missing SRF deadline delays project by greater than one year
- To keep on schedule, would require funding stormwater portion through GOB Tranche 1
- Would be higher interest, increased fees, and worse payback terms.
- Would expend available GOB funding faster.

COMPLETE
ON TIME
ISSUES
PROBLEMS
NOT STARTED



Zone 1 Design Overview



Legend

- | | |
|------------------|----------------------------|
| Force Main | Inlets |
| Stormwater Pipes | Manholes |
| Trunk Lines | Stormwater Treatment Units |
| Outfalls | Pump Station |

Zone 1 Outfall Status

 **115-130 CFS** (1&2 Harbor Pt)

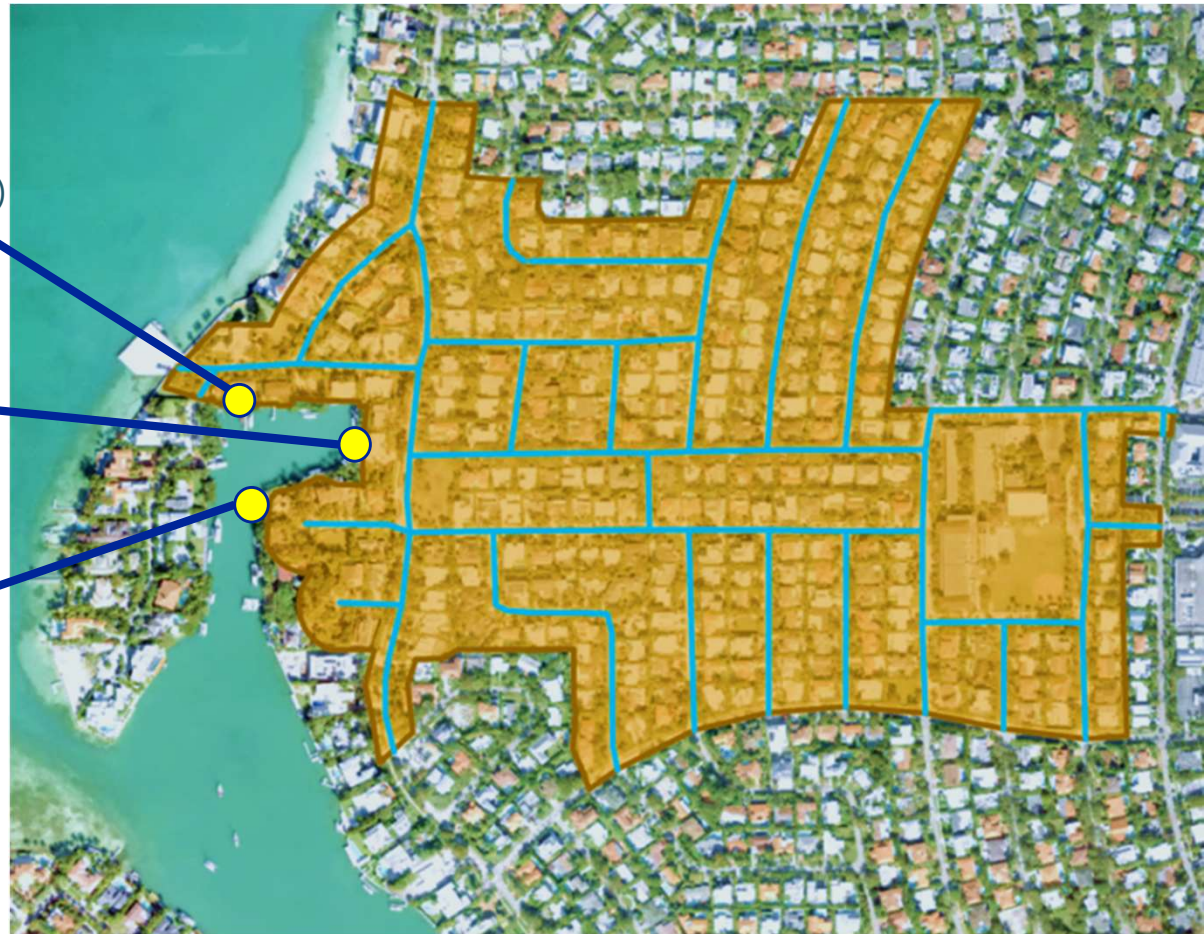
 **37 CFS** (540/550 Harbor Dr)

 **16-20 CFS** (640 Sunset Cir)

Discharge Requirement:

1": 77 CFS

2": 155 CFS

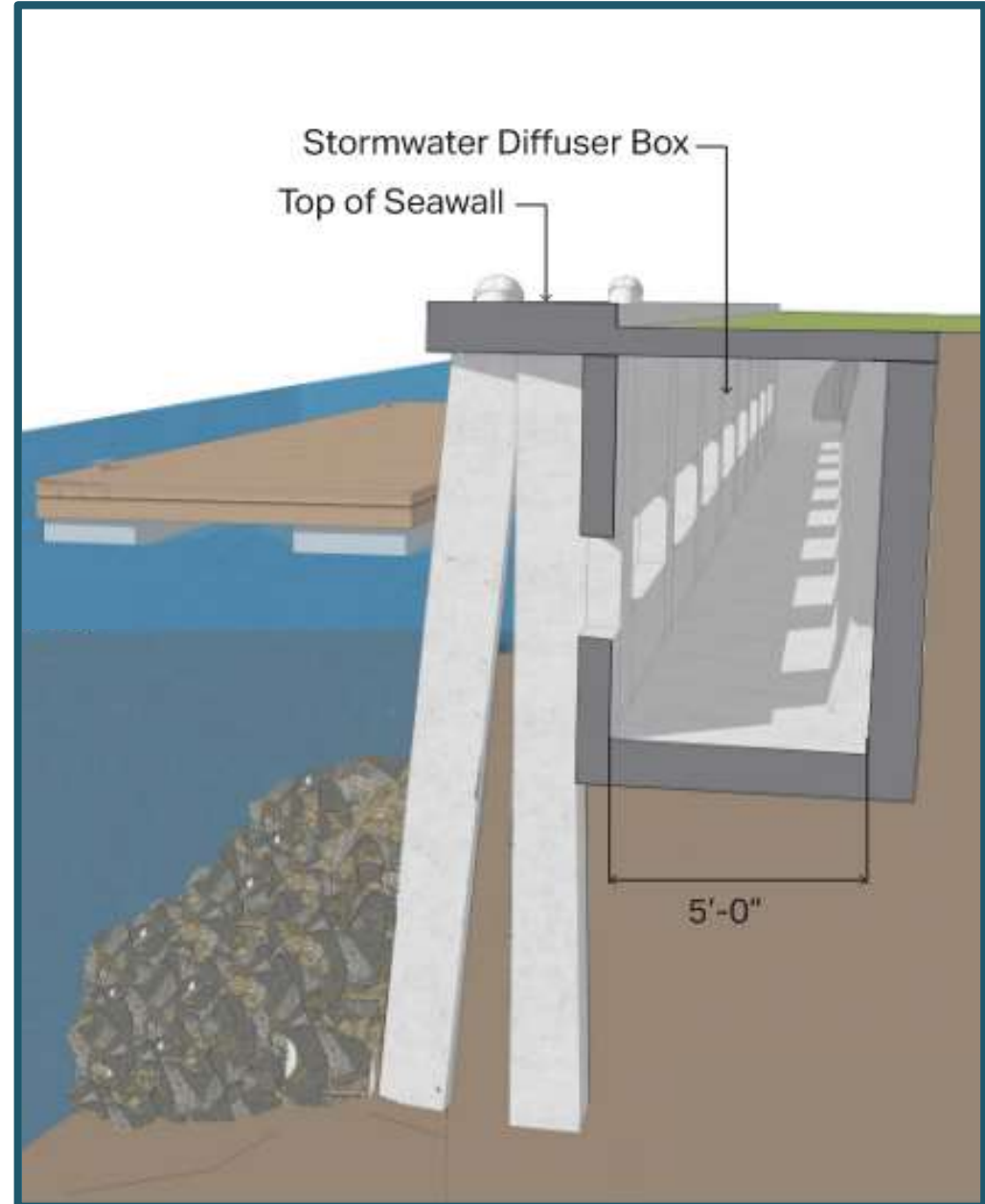
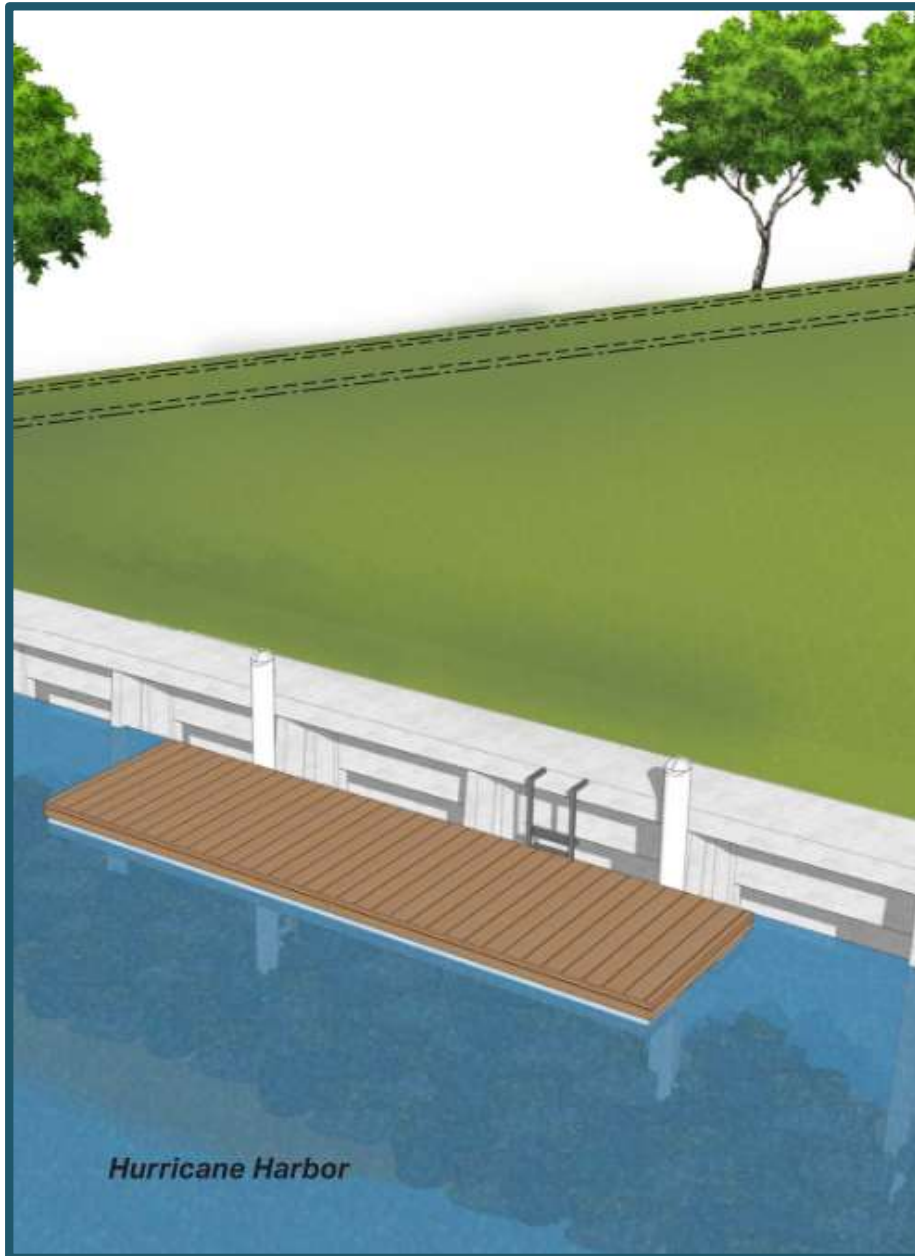


Decision Point:

Construct only outfalls besides 1 & 2 Harbor?

Cost Impact: Reduces \$1.6M Upfront

Zone 1 Outfall Visual



Zone 1 Pump Station Harbor Park



Key Points

- Footprint:
 - 1130 sqft
 - Building Height: 23'
- 800kw Generator
- (4) to (6) Pumps
- Stormwater Treatment Unit
- Underground Wet Well
- FPL Vault with Vista Switch and Transformers
- Opportunity for Recreational Equipment

Decision Point:

Construct 4 pumps or 6 pump?

Cost Impact: Reduces \$2M Upfront

Zone 1 Pump Station Visual



Zone 1 Stormwater System Components

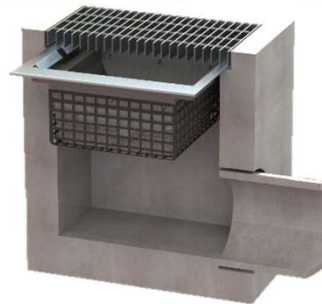
STREET SWEEPING

Remove accumulated pollutants from paved surfaces before they can be washed into drainage system.



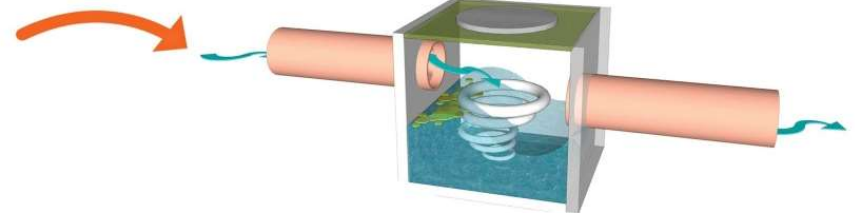
INLET FILTERS

Remove trash and large debris.



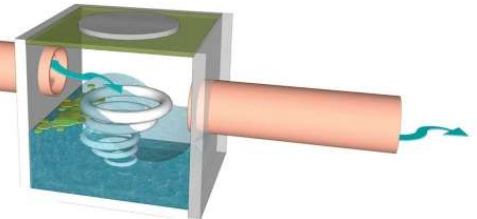
LATERAL TO TRUNK LINE CONVEYANCE:

Pipes that transport stormwater using gravity from smaller lateral lines to larger trunk lines.



HYDRONAMIC WATER QUALITY TREATMENT

Remove sediment, grease and oils.



INLETS

Allows stormwater to enter the drainage system from the surface.

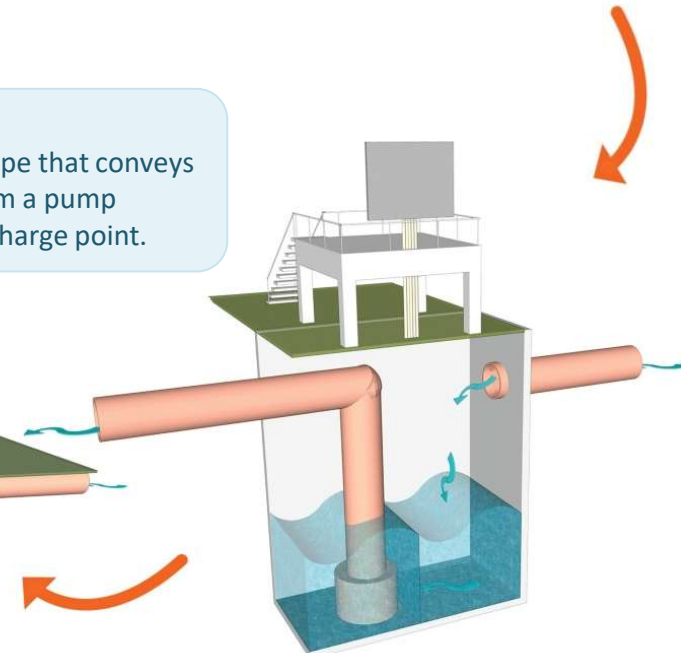
OUTFALL

The point where stormwater is discharged from the drainage system into a body of water.



FORCE MAIN

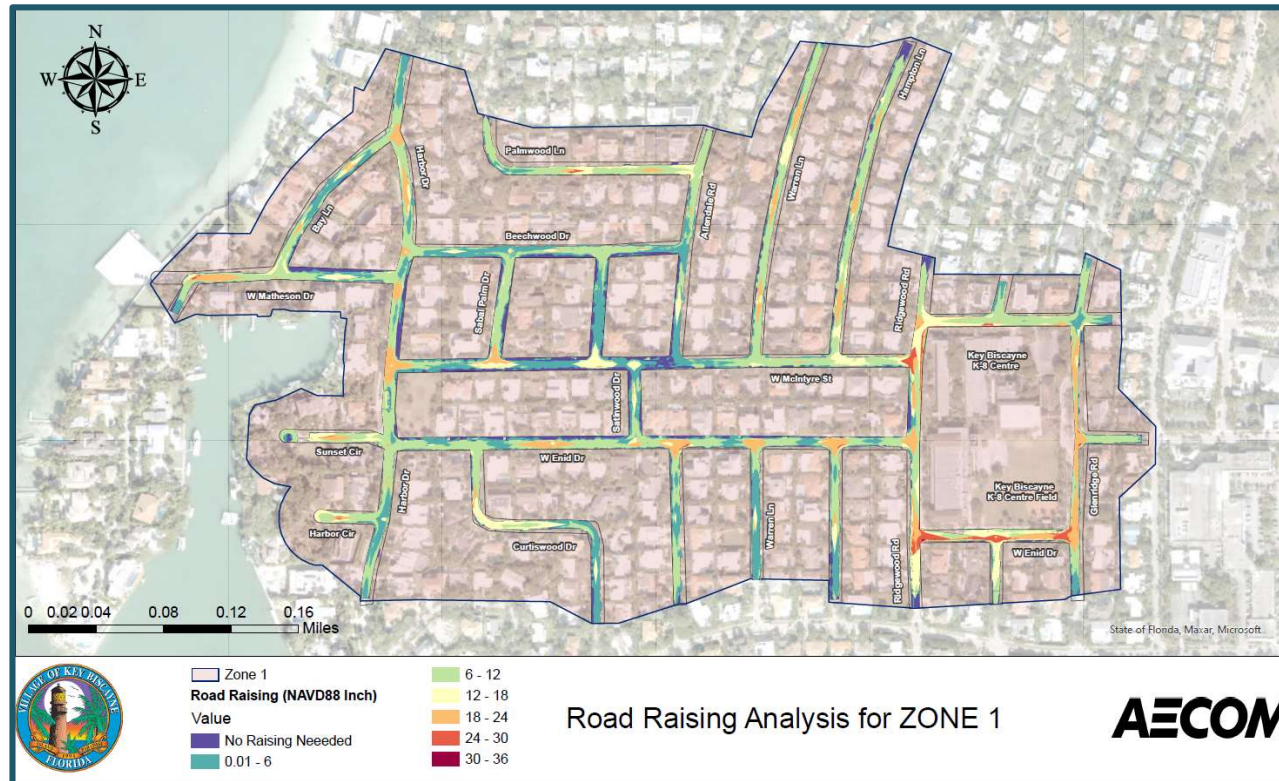
A pressurized pipe that conveys stormwater from a pump station to a discharge point.



PUMP STATION

Move stormwater from lower to higher elevations within the drainage system.

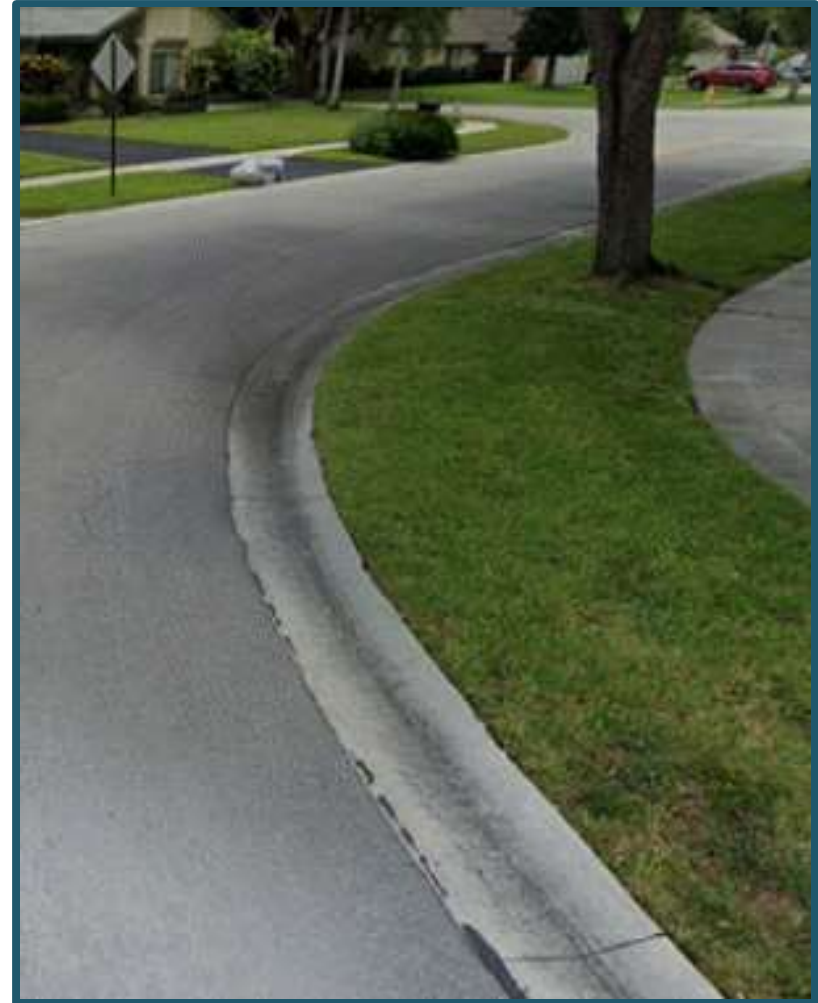
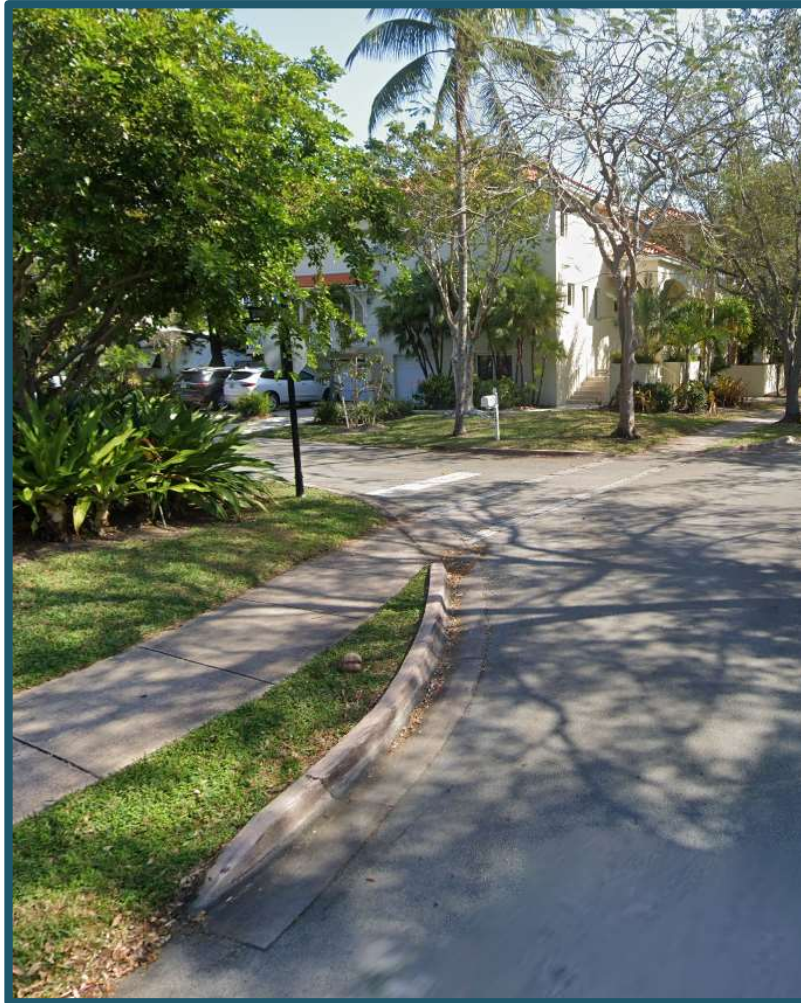
Zone 1 Roadways



Key Points

- Average Road Raised 6"-12" except for intersections and school area
- No encroachment on residential private property
- Driveway grade less than 12% to prevent bottoming out
- Black Base:
 - Protects road from ground water
 - Reduces crown of road by equivalent of 4"
 - Reduces cost of repaving for future maintenance

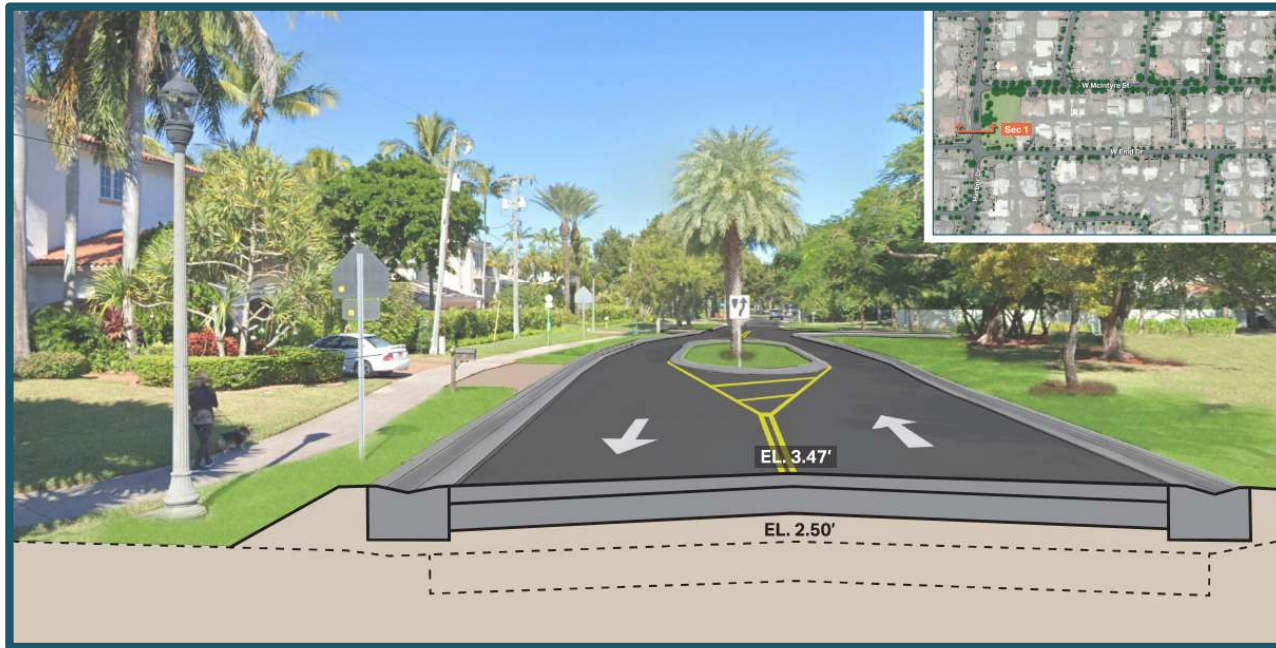
Zone 1 Roadway Typical Curbs



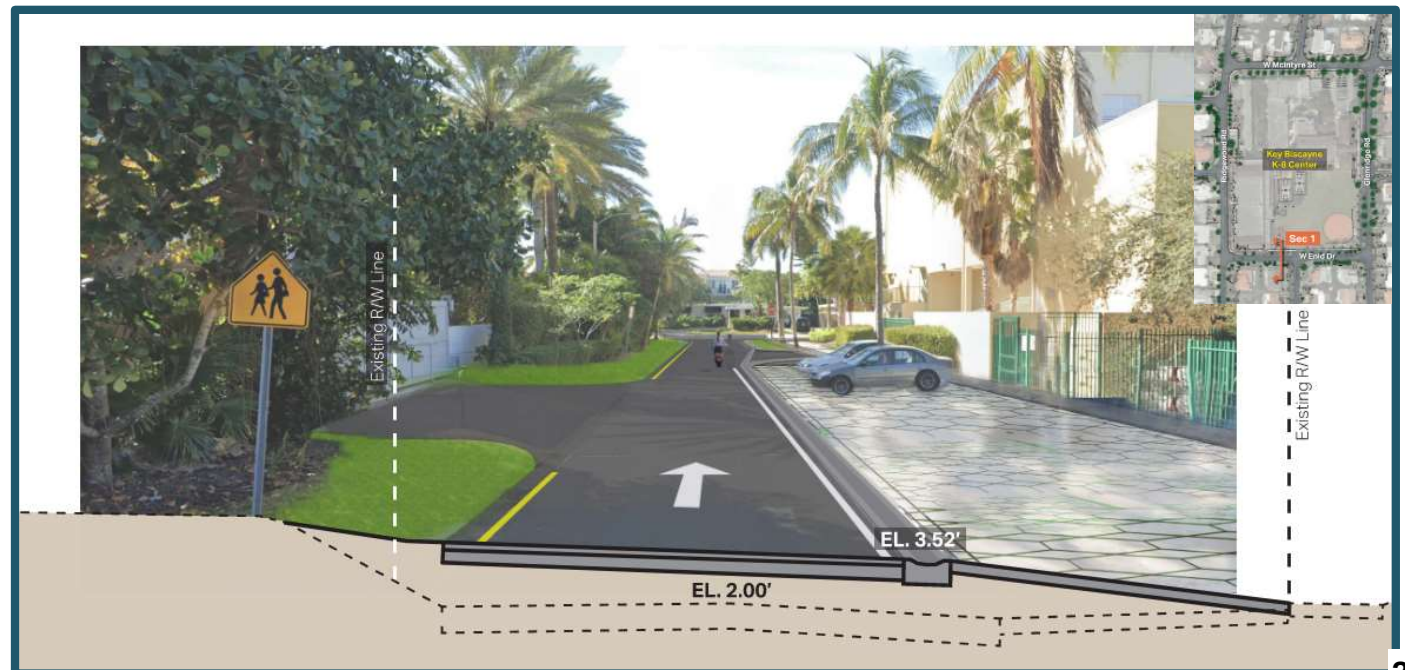
Key Points

- Reduces number of inlets needed
- Reduce impact on existing trees

Street Cross Sections

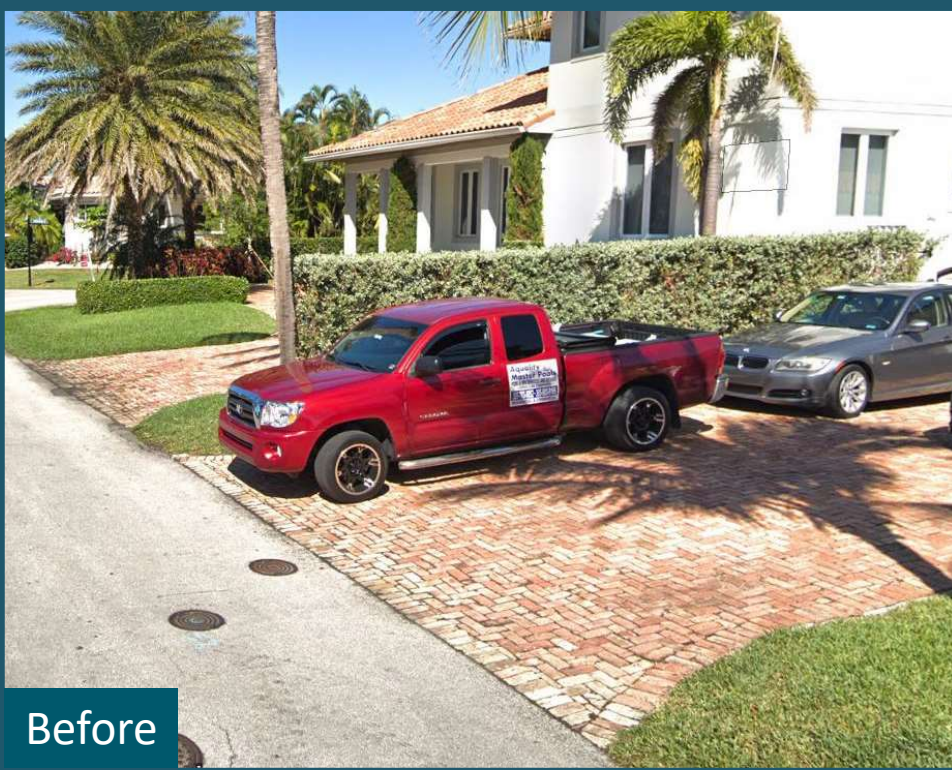


Street Cross Sections



Zone 1 Private Property Harmonization

Harmonization: Providing a smooth transition between the new raised roadway and private property



Before



After

Key Points

All harmonization can be completed within the right-of-way

288 Total residential properties within Zone 1

432 Total driveway will need to be harmonized

Cost Like for Like: \$1,534,578

Cost standard driveways \$808,623

Decision Point:

Like for Like or Standard Materials

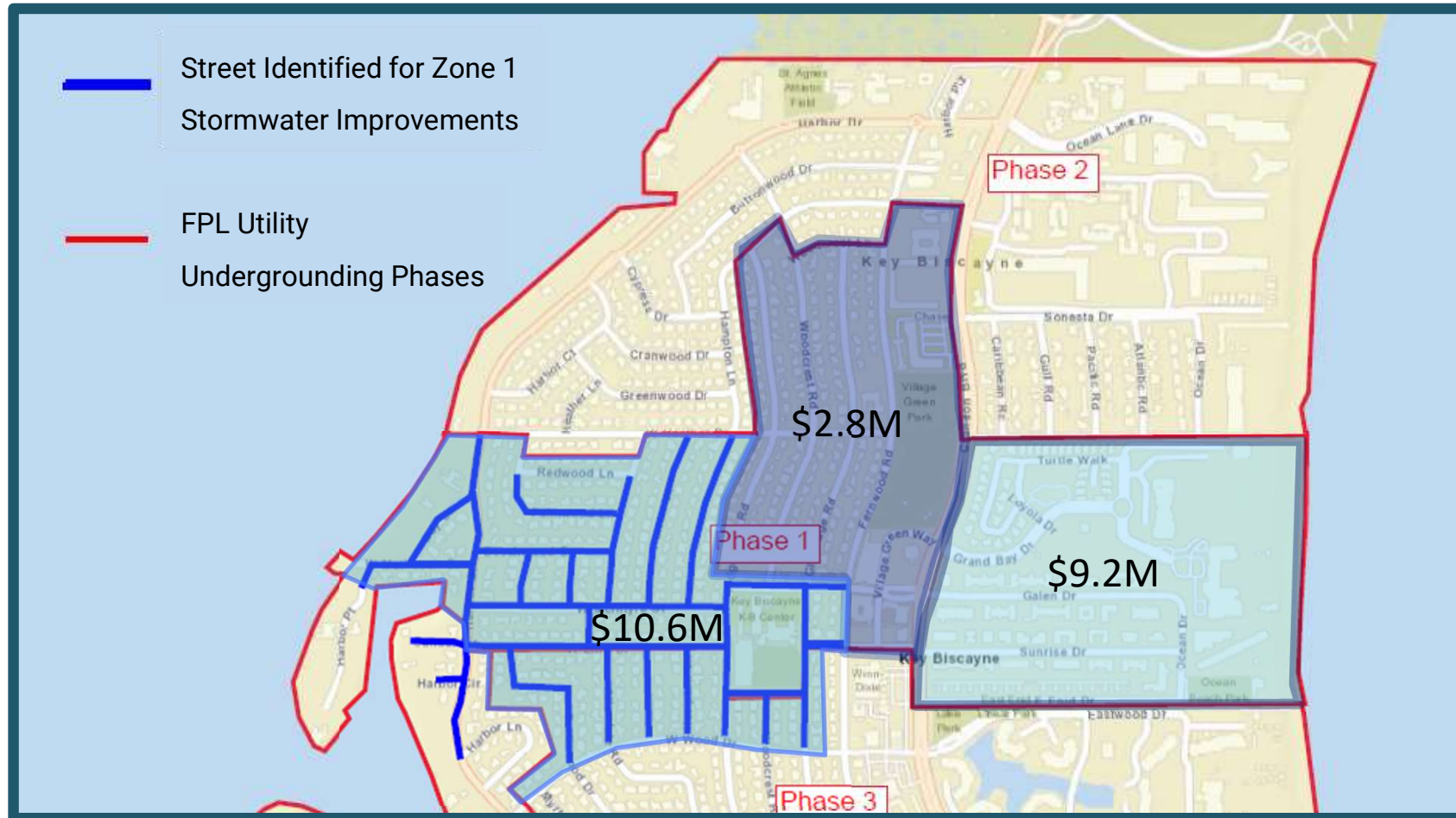
Cost Impact: Like for Like increases \$726K

Decision Point:

If standard materials, select materials

Cost Impact: \$TBD

Zone 1 Phase vs Zone Undergrounding



Key Points

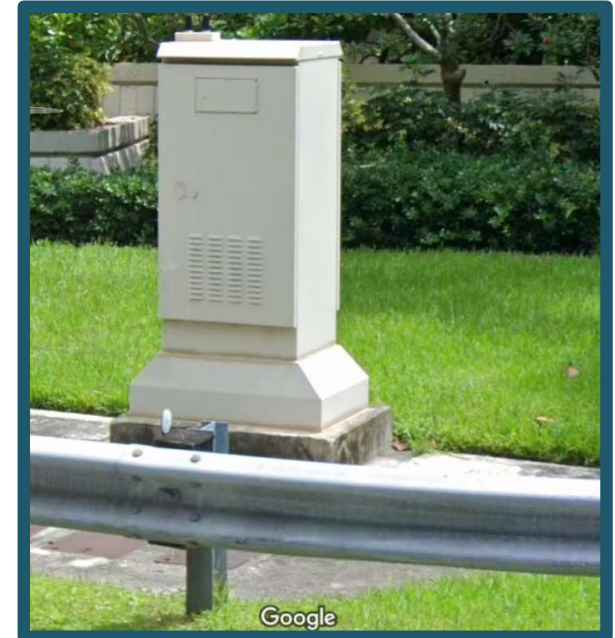
- \$10.6Mil included in existing 60% budget for Zone 1.
- Conflict costs to be incurred if undergrounding before stormwater

Decision Point:

Underground Entire Phase 1

Cost Impact: *Increase Approx \$12M*

Zone 1 Electrical Equipment



Key Points

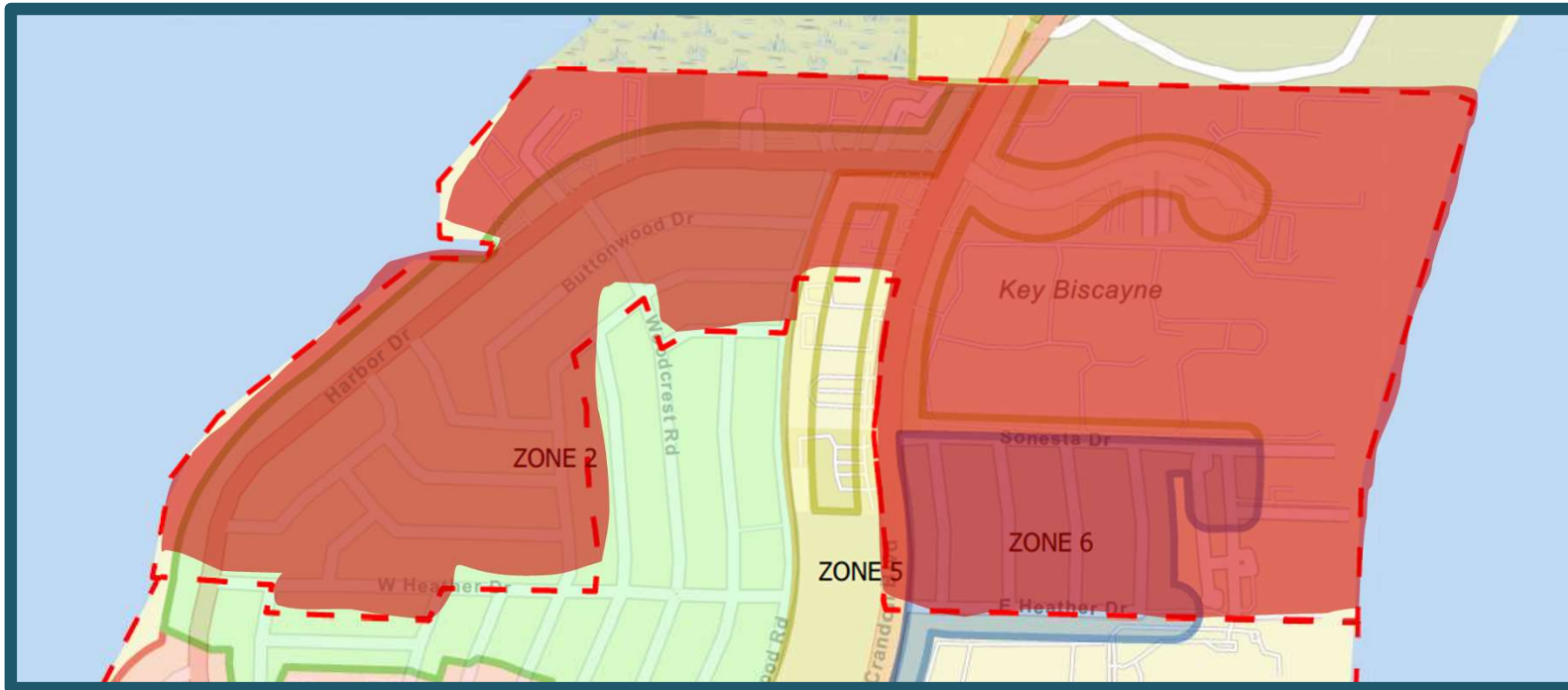
- Transformer/switches will need to be installed above ground around the Village.

Decision Point:

Install the Electrical Transformers in ROW?

Cost Impact: Relocate to Private Property with Easements

Phase 2 Utility Undergrounding



Purpose: Undergrounding of power and telecom for increased resilience and reliability

Tasks: Install power and telecom lines underground and remove existing above ground poles and cables

Benefit: Increased efficiency and reliability for residents

Status: Preliminary budgeting and feasibility

Funding: GOB Bond

Decision Point:

Proceed with estimate and engineering for Phase 2

Cost Impact: Increase \$15M Total

Zone 1 Electrical



Key Points

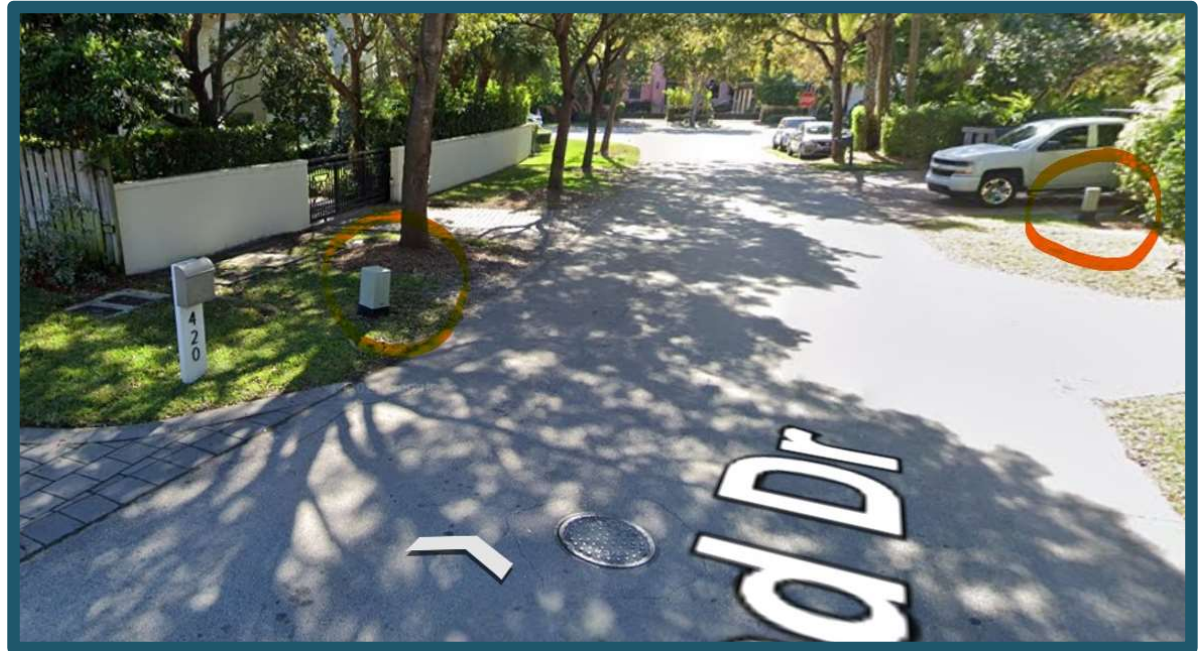
- Overhead can NOT be dismantled until residents are connected to the new telecom system.
- The cost of a residential connection range between \$1000 - \$2400.

Decision Point:

Electrical Connections Village or Resident Responsibility?

Cost Impact: Increase Approx \$500K

Zone 1 Telecom Undergrounding



Key Points

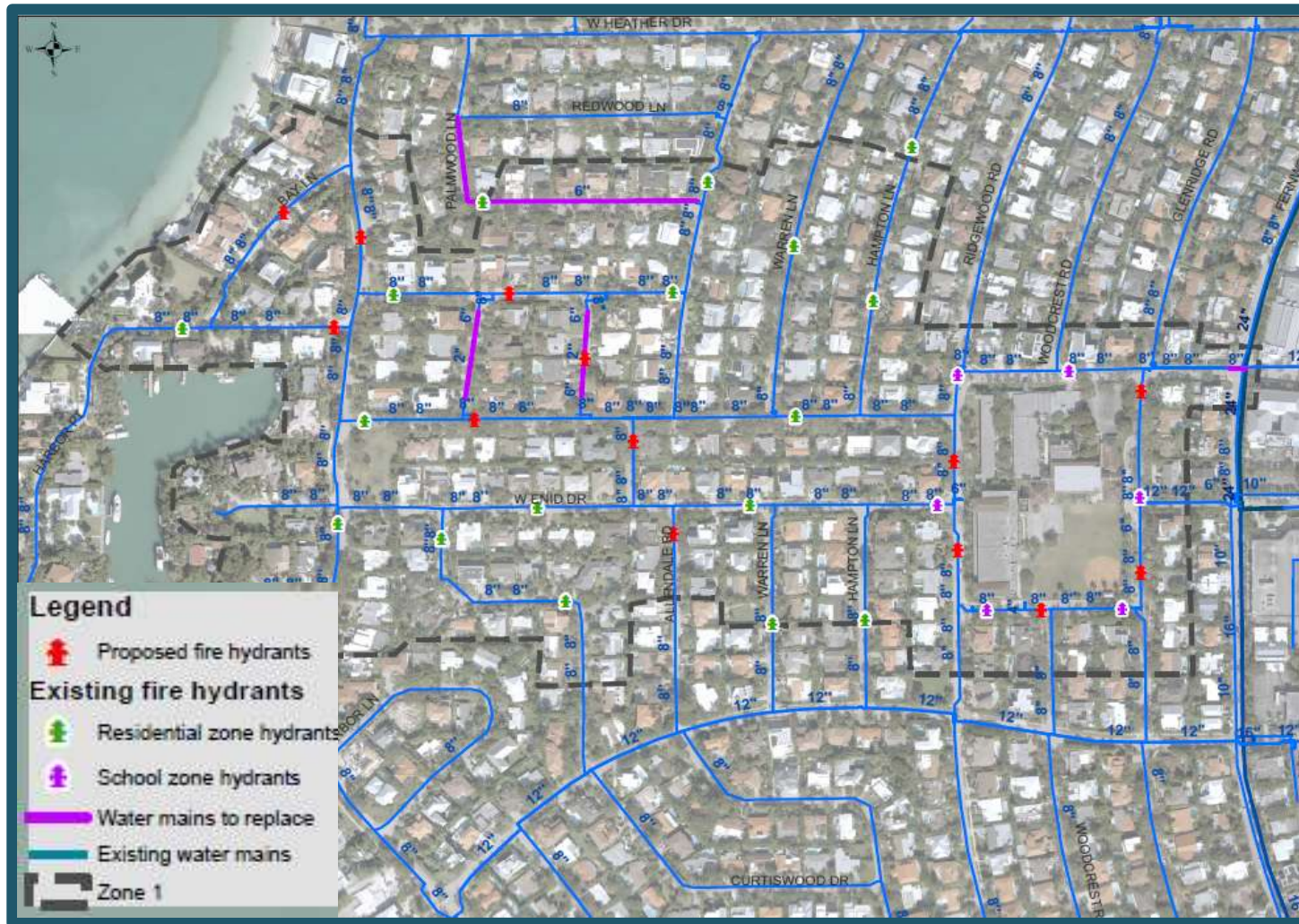
- Individual residential connection agreements required for overhead wire and pole removal.
- 5G Wireless requires additional hardwiring to antennas
- Currently, AT&T and Comcast do not have wireless residential cable/internet

Decision Point:

5G Conversion Exploration?

Cost Impact: *Increase in cost, design and schedule*

Zone 1 Water & Sewer



Key Points

- Upgrade of existing water mains and sewer gravity pipes
- Replace water pipes in conflict of stormwater
- Install new fire hydrant to improve fire protection

Decision Point:

Design and Construction WASD JPAs

Cost Impact: *Transfer Costs to WASD (\$2M-\$4M)*

Zone 1 Permitting

Permit	Issuing Agency	Responsibility for Permit Application Process	Status
Sanitary Sewer Extension Permit	M-DC DERM	EOR	Not Started
Sanitary Sewer Extension Permit	FDEP	EOR	Not Started
Water and Sewer Existing Permit Revision	Miami-Dade WASD	EOR	Internal Review
ROW Permit	VKB Public Work	EOR	Internal Review
Water Main Extension	M-DC DERM	EOR	Not Started
As needed	VKB BZP / PW	EOR	Internal Review
Section 404/10 (Clean Harbors & Rivers)	USACE	EOR	Internal Review
Environmental Resource Permit	SFWMD	EOR	Internal Review
Class I Costal Construction Permit	M-DC DERM	EOR	Internal Review
Class II Costal Construction Permit	M-DC DERM	EOR	Internal Review
Class V Dewatering	M-DC DERM	Contractor	For Construction
NPDES SWPPP	FDEP	Contractor	For Construction
Pavement Marking, signalization	VKB Public Works	Contractor	For Construction
Landscaping/Tree permitting	VKB BZP	Contractor	For Construction

Key Points

- Permit applications have been reviewed by Black & Veatch to ensure compliance.
- Acquiring permits is essential to secure a spot on the SRF funding list in August 2025.

Zone 1 Procurement

Procurement Timeline and Considerations

- Procurement Development
 - Industry Forum (Feb / Mar)
 - 90% Construction Drawings (Mar / Apr)
 - Engineered Technical Specifications (Mar / Apr)
 - Village Specific Technical Specifications (Mar / Apr)
 - Construction Management Plan
 - Material Staging
 - Sequence of Construction
 - Dewatering and Stormwater Flood Mitigation Plan
 - MOT and Residential Access Requirements
 - Plans Field Review
 - WASD Technical Specifications
 - Contractor Requirements
 - Grant and Loan Bid Requirements
 - Work Packages
 - Risk Transfer Analysis
 - Permit Approvals
- Procurement
 - Contract Award Following SRF Loan Approval
 - Bid Approval within 90 days of opening
 - Bid Release Tentative for August '25
 - Tentative Council Approval for December '25

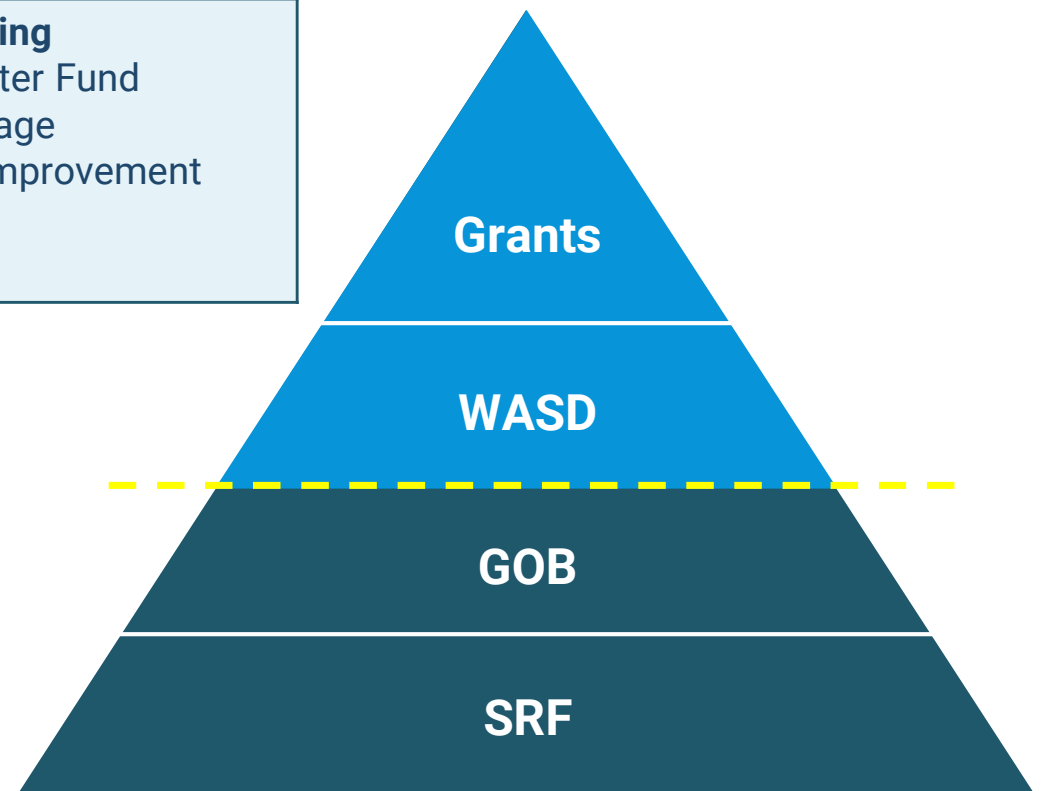
Program Decision Points

Decisions	Decision Date	Implication	Cost Implications	Slide
Number of Outfalls	Mar 18th	Progressive Level of Service	Reduces \$1.6M	14
Number of Pumps	Mar 18th	Progressive Level of Service	Reduces \$2M	16
Driveway Harmonization Materials	Jan 28th	Type of Replacement Materials	Increase \$726K	23
Add Entire Phase 1 Undergrounding to Zone 1 Project	Feb 11th	Underground Utilities Beyond Zone 1 Boundaries	Increase \$12M	24
FPL ROW Agreement	Feb 11th	Location of Transformers/Switches	TBD	25
Phase 2 Undergrounding	Mar 18th	Underground Utilities in North of Village	Increase \$15M	26
Residential Utility Connections	Mar 18th	Village or Resident Responsibility	Increase \$500K	27
5G Telecom Conversion	Mar 18th	Transform Telecom with Conditions	TBD cost increase and redesign delay	28
Design JPA with WASD	Feb 11th	Cost Sharing	Decrease TBD	29
Construction JPA with WASD	Jul '25	Cost Sharing	Decrease \$2 -\$4M	29

Funding Strategy – Cost/Funding/Payment

Leveraging....

Grants & Appropriations • Hazard Mitigation Grant Program • Resilient Florida Grants • Biscayne Bay Water Quality • Target of Opportunities • State and Federal Appropriations	Secured Obligations • State Revolving Fund • General Obligation Bond
Partnerships • Joint Participation Agreements • WASD / DTPW / FPL • State & Federal Representatives	Village Funding • Stormwater Fund • GOB Millage • Capital Improvement Program



Zone 1 - 60% Design Budget



Pre-Construction & Design	\$ 6,341,768
Mobilization & Traffic Control	\$ 6,810,840
Easement & Land Acquisition	\$ 500,000
Project Support	\$ 3,300,043
Stormwater	\$ 44,241,819
Pump Station & Water Treatment	\$ 22,602,303
1/2 Harbor Point	\$ 3,600,000
540/500 Harbor and 640 Sunset	\$ 1,675,265
Conveyance System	\$ 15,359,287
Inlet Filtration	\$ 1,004,964
Roadways	\$ 11,859,441
Pavement & Road Materials	\$ 7,523,337
Blackbase	\$ 1,335,722
Landscaping	\$ 3,000,382
Water & Sewer	\$ 4,466,465
WASD Requests	\$ 1,655,646
Conflicts	\$ 2,810,819
FPL/Telecom Undergrounding	\$ 10,555,726
FPL	\$ 4,597,442
AT&T	\$ 2,832,024
Comcast	\$ 3,126,260
Total	\$ 88,076,102

Funding Sources

Pre-Construction / Project Support

CWSRF: \$4,579,921
 GOB: \$9,364,694
 Grants: \$1,885,626
 Village CIP: \$500,000
WASD: \$622,410

Stormwater & Roadways:

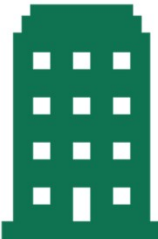
CWSRF: \$58,912,079
WASD: \$1,655,646
 Grants: TBD

Utility Undergrounding

GOB: \$10,555,726

\$

Zone 1 - Estimated Annual Incremental Taxpayer Payments

	SINGLE FAMILY	MULTI-FAMILY*
SMALL	 3,000 SF impervious Avg SW Fee: \$484/yr Avg Taxes: \$302/yr Avg YR: \$786/yr Total 30YR: \$23,592	 500 SF Impervious Avg SW Fee: \$100/yr Avg Taxes: \$181/yr Avg YR: \$282/yr Total 30YR: \$8,452
MEDIUM	 5,000 SF Impervious Avg SW Fee: \$765/yr Avg Taxes: \$604/yr Avg YR: \$1,370/yr Total 30YR: \$41,090	 1,000 SF Impervious Avg SW Fee: \$171/yr Avg Taxes: \$423/yr Avg YR: \$594/yr Total 30YR: \$17,812
LARGE	 7,500 SF Impervious Avg SW Fee: \$1,117/yr Avg Taxes: \$1,209/yr Avg YR: \$2,325/yr Total 30YR: \$69,761	 1,500 SF Impervious Avg SW Fee: \$241/yr Avg Taxes: \$665/yr Avg YR: \$906/yr Total 30YR: \$27,173

Percent of Total Annual Stormwater Fee Collected by Property Type

Single Family 40%	Multi-Family 40%	Commercial 20%
----------------------	---------------------	-------------------

Stormwater Fee

\$0.1218 per square foot of impervious area on property

Millage Rate

0.1209 mills per \$1,000 in assessed property value in 2025

*Condo Stormwater fees based on multi-family property total impervious area, divided proportionately based on condo unit livable area.

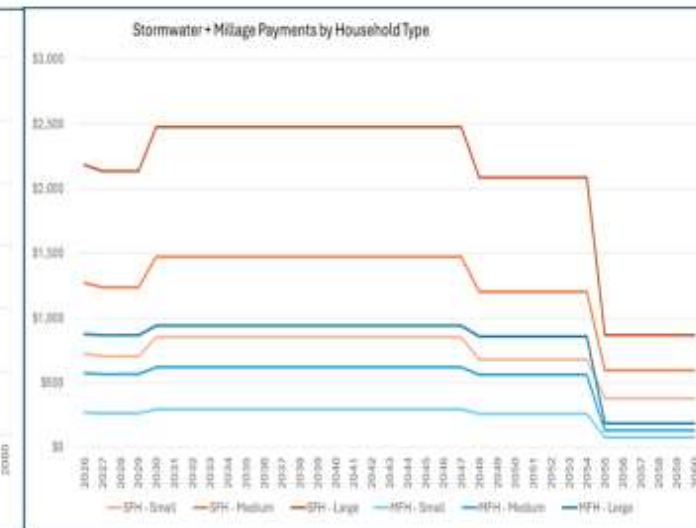
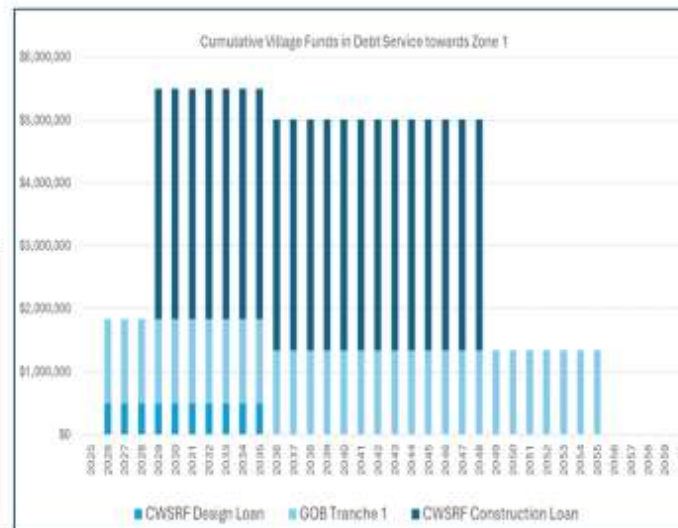
Costs in 2026 dollars, not adjusted for inflation or increase in property values over time. Assumes \$10B in taxable value each year.

Zone 1 – Funding Plan

JAN'23 – JUN'25	JAN'26 – JUL'26	JAN'26 – JAN'27	MAR'26 – NOV'26	AUG'26 – NOV'26	DEC'26 – MAY'27	JUN'27 – OCT'27	OCT'27 – APR'28	MAY'28 – AUG'28
Pre-Construction	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6	Stage 7	Stage 8
AECOM / BV	540/550 Harbor 640 Sunset Outfalls	Pump Station	1 / 2 Harbor Point Outfalls	Harbor Dr. & W. Matheson	McIntyre & Enid to Ridgewood	School (North, South, & West)	All Laterals	Glenridge, McIntyre & Enid to Fernwood
\$6,341,768	\$1,675,265	\$22,602,303	\$3,600,000	\$14,222,344	\$12,572,344	\$9,928,977	\$10,970,567	\$5,662,534
SRF: \$3,492,000 Grant: \$1,885,626 CIP: \$500,000 WASD: \$464,160	SRF: \$ 1,229,788 GOB: \$408,299 WASD: \$37,178 Resilient Florida '25	SRF: \$16,592,026 GOB: \$5,508,674 WASD: \$501,604 Resilient Florida '25 Biscayne Bay Water Quality '25	SRF: \$2,642,708 GOB: \$877,398 WASD: \$79,893 Resilient Florida '25 Biscayne Bay Water Quality '25	SRF: \$10,440,418 GOB: \$3,466,295 WASD: \$315,631 Resilient Florida '25 State/Federal Appropriations	SRF: \$9,412,698 GOB: \$3,125,085 WASD: \$285,561 Resilient Florida '25 State/Federal Appropriations	SRF: \$7,472,241 GOB: \$2,480,838 WASD: \$225,898 Resilient Florida '26 State/Federal Appropriations	SRF: \$8,053,336 GOB: \$2,673,766 WASD: \$243,465 Resilient Florida '27 State/Federal Appropriations	SRF: \$4,156,785 GOB: \$1,380,083 WASD: \$125,666 Resilient Florida '27 State/Federal Appropriations

Construction Funding: \$81,734,334
 SRF: \$60,000,000
 GOB: \$19,920,438
 WASD: \$1,813,896

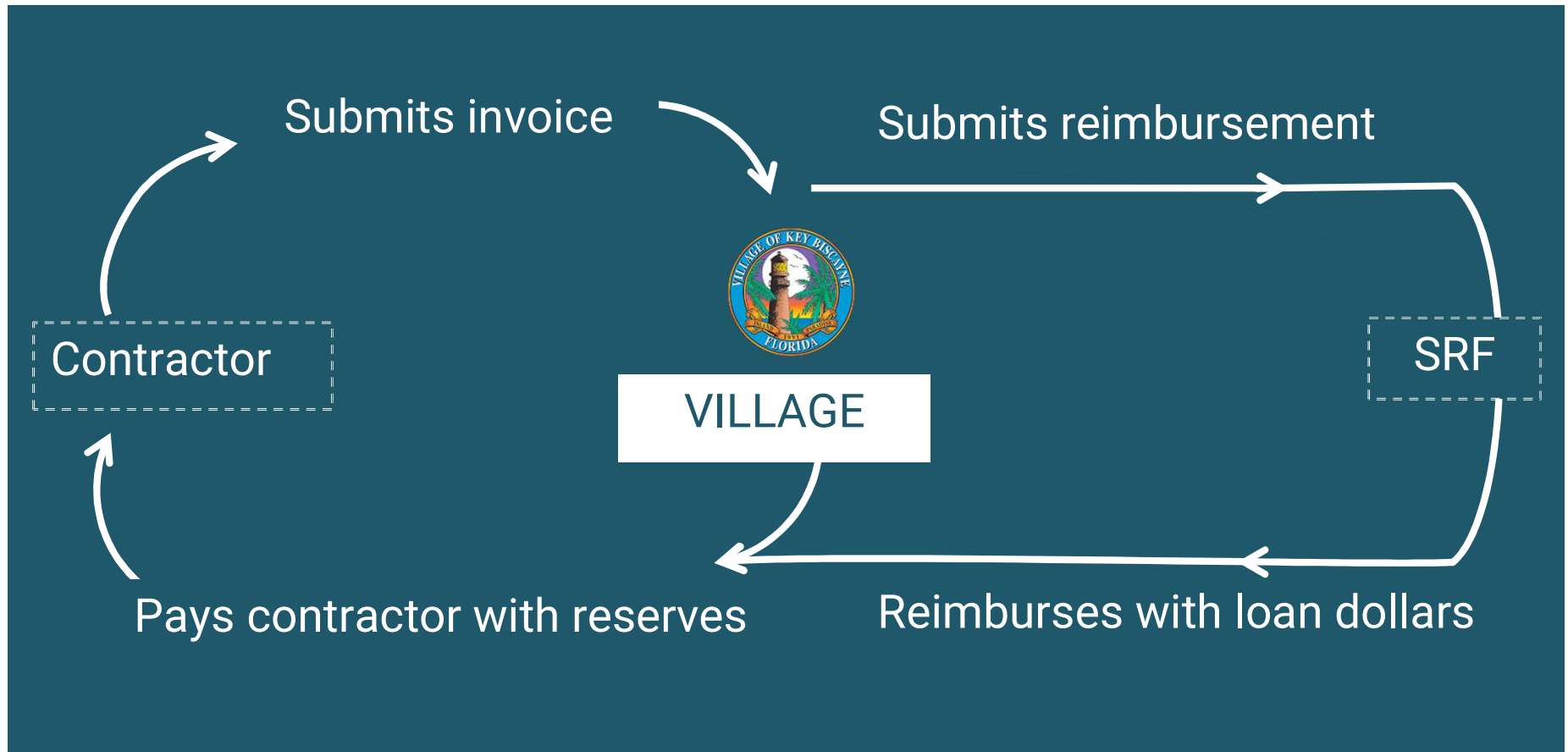
Pre-Construction Funding: \$6,341,768
 SRF: \$3,492,000
 Grant: \$1,885,626
 CIP: \$500,000
 WASD: \$464,160



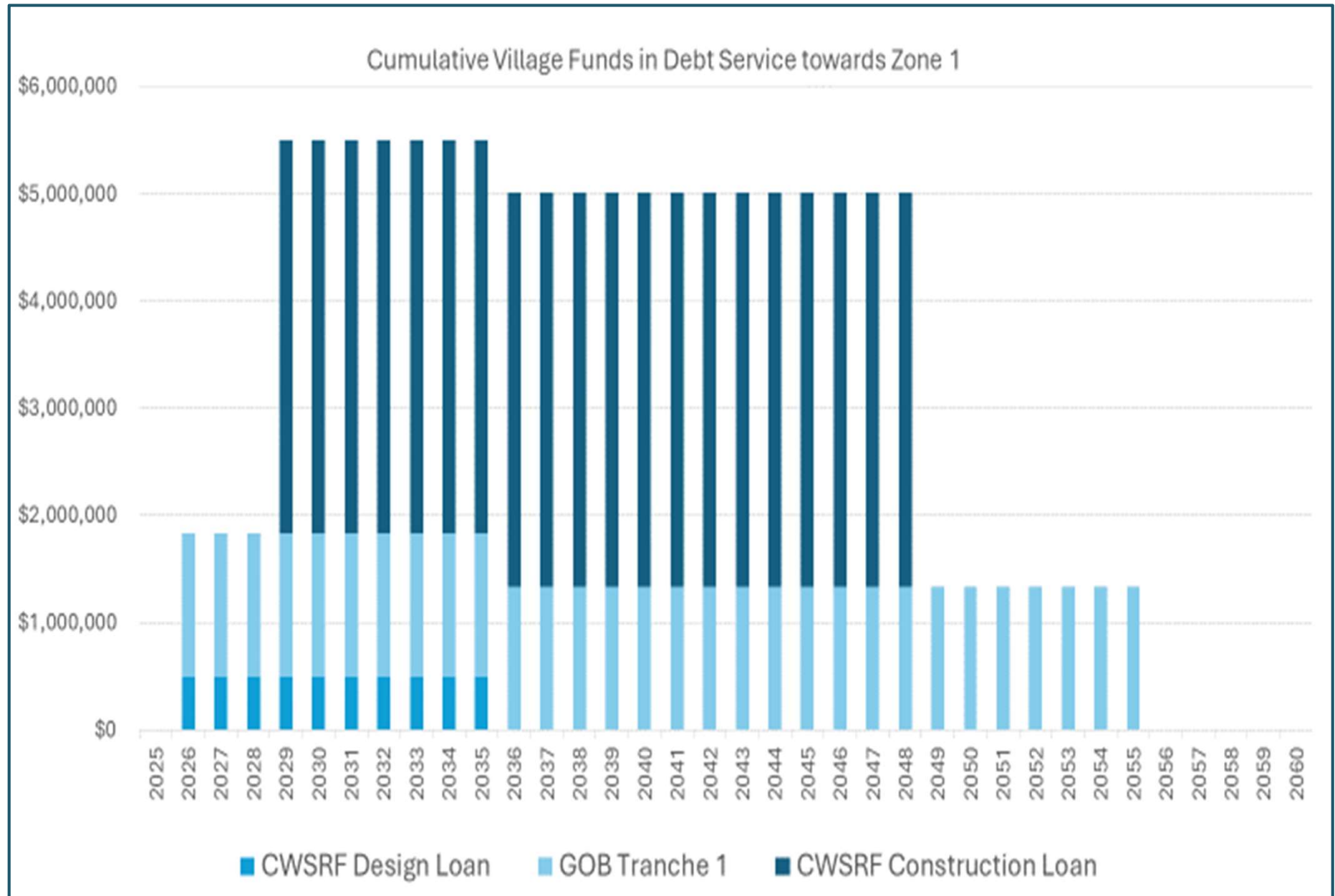
Key Points

- Retain Sufficient Reserve Amounts
- Streamlined Payment & Reimbursement Process

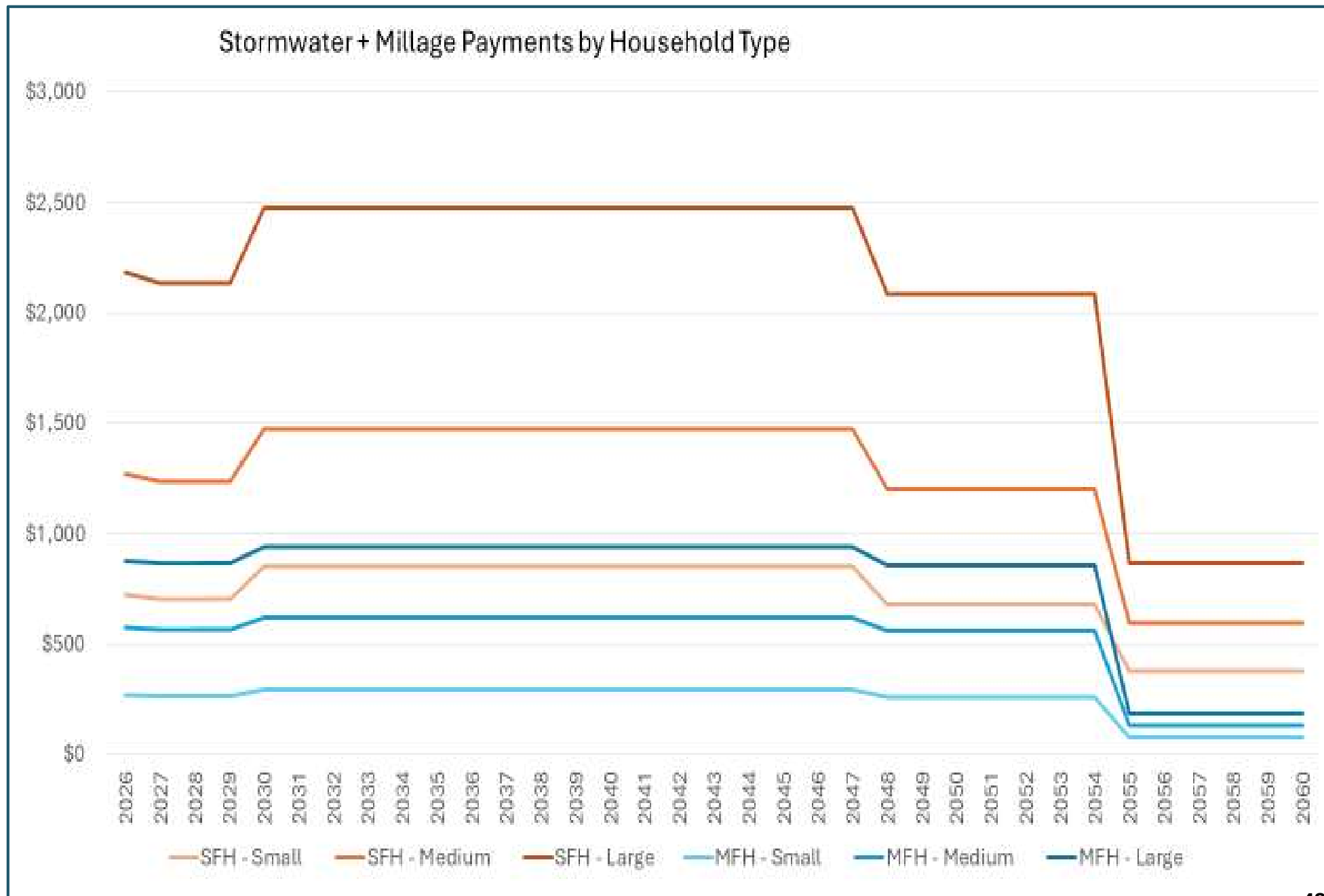
SRF & Grants Payment Cycle



Zone 1 - Village Debt Service



Zone 1 - Payment per Household



Communication Plan

We developed comprehensive outreach strategies to engage Key Biscayne stakeholders, keep the Council informed, foster resilience partnerships, and connect with qualified contractors.

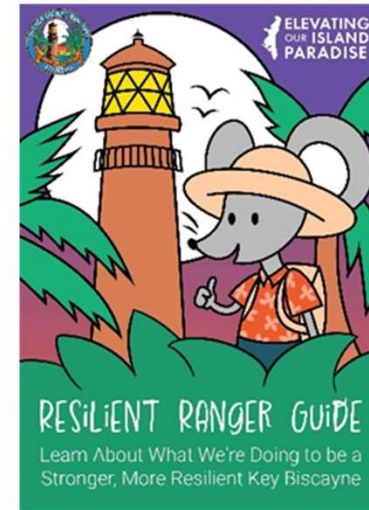


Our **custom QR code** for Resilience Program email updates was scanned more than **800 times**. Over **32,000 email opens** during 2024.

Sign up to learn more!

* Email

Sign Up



Created a **Resilient Ranger Activity Book** and are coordinating launch with schools in time for Earth Month.



Developed **social media content** (posts, Reels, stories and videos) highlighting program achievements. Overall **reach is more than 41,000 views** across all platforms.



Stormwater System Comparison

	2 inch per hour	1 inch per hour	Injection Wells	Existing System
PROS				
	- Designed to 2060/70 - Flexible Capacity - Meets Village Established Criteria - Improves Water Quality	- Around 17% lower cost than 2 inches per hour - Improves water quality - Less outfall requirement	- Less outfall requirement - Intermediate reduction of flooding	- No additional cost beyond current maintenance cost - Limited disruption due construction - Existing infrastructure - No new permits required
CONS				
	- Higher Cost - Require a pump station - Require outfalls - Will create disruption during construction	- Expensive and disruptive to upsize - Require a pump station - Requires outfalls - Will cause over 12.5 inches of flooding over the crown of the road for over 3.5 hours - Low return on investment - Will create disruption during construction - Limited capacity	- Not enough space for 2 inch pumping rate - Loses effectiveness over time - High initial investment - Higher maintenance and redevelopment costs - Require multiple pump stations across Zone 1 - Will create disruption during construction - High O&M cost	- Not meeting Village criteria - Loses effectiveness in short time - High O&M cost - No water quality treatment



SCAN ME



**Submit your email address to receive
resilience program updates. Visit our website:
www.keybiscayne.fl.gov/elevate**



This work was funded in part through a grant agreement from the Florida Department of Environmental Protection's Office of Resilience and Coastal Protection Resilient Florida Program. The views, statements, findings, conclusions, and recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of the State of Florida or any of its subagencies.





VILLAGE OF KEY BISCAINE

MEMORANDUM

Village Council

Joe I. Rasco, Mayor
Oscar Sardiñas, Vice Mayor
Michael F. Bracken
Franklin H. Caplan
Edward London
Nancy Stoner
Fernando A. Vazquez

DATE: January 28, 2025
TO: Honorable Mayor and Councilmembers
FROM: Steven C. Williamson, Village Manager
RE: Award Design-Build Contract for Artificial Turf Field at St. Agnes

Village Manager
Steven C. Williamson

RECOMMENDATION

Recommend the Village Council authorize the Village Manager to negotiate and enter an agreement with CSR Construction Inc., for the Design-Build installation of Artificial Turf at St. Agnes Catholic Church in an amount not to exceed \$1,768,827.00.

PROJECT HISTORY

In 2004, the Village and the Archdiocese of Miami first entered into a joint use agreement. Since then, the agreement has been amended four times to extend its duration and allow for capital improvements. The St. Agnes athletic field is a vital resource for the Village's athletic programs, which have seen significant growth. Over the past decade, athletic field program registrations have increased by 75%. Currently, our field inventory is utilized at full capacity. This has led to restrictions on registrations and has prevented new field sports from accessing facilities, despite demonstrated demand. Despite our best maintenance efforts, the increased use of the St. Agnes field has exceeded the carrying capacity of a natural grass surface. As a result, the field's condition has deteriorated, leading to an unacceptable playing surface. The Village has had to install sod each summer, at a cost of approximately \$ 50,000.00, to bring the field back to an acceptable condition. The conversion of the field to artificial grass was initially discussed in the Spring of 2024 and subsequently added to 2024/2025 Capital Improvement Plan on May 14, 2024 by Ordinance 2024-09.

EVALUATION AND RANKING PROCESS

In accordance with government procurement best practices, and as part of a larger effort to ensure best value and promote fair and open competition for Village contracts, the decision was made to go out to market for these services.

The Village issued an RFP on November 19, 2024. The RFP was posted to the Village's website and Notice Board, DemandStar and Miami Herald. A non-mandatory pre-conference meeting was held for interested vendors where a bid summary was given.

The RFP allowed potential vendors to submit their best proposal based on the scope of work for goods or services where pricing is not the primary factor. It subsequently allows the Village the opportunity to negotiate the best and final offer.



VILLAGE OF KEY BISCAIYNE

SCOPE OF WORK

The Village intends to select a qualified and experienced firms to provide design-build services for upgrading the existing natural grass playfield at St. Agnes to artificial turf, which is utilized by the Village for recreational purposes.

This design-build project involves the installation of artificial turf at the St. Agnes playfield. The CONTRACTOR shall provide all necessary design, labor, supervision, supplies, tools, permits, materials, equipment, and any other required incidentals to complete the service as outlined in the RFP. All work must be carried out in full accordance with the specifications, terms, and conditions specified in the Request for Proposal (RFP).

To qualify for award, prospective Proposers were required to:

- A. Meet the objectives and goals set in the RFP Scope of Services.
- B. Have a minimum of 5 years' experience working with Artificial Turf projects in the public sector.
- C. Able to provide professional engineering, design construction and installation services.
- D. Provide qualified staff and management team to manage and execute the project.
- E. Be a licensed, permitted, certifications and insured vendor/business in the State of Florida.

EVALUATION AND RANKING PROCESS

On December 23, 2024, four (4) proposals were received from the following firms:

No.	Proposer	Years Experience	Price
1.	CSR Construction Inc.	22	\$1,908,700.00
2.	Field Turf USA Inc.	Non-Responsive	
3.	LTG Sports Turf One LLC.	7	\$1,972,800.00
4.	SCG Fields LLC.	30	\$1,852,630.00

The Evaluation Committee comprises the following individuals:

1. Christopher Miranda, Director of Public Works
2. Colleen Durfee, CIP and Grants Manager
3. Carlos Sanchez, Facility Manager
4. Todd Hofferberth, Parks, Recreation and Open Space Director
5. David Prada, Archdiocese of Miami, Senior Director

Procurement conducted a thorough due diligence review of the proposals and determined that one proposal was non-responsive. The remaining three proposals were deemed responsive, with no material defects identified in the proposals or the qualifications of the proposers. Each proposer is properly licensed and qualified to perform the work, has provided the required certifications and references, and no issues were found indicating that any of the responsive proposers would be incapable of delivering the services.



VILLAGE OF KEY BISCAINE

The Evaluation Committee was provided with the proposals and on January 06, 2025, conducted its first meeting to discuss, review, hear presentations, score, and/or rank the proposals. Upon reviewing and discussing the top three (3) Proposals the members proceeded to score. Once the technical scores were finalized, the pricing scores for each vendor were added resulting in the following ranking:

- Proposer's Design-Build Experience – 25 pts.
- Proposer's Reputation and Track Record – 35 pts.
- Organizational Approach and Project Team Qualifications – 25 pts.
- Project Approach and Design Documentation – 15 pts.

Committee Member	CSR Construction Inc.		LTG Sports Turf One LLC.		SCG Fields LLC.			
	TOTAL POINTS (TP)							
	Points		Points		Points		Points	
Carlos Sanchez	95		75		85			
Christopher Miranda	98		89		85			
Colleen Durfee	100		86		78			
Todd Hofferberth	93		75		68			
David Prada	98		83		82			
TOTAL POINTS (TP)	484		408		398			
PRICE (P)	\$1,908,700.00		\$1,972,800.00		\$1,852,630.00			
P/TP=AR	P/TP	SLR	P/TP	SLR	P/TP	SLR	P/TP	SLR
Carlos Sanchez	20,091.58	1	26,304.00	3	21,795.65	2		
Christopher Miranda	19,476.53	1	22,166.29	3	21,795.65	2		
Colleen Durfee	19,087.00	1	22,939.53	2	23,751.67	3		
Todd Hofferberth	20,523.66	1	26,304.00	2	27,244.56	3		
David Prada	19,476.53	1	23,768.67	3	22,593.05	2		
TOTAL ADJUSTED RANKING (AR)	98,655.30		121,482.50		117,180.57			
SHORT-LIST RANKING (SLR)	1		3		2			
	CSR Construction Inc.		LTG Sports Turf One LLC.		SCG Fields LLC.			

Proposers were scored then ranked with no. 1 being most favorable in the following order:

- CSR Construction Inc.
- SCG Fields LLC.
- LTG Sports Turf One LLC.

RECOMMENDATION

Based on the Evaluation Committee's short list, it is recommended that the Village Manager execute a contract, substantially in the form attached as Exhibit A, with the top-ranked Proposer CSR Construction Inc., due to the following:

- Has a significant amount of development, design-build, and construction experience.
- Provided a full construction schedule and detailed sub-contracting plan.
- Has extensive positive experience in South Florida, including working on shared property projects.



VILLAGE OF KEY BISCAINE

PROJECT FUNDING

The FY24-25 Capital Improvement Program will fund the installation of the artificial turf at St. Agnes. CRS Construction Inc. submitted a base bid of \$1,908,700. Following a value engineering meeting between staff and CRS Construction, the total project cost was reduced to \$1,768,827.

PROJECT TIMELINE

The project's design and permitting will commence upon the award of the contract. Construction will begin in May with substantial final completion scheduled for August 13, 2025.

ORDINANCE NO. 2025-_____

A CAPITAL PROJECT AUTHORIZING ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING CSR HEAVY CONSTRUCTION, INC. FOR DESIGN-BUILD SERVICES RELATING TO THE INSTALLATION OF ARTIFICIAL TURF AT THE ST. AGNES ATHLETIC FIELD PROJECT IN AN AMOUNT NOT TO EXCEED \$1,768,827; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution No. 2004-28, the Village Council of the Village of Key Biscayne (the “Village”) approved and authorized an Agreement with the Archdiocese of Miami (the “Agreement”) for the use of the St. Agnes Catholic Church Athletic Field (the “Athletic Field”); and

WHEREAS, on January 28, 2025, the Village Council adopted Resolution No. 2025-___, approving a Fifth Amendment to the Agreement to extend the term of the Agreement through September 30, 2034; and

WHEREAS, the Village issued Request for Proposal No. 2024-15 (the “RFP”) for design-build services, including design, construction, and installation (the “Services”), related to the upgrade of existing natural grass at the Athletic Field with artificial turf (the “Capital Project”); and

WHEREAS, four sealed proposals were received by the RFP deadline; and

WHEREAS, in January 2025, an Evaluation Committee appointed by the Village Manager ranked CSR Heavy Construction, Inc. (the “Contractor”) as the highest ranked firm; and

WHEREAS, the Village Manager recommends that the Contractor be selected to perform the Services for the Capital Project; and

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to select the Contractor to perform the Services for the Capital Project and authorize the Village

Manager to negotiate and execute an agreement, in substantially the form attached hereto as Exhibit “A” (the “Contract”), with the Contractor in an amount not to exceed \$1,768,827; and

WHEREAS, the Village Council finds that this Ordinance is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. **Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. **Selection.** The Village Council hereby selects the Contractor to perform the Services for the Capital Project.

Section 3. **Authorization.** The Village Manager is hereby authorized to negotiate and execute the Contract with the Contractor, in substantially the form attached hereto as Exhibit “A,” in an amount not to exceed \$1,768,827, subject to the Village Attorney’s approval as to form, content, and legal sufficiency. If an agreement cannot be reached with the Contractor, the Village Manager is authorized to negotiate and execute a contract that is in the best interest of the Village with the next highest ranked firm.

Section 4. **Implementation.** That the Village Council hereby authorizes the Village Manager to take any action which is reasonably necessary to implement the purpose of this Ordinance.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED on first reading on the _____ day of _____, 2025.

PASSED AND ADOPTED on second reading on the _____ day of _____, 2025.

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted** ~~double-strikethrough~~ and double underline.

JOE I. RASCO
MAYOR

ATTEST:

JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

VILLAGE OF KEY BISCAYNE
DESIGN-BUILD AGREEMENT¹

THIS AGREEMENT (this “Agreement”) is made and entered into the ____ day of _____ 2025 (the “Effective Date”) by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation (the “Village”), and **CSR HEAVY CONSTRUCTION, INC.**, a Florida profit corporation (the “Design-Builder”).

RECITALS

WHEREAS, on November 19, 2024, the Village issued Request for Proposals No. 2024-15 (“RFP”), which is incorporated and attached hereto as Exhibit “A,” to provide Design-Build Services for the installation of artificial turf at the St. Agnes Athletic Field (the “Project”); and

WHEREAS, Design-Builder submitted the most responsive and responsible proposal in the amount of \$1,754,086.78 in response to the RFP, which Proposal is incorporated herein by reference and attached hereto as Exhibit “B”; and

WHEREAS, on January 28, 2025, the Village Council adopted Resolution No. 2025-XXXX, selecting the Design-Builder to perform the Design-Build Services for the Project in an amount not to exceed \$1,754,086.78; and

WHEREAS, the Village and the Design-Builder, in reliance on the representations and proposals set forth in the RFP and the Response to RFP, now desire to enter into this Agreement; and

WHEREAS, the Village has determined that entering into this Agreement with the Design-Builder for the design and construction of the Project is in the best interests of the health, safety, and welfare of the residents of the Village.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and undertakings and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do mutually covenant and agree to the following terms.

¹ Based in part on AIA Copyright Document A141-2014, Standard Form Agreement between Owner and Design-Builder

TERMS

ARTICLE 1 - DEFINITIONS

Wherever used in this Agreement or in the other Design-Build Documents the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:

1.1 **Agreement** - This written agreement between the Village and the Design-Builder covering the Work to be performed and including all other Design-Build Documents that are attached to this Agreement or made a part hereof.

1.2 **Architect** - A person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in Florida. The Architect is referred to throughout the Design-Build Documents as if singular in number.

1.3 **Building Department** - The Building Department of the Village of Key Biscayne, Florida, or its authorized employees.

1.4 **Change Order** - A document that is signed by the Design-Builder and the Village Manager and authorizes an addition, deletion or revision in the Work within the general scope of this Agreement, or an adjustment in the Contract Sum or the Contract Time, issued on or after the Effective Date of the Agreement.

1.5 **Consultant** - A person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The Consultant shall be lawfully licensed in Florida to provide the required professional services.

1.6 **Contract** - The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified from time to time, only by a written Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Village and the Design-Builder.

1.7 **Contract Sum** - The amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

1.8 **Contract Time** - Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

1.9 **Contractor** - A person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed in Florida. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

1.10 **Date of Commencement** - The date specified in the Notice to Proceed for the Design-Builder

to commence the Work.

1.11 Day - The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

1.12 Defective Work - Work that is unsatisfactory, faulty or deficient, or does not conform to the Design-Build Documents, or does not meet the requirements of the Florida Building Code or the requirements of any other authority having jurisdiction over the Project, or has been damaged prior to final payment.

1.13 Design-Build Documents - The Design-Build Documents consist of this Agreement between the Village and the Design-Builder and its attached Exhibits listed in Section 2.1 (the “Agreement”); other documents listed in and incorporated by reference into this Agreement; and Modifications issued after execution of this Agreement.

1.14 Design-Builder - The person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

1.15 Design Services - Design-Builder’s provision of professional design services to be utilized to convert the Village’s program and Design Criteria into the Construction Documents that are to be utilized to build the Project.

1.16 Drawings - The drawings which show the character and scope of the Work to be performed, the basis for which is provided in the Design-Build Documents.

1.17 Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.18 Field Order - A written order issued by Village Manager which orders minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time.

1.19 Instruments of Service - Representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

1.20 Modification - A written amendment to the Contract signed by both parties, including the Design-Build Amendment; a Change Order; or a Work Change Directive.

1.21 Notice to Proceed - A written notice given by the Village to the Design-Builder fixing the date that the Contract Time will commence to run and the date that the Design-Builder shall start to perform the Design-Builder’s obligations under the Design-Build Amendment.

1.22 Project - The total design and construction of the Design-Build Artificial Turf Field at St, Agnes Project, which Work performed under the Design-Build Documents may be the whole or a

part, and may include design and construction by the Village and by separate contractors.

1.23 Project Schedule - The Project Schedule as attached hereto for completion of the Work in accordance with the Design-Build Documents.

1.24 Site - The lands upon which the Work is to be performed, which is legally described on **Exhibit F** of this Agreement.

1.25 Specifications - Those portions of the Design-Build Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.26 Subcontractor - An individual, firm or corporation having a direct contract with the Design-Builder or with any other of the Design-Builder's subcontractor for the performance of a part of the Work at the site.

1.27 Submittal - Any submission to the Village for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

1.28 Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor with respect to the Project.

1.29 Total Construction Cost - The not to exceed lump sum amount for all Work for the Project, including, without limitation, general conditions, equipment, materials, installation, rewiring, construction of slab, site work and landscaping, permitting, as set forth in **Exhibit A** is **\$1,694,485.78 (Excluding Pre-Construction and Design Costs)**.

1.30 Total Pre-Construction and Design Cost - The amount for all design-related services for the Project, including, without limitation, design development, value engineering and cost estimating, performed at the hourly rates set forth in the Price Proposal Form of the Design-Builder's response to the RFP with a not to exceed total amount of **\$59,601**, subject only to change by a Modification.

1.31 Village - The Village of Key Biscayne, Florida, a Florida municipal corporation, with whom the Design-Builder has entered into the Agreement and for whom the Work is to be provided. The Village is a public body that is a party to this Agreement and for which this Agreement is to be performed. In the event the Village exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to the Village's authority as a governmental body and shall not be attributable in any manner to the Village as a party to this Agreement.

1.32 Work - The design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

1.33 Work Change Directive - A written directive to the Design-Builder issued on or after the Effective Date of the Agreement and signed by the Village and recommended by Village Manager ordering an addition, deletion or revision in the Work, prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Village may by Work Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly. A Work Change Directive shall not necessarily change the Contract Sum or Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

1.34 Written Amendment - A written amendment of the Design-Build Documents, signed by the Village and the Design-Builder on or after the Effective Date of the Agreement and normally dealing with the non-engineering, non-architectural, or non-technical aspects rather than strictly Work related aspects of the Design-Build Documents.

ARTICLE 2 - DESIGN-BUILD DOCUMENTS

2.1 Enumeration of Design-Build Documents - The Design-Build Documents which comprise the entire agreement between the Village and the Design-Builder are made a part hereof and consist of the following:

- 2.1.1 This Agreement without any Exhibits
- 2.1.2 Exhibit A – Request for Proposals No. 2024-15
- 2.1.3 Exhibit B – Design-Builder's Response to RFP
- 2.1.4 Exhibit C - Design-Build Amendment, if executed
- 2.1.5 Exhibit D - Insurance Certificates and Performance and Payment Bonds
- 2.1.6 Exhibit E – Hourly Billing Rates for Design-Builder's Personnel
- 2.1.7 Exhibit F - Legal Description of Site(s)
- 2.1.8 Exhibit G - Preliminary Project Milestone Schedule allocating the total timeframe for the Project among major milestones, with the Contract Time and detailed Project Schedule to be included as part of Exhibit C, Design-Build Amendment, if executed.
- 2.1.9 Exhibit H - Notice to Proceed Form; if the Design-Build Amendment is executed, then the Village will issue the Notice to Proceed.
- 2.1.10 Exhibit I – Performance and Payment Bonds (if applicable)
- 2.1.11 All applicable provisions of State, Federal or local law.

2.1.12 Any modification, including all Change Orders, written amendments and Work Change Directives duly delivered after execution of the Agreement.

2.2 Entire Agreement - The Design-Build Documents comprise the entire agreement between the Village and the Design-Builder concerning the Design Services and the Work. The Design-Build Documents are complimentary; what is called for by one is as binding as if called for by all. The Design-Build Documents will be construed in accordance with the law of the State of Florida.

2.3 Intent - No provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Design-Build Documents) shall be effective to change the duties and responsibilities of the Village, the Design-Builder, or any of their consultants, agents or employees from those set forth in the Design-Build Documents. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Village and an architect, (2) between the Village and a contractor or subcontractor, or (3) between any persons or entities other than the Village and Design-Builder, including but not limited to any consultant retained by the Village to prepare or review the Design Criteria. An enumeration of the Design-Build Documents appears in Article 2.1 above.

2.4 Amending and Supplementing Design-Build Documents - The Design-Build Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof solely through one or more of the following ways:

- a. A Change Order;
- b. A Written Amendment; or
- c. Work Change Directive.

2.5 Supplements, Minor Variations or Deviations

2.5.1 The Village will not authorize any Change Orders to the Design-Build Documents, except in a manner allowed by law. The Design-Builder covenants and agrees that the Village shall not be responsible for the costs above those set forth herein unless the same are set forth in a Change Order or Written Amendment executed by both Parties. Any and all Change Orders issued by the authority of an entity not a party to this Agreement shall not be compensated by the Village, and shall not constitute a Change Order.

2.5.2 The requirements of the Design-Build Documents may be supplemented, and minor variations and deviations in the Work may be authorized solely through one or more of the following ways:

- a. Village Manager's approval of a shop drawing or sample;
- b. Village Manager's written interpretation or clarification; or
- c. A Field Order.

2.6 Representation of Design-Builder - Execution of the Agreement by the Design-Builder is a representation that the Design-Builder has visited the Site and become familiar with and investigated the local conditions under which the Work is to be performed.

2.7 The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder. Performance by the Design-Builder

shall be required to the extent consistent with the Design-Build Documents and reasonably inferable from them as being necessary to produce the indicated results.

2.8 If the Design-Builder discovers any inconsistency, ambiguity, discrepancy or error in the Design-Build Documents, the Design-Builder shall immediately seek clarification in writing from the Village.

2.9 Order of Precedence - In the event of any conflicts, discrepancies, or inconsistencies among the Design-Build Documents, interpretations will be based upon the following descending order of priority, keeping in mind that the better quality or greater quantity of Work shall be provided in accordance with the Village's interpretation:

- a. This Agreement as executed or as may be amended hereunder.
- b. The Design-Build Amendment, upon its execution.
- c. The RFP, as may be amended.
- d. Addenda, with those of later date having precedence over those of earlier date.
- e. Drawings and Specifications.
- f. Design-Builder's Response to RFP, as modified.
- g. Change Orders agreed to pursuant to this Agreement.
- h. All other Exhibits to the Agreement.

Additionally, the Design-Builder shall seek clarification or (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement; either or both in accordance with the Village's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large-scale drawings over small scale drawings. Design-Builder must verify all grades, elevations, dimensions, locations and quantities indicated on the Design-Build Drawings prior to the performance of Work. In all cases of interconnection of Design-Builder's Work with existing or other Work, Design-Builder shall verify at the site all grades, elevations, dimensions, locations and quantities relating to such existing or other Work. Any errors due to the Design-Builder's failure to verify all such grades, elevations, dimensions, locations and quantities shall be promptly rectified by the Design-Builder without any additional cost to the Village. Whenever a product to be furnished by Design-Builder requires it to be in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification or other association standard, including the requirement of compliance with any local certifications for products such as a Notice of Acceptance approving the product, the Design-Builder shall present an affidavit from the manufacturer when provided by the manufacturer and, when requested by the Village or as set forth in the Design-Build Documents certifying that the product complies with the particular Standard or Specification. When provided by the manufacturer and requested by the Village, the specified support test data shall be submitted to substantiate compliance. In the case of an inconsistency between the Drawings and Specifications or within either document not clarified by an Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Village's interpretation.

ARTICLE 3 - SCOPE OF WORK

3.1 This Agreement is based on the Village's Design Criteria set forth in the RFP, which is attached to and made a part of this Agreement as **Exhibit A**. If the Village's Design Criteria conflicts

with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall promptly notify the Village of the conflict.

3.2 The Design-Builder shall provide services and work for the design and construction of the Project.

3.3 Design and Construction Administration Services - The Design-Builder shall perform all Services, with respect to the design and construction administration portions of the Project, in accordance with the requirements of this Agreement and with the standard of professional skill and care required for architects and other design professionals retained to design, document, coordinate, assist with and inspect from commencement to finish the design, documentation, permitting, field inspection and other architectural services for design-build projects of a similar nature.

3.4 Construction Services - Design-Builder shall construct the Project as described in the Design-Build Documents, meeting all required standards of construction as set forth in the Design-Build Documents. The Design-Builder shall perform all Work required under the Design-Build Documents, with commercially reasonable skill and care as is consistent with the orderly progress of the Project.

ARTICLE 4 – DESIGN FEE/CONTRACT SUM

4.1. Design Phase Fee - The Village shall pay the Design-Builder based on the Design-Builder's invoices consisting of hourly rates as set forth on **Exhibit E** and Reimbursable Expenses (as further defined in Section 4.3.2), as full compensation for the performance of all the design phase Work for the Project, including, without limitation, design development and value engineering for the Project, a sum not to exceed **\$59,601**. Unless the Total Design Phase Fee is increased in writing by a Modification executed by both Parties, any of Design-Builder's professional services which cause the Total Design Phase Fee to be exceeded shall be made at Design-Builder's sole risk and paid by the Design-Builder without reimbursement by the Village.

4.2. Contract Sum

4.2.1. If the Design-Build Amendment is executed, the Village shall pay the Design-Builder the Contract Sum, as full compensation for the performance of all the construction phase Work for the Project, subject to additions and deductions by Modification as provided in this Agreement.

4.2.2. The Design Phase Fee includes the Design-Builder's Contingency. The Design-Builder's Contingency is for the sole use of the Design-Builder to account for the costs of unknown conditions in the estimate and the execution of the Work. The Contract Sum may be modified only as herein provided, including possible changes as a result of additional work and improvements as may be documented in Village approved Change Order[s].

4.3. Progress Payments

4.3.1. Compensation for Work Performed Prior To Execution of Design-Build Amendment - Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Village shall compensate the Design-Builder a total amount not to exceed **\$59,601**. The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors are set forth in **Exhibit E**.

4.3.2. Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment - Reimbursable Expenses are part of the total compensation set forth in Section 4.3.1 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows, but only to the extent applicable:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents, but only to the extent Design-Builder incurs such costs from a third party;
- .3 Postage, handling and delivery;
- .4 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Village;
- .5 All taxes levied on professional services and on reimbursable expenses; and
- .6 Other Project-related expenditures, if authorized in advance, in writing, by the Village.

For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, at cost, without mark-up.

4.3.3. Payments to the Design-Builder Prior To Execution of Design-Build Amendment - Undisputed payments are due and payable within twenty (20) days of presentation and approval by the Village of the Design-Builder's invoice at intervals of not more than once a month.

Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be submitted with monthly invoices and shall be available to the Village at mutually convenient times for a period of three years following execution of this Agreement.

4.4. Payment for Work Performed After Execution of Design-Build Amendment - For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Village shall pay to the Design-Builder the Contract Sum as agreed in the Design-Build Amendment.

4.5. Schedule of Values - The Contract Sum will be based on a stipulated sum. The Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment, shall submit to the Village a schedule of values allocating the entire Contract Sum to the various portions of the Work and shall include the Design-Builder's contingency. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Village may require. This schedule, unless objected to by the Village, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

Design-Builder may requisition payments for Work completed during the Project at intervals of not more than once a month. The Design-Builder's requisition shall show a complete breakdown of the Project components, the quantities completed and the amount due, together with a certification by the Design-Builder that the Design-Builder has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payments received by the Design-Builder for all Work completed and materials furnished in the previous period or properly executed releases of liens by all subcontractors, suppliers and materialmen who were included in the Design-Builder's previous applications for payment, and any other supporting documentation as may be required by the Village Manager or Design-Build Documents. Each requisition shall be submitted in triplicate to the Village

Manager for approval; Village shall have fifteen (15) days to approve or disapprove the requisition. If the requisition is not approved, the reasons therefor shall be stated with particularity. The Village shall make payment to the Design-Builder within fifteen (15) calendar days after approval by the Village Manager of the Design-Builder's requisition for payment.

4.6. Certificates for Payment - The Village shall, within fifteen days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Village determines is properly due, and notify the Design-Builder in writing of the Village's reasons for withholding certification in whole or in part as provided in Section 4.7 below.]

4.7. Decisions to Withhold Certificate of Payment - The Village may withhold a Certificate for Payment in whole or in part, or because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be to the extent reasonably necessary to protect the Village due to the Village's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Village is unable to certify payment in the amount of the Application, the Village will notify the Design-Builder in writing. If the Design-Builder and Village cannot agree on a revised amount, the Village will promptly issue a Certificate for Payment for the amount that the Village deems to be due and owing. The Village may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Village from loss for which the Design-Builder may be responsible because of:

- .1 Defective Work, including design and construction, not remedied in a timely manner;
- .2 Third party claims or liens filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Village is provided by the Design-Builder;
- .3 Failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 Damage to the Village or a separate contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 Failure to carry out the Work in accordance with the Design-Build Documents;
- .8 Failure of the Work to progress satisfactorily or according to the Project Schedule;
- .9 Failure to provide releases of lien for each Application for Payment in accordance with the Design-Build Documents; or
- .10 Any other failure to perform a material obligation contained in the Design-Build Documents.

When the above grounds are removed or resolved or the Design-Builder provides a letter of credit satisfactory to the Village which will protect the Village in the amount withheld, payment may be made, in whole or in part, for amounts previously withheld.

If the Village withholds certification for payment under this Section, the Village may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor,

material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. However, the Village is under no obligation to issue joint checks and issuance of joint checks does not establish privity between the Village and the party paid. In making such payments to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder, the Village shall require such lienor to execute a waiver of lien to the extent of payment.

4.8. Substantial Completion

4.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Village can occupy or utilize the Work for its intended use, all permits and governmental approvals for the Project have been obtained, and Design-Builder has caused the following requirements to have been met: (a) the Work is sufficiently complete in accordance with the Design-Build Documents so that the Village can occupy or utilize the Work or designated portion thereof for its intended use which would be evidenced by the issuance of a Certificate of Occupancy; (b) all temporary utilities have been disconnected (if requested by the Village); (c) all systems and parts are functional; (d) all utilities are connected; (e) the Project has passed all required inspections necessary for issuance of a Certificate of Occupancy or local equivalent; (f) the work to be performed by the Village's contractors (for which Design-Builder is responsible for managing and overseeing as set forth in this Agreement), is sufficiently complete in accordance with the contractors' respective contracts so that the Village can occupy or utilize such work or designated portion thereof for its intended use; and (g) all other Design-Build Document requirements for Substantial Completion have been met. Specifically, in order to achieve Substantial Completion for this Project or a designated portion thereof, Design-Builder must achieve the following minimum requirements:

- .1 To the extent applicable, all exterior elements, such as Site cleanup and restoration (including without limitation removal of all excess materials, soil, grass, mulch, rock, sand, paving, debris, supplies, equipment, temporary structures, and trailers), paving, parking, landscaping and exterior finishes, on all areas receiving a temporary Certificate of Occupancy, and all mechanical, electrical, plumbing and technical systems required by the Design-Build Documents, as well any and all areas, fire and life safety systems, and the entire parking and street areas, are fully operational and are ready for use or occupancy, the Design-Builder has submitted a punch list with respect to such items and they have been completed, inspected and approved by the Village as to scope, number, quality and content;
- .2 Completion of the those items on the Design Builder's punch list the Village deems necessary for Substantial Completion;
- .3 The Work is ready for occupancy, completed in accordance with the Plans and Specifications and the Design-Build Documents and, to the extent it is within the Design-Builder's scope of Work, all persons or entities having jurisdiction over the Project have issued the appropriate permits, and authorizations for the construction and use of the Project; and
- .4 Design-Builder has provided Village with three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and

the spine of each binder and indexed, in suitable sets of manageable size, containing the following information:

- a. All Subcontractor warranties fully executed in the form approved by the Village and properly endorsed and assigned to the Village;
- b. All Extended Warranties required by the Design-Build Documents, properly endorsed and assigned to the Village;
- c. The Design-Builder's warranty; and
- d. A list of all Subcontractors, Sub-subcontractors and suppliers who performed Work on the Project or who furnished equipment or materials for use in the Project, such list to include the name, address, email address, and telephone number of the responsible person at all such entities.

4.8.2 The Contract Time and liquidated damages will continue to run until all conditions for Substantial Completion as set forth above and elsewhere in the Design-Build Documents are fully satisfied.

4.8.3 Village Requirements for Substantial Completion - Thirty (30) days prior to Substantial Completion, Design-Builder must notify the Village of all items of which Design-Builder is aware that the Village must take care of in sufficient time for the Village to perform so the Project will not be delayed and Design-Builder must include all such times in its schedule.

4.8.4 Substantial Completion Inspection - When the Design-Builder considers that the entire Work is Substantially Complete, the Design-Builder, and the Village shall inspect the Work. Based upon the Substantial Completion Inspection, the Village shall prepare, coordinate, and submit to the Design-Builder a detailed list of all remaining Work to be completed or corrected in the Work. The Design-Builder shall promptly correct all items identified as a condition to the Certification of Substantial Completion. The Design-Builder shall notify the Village when all items necessary for Substantial Completion are complete and correct, and request inspection by the Village. The Village will make an inspection to determine whether they are complete. If the Village's inspection discloses any item, which is not sufficiently complete in accordance with the Design-Build Documents so that the Village can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Village. In such case, the Design-Builder shall then submit a request for another inspection by the Village. After the second inspection, the Design-Builder shall be responsible for all costs incurred by the Village to re-inspect the Work a third, fourth or more time to determine Substantial Completion, provided the re-inspection is due to Design-Builder's fault. The Design-Builder's obligation to complete all Work in accordance with the Design-Build Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any punch list, completion list, or inspection report.

4.8.5 Prior to issuance of the Certificate of Substantial Completion under Section 4.8.6, the Village and Design-Builder shall discuss and then determine the parties' obligations following issuance of the Certificate of Substantial Completion.

4.8.6 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Village's signature a Certificate of Substantial Completion that shall, upon the Village's signature, establish the date of Substantial Completion; establish responsibilities of the Village and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

4.8.7 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Village for written acceptance of responsibilities assigned to it in the Certificate. Upon the Village's acceptance, and consent of surety, if any, the Village shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

4.8.8 Partial Occupancy or Use - The Village may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Village and the Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Village as provided under Section 4.8.1. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Village and the Design-Builder.

4.8.9 Prior to the time any partial occupancy or use may occur, the following minimum requirements must be met by Design-Builder and submitted to the Village:

- .1 Design-Builder's installers and operation and regular maintenance personnel have met with Village or other individuals as may be designated by the Village, at the Project site, to provide complete instructions and training needed for proper start-up, operation, shut-down and maintenance of that part of Work. Instructions by manufacturer's representatives are required where installers are not experts in operating/maintenance procedures, or as specified in the Construction Documents. For operational equipment, installers shall demonstrate startup, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and other applicable operations, and shall review maintenance and operating instructions which are required to be performed in order to maintain in force applicable warranties, guaranties and bonds;
- .2 Design-Builder has provided the Village with three (3) heavy duty, bound, hard-cover books and one (1) electronic copy of same, properly identified on both the front and the spine of each binder and indexed, in suitable sets of manageable size, containing the following information related to all equipment and systems on the Project, to the

extent provided by the applicable manufacturer: (1) Training, maintenance and operating manual information; (2) emergency instructions; (3) spare part listings; (4) wiring diagrams; (5) recommended “turn around” cycles; (6) inspections procedures; (7) all approved shop drawings, product data and any other applicable information on a single flash drive in electronic format; (8) detailed information and records for maintenance performed on all equipment and systems on the Project, operated and maintained by Design-Builder prior to Substantial Completion as required to achieve specified warranty.

No later than fourteen (14) days after any partial occupancy or use, Design-Builder shall provide Village the Red Line drawings as required by the Design-Build Documents, to the extent applicable.

4.8.10 The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

4.8.11 Immediately prior to such partial occupancy or use, the Village and the Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

4.8.12 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

4.9 Final Completion and Final Payment - Upon receipt of written notice from Design-Builder that the Work is ready for final inspection and acceptance, the Village and its consultant, if any, will promptly make the Final Inspection and shall prepare a Final Punch List as required by the Florida Statutes. To the extent this Project involves more than one building or structure, or will proceed in multiple phases, the Village will provide a Final Punch List for each building, structure, or phase of the Project within the time limitations set forth in this Article.

4.9.1 The Village shall work with its consultant, if any, to prepare the Final Punch List, which shall include a list of items and the estimated cost to complete each such item, which is required to render complete, satisfactory, and acceptable the Work of the Design-Builder.

4.9.2 The Village shall develop the Final Punch List no later than thirty (30) calendar days after the Project has achieved Substantial Completion. The Village shall deliver the Final Punch List to Design-Builder within five (5) calendar days of its development.

4.9.3 All items in the Final Punch List shall be completed by the Design-Builder within thirty (30) calendar days after Design-Builder’s receipt of the Final Punch List. If the Final Punch List is not provided to the Design-Builder by the agreed upon date for delivery of the Final Punch List, the Contract Time for completion shall be extended by the number of days that the Village exceeded the delivery date.

4.9.4 Notwithstanding anything to the contrary contained in any Design-Build Documents or any attachment thereto, the Village may withhold from payments to Design-Builder a sum equal to one hundred and fifty percent (150%) of the cost of the items on the Final Punch List (the “Final Punch List Balance”).

4.9.5 Within twenty (20) business days after the Final Punch List is created, the Village shall pay the Design-Builder any remaining contract balance, including all retainage previously withheld, excluding an amount equal to the Final Punch List Balance as set forth in Section 4.9.4.

4.9.6 The failure to include any corrective work or pending items not yet completed on the Final Punch List does not alter the responsibility of the Design-Builder to complete all the construction services purchased pursuant to the Agreement. All items that require correction under the Design-Build Documents, which are identified after the preparation and delivery of the Final Punch List remain the obligation of the Design-Builder as defined by the Design-Build Documents.

4.9.7 Upon Design-Builder's completion of the Final Punch List, Design-Builder may submit to the Village a final Application for Payment requesting the Final Punch List Balance set forth in Section 4.9.4.

4.9.8 If Village finds the Work acceptable, the requisite documents have been submitted and the requirements of the Design-Build Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment shall be issued, stating that the requirements of the Design-Build Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

4.9.9 If a good faith dispute exists as to whether one or more items identified on the Final Punch List have been completed in accordance with the Design-Build Documents, the Village may continue to withhold up to 150% of the total cost to complete such item.

4.9.10 The Village is not required to pay or release any amounts to Design-Builder that are the subject of a good faith dispute made in writing pursuant to the Agreement.

4.9.11 Final payment, including any remaining retention, shall not become due until the Village has issued a Final Certificate for Payment and the Design-Builder submits to the Village, the following: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect; (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents; (4) consent of surety to final payment; (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction; (5) manufacturer's warranties, product data, and maintenance and operations manuals; (6) evidence that all Final Punch List items have been fully completed to the satisfaction of the Village; (7) final releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Village and Surety (if any) to assure a lien-free and claim-free completion of the Work; (8) all original drawings in Design-Builder's possession; (9) all Shop Drawings, revised Drawings and related information; (10) final As-Built Drawings; (11) the Design-Builder has fully cleaned and restored the site, including removal of all rubbish and construction debris; (12) the final certificate of occupancy and all final governmental and utility authority permits have been issued and all permits have been closed out; (13) the Design-Builder has fully complied with and performed all of its obligations and/or responsibilities under the Design-Build Documents; (14) the Design-Builder has submitted a final accounting for the Cost of the Work and a final Application for Payment; (15) a final Certificate for Payment has been issued by the Village in accordance with this Agreement; (16) Village has received beneficial occupancy of the Work; (17) Design-Builder has delivered to Village the Minutes from all

meetings; (18) Design-Builder has delivered to Village all monthly progress photos and reports; (19) Design-Builder has provided Village with an affidavit stating that the Project has been completed in accordance with the Design-Build Documents; (20) Design-Builder has provided the Village with one (1) set of Change Orders; (21) Design-Builder has provided the Village with specifications and operation maintenance manuals for all equipment provided by Design-Builder; copies of all reports related to the Work, including but not limited to equipment testing and balancing reports; all certifications and test results as applicable under the Design-Build Documents; and training on all equipment installed in the Project as deemed appropriate by Village; and (22) Design-Builder has complied with all other requirements of the Design-Build Documents and all reasonable requirements of the Village.

4.9.11.1 The Design-Builder shall submit to Village within forty-five days (45) of the date of issuance of the certificate of occupancy for the applicable portion of the Work, the completed set of "As-Built" drawings relative to that portion of the Work for review and approval in electronic form. The "As-Built" drawings shall be prepared, sealed and certified by the appropriate professional licensed by the State of Florida. Prior to approval, if necessary, the drawings may be returned to the Design-Builder for changes or modifications if in the opinion of Village Manager they do not represent correct or accurate "As-built" drawings.

4.9.12 The Design-Builder's obligation to complete all Work in accordance with the Design-Build Documents shall not be deemed waived, excused, or otherwise satisfied by any failure of any person or entity to include, discover, or identify any incomplete or defective Work in any punch list, completion list, or inspection report, including without limitation the Final Punch List. Issuance of Final Payment shall not constitute a waiver of any incomplete or defective Work or of Design-Builder's obligations under the Design-Build Documents.

4.9.13 Final payment may be withheld on account of (1) defective Work not remedied, (2) claims or liens filed, (3) failure of the Design-Builder to make payments properly to subcontractors or for labor, materials, or equipment, (4) failure to provide waivers of lien for all lienors giving notices, (5) damage to the Village's property caused by Design-Builder or any person/entity for which it is responsible, in which case a reasonable estimated amount of such damages shall be withheld from Design-Builder's payment until such damages are satisfactorily corrected, (6) untimely performance, or (7) failure to carry out the Work in accordance with the Design-Build Documents.

4.9.14 If, through no fault of Design-Builder, final completion of the Work is significantly delayed and if Village Manager so confirms, Village shall, upon receipt of Design-Builder's final Application for Payment and recommendation of Village Manager, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.

4.9.15 The acceptance of final payment by the Design-Builder or a Subcontractor for materials and supplies shall constitute a waiver of claims by that payee except those previously made in writing and identified by payee as unsettled at the time of final application for payment.

4.9.16 Retainage - Five percent (5%) of all monies earned by Design-Builder shall be retained by the Village until twenty (20) business days after creation of the Final Punch List as set forth in Section 4.9. Within twenty (20) business days after the Final Punch List is created, the Village shall pay the Design-Builder any remaining contract balance, including all retainage previously withheld, with the

exception of an amount equal to 150% of the estimated cost to complete the items identified on the Final Punch List, as set forth herein.

4.9.17 This Agreement is intended to comply with the requirements of Sections 218.735 and 255.073-079, Florida Statutes, as applicable. If this Article or Agreement contains any provision found to be unlawful under Sections 218.735 and 255.073-079, Florida Statutes, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 5 - DESIGN BUILDER'S RESPONSIBILITIES

5.1. General

5.1.1. The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

5.1.2. Prior to execution of this Agreement, the Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

5.1.3. The Design-Builder shall be responsible to the Village for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

5.1.4. Design shall be performed by qualified architects, engineers and other professionals duly licensed by the State of Florida and holding current certificates of registration under the laws of the State of Florida to practice architectural and/or engineering, and who are selected and paid by the Design-Builder.

5.1.5. Liability for Use of Project for Intended Purpose - As an inducement for the Village to enter into this Agreement, the Design-Builder has represented an expertise in the construction of public construction projects of a similar type and scope as contemplated herein. In reliance upon those representations, the Village hired the Design-Builder to provide professional design services through licensed architects and/or engineers and construction services. The Design-Builder shall be liable for any defective or negligent design, whether patent or latent, and/or any negligence, or breach of other legal duty to the extent and in the manner as hereafter set forth.

5.1.6. Relationship of the Parties - The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Village to cooperate with the Village. Further, Design-Builder acknowledges and accepts its fiduciary duties and obligations to the Village in performing its services, and covenants with the Village to exercise the Design-Builder's best efforts and highest skill and judgment in furthering the interests of the Village to furnish efficient business administration; construction administration, management services and supervision; to furnish at all times a sufficient supply of workers and skilled personnel and materials and equipment; and to perform the Work in an expeditious and economical manner consistent with the Village's best interests. The Village agrees to furnish or approve, in a timely manner, information required in writing by the Design-Builder for construction of the Project and to make payments to the Design-Builder in accordance with the requirements of the Design-Build Documents.

5.2. Consultation - Generally

5.2.1. The Design-Builder shall schedule and conduct periodic meetings with the Village to review

matters such as procedures, progress, coordination, and scheduling of the Work.

5.2.2. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Design-Builder understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Village.

5.2.3. The Design-Builder, with the assistance of the Village, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

5.3. Design-Builder's Schedules

5.3.1. The Design-Builder, within ten (10) days of execution of this Agreement, shall prepare and submit for the Village's information a preliminary project milestone schedule for the Work (the "Project Schedule") to be attached to this Agreement as **Exhibit G**. Only with the Village's prior written approval, may the Design-Builder adjust the Project Schedule, if necessary, as the Project proceeds until the commencement of construction.

5.3.2. If the Design-Build Amendment is executed, then a Construction Project Schedule shall be included with it, in a detailed precedence-style, resource loaded, critical path method (CPM) type format satisfactory to the Village which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction, Temporary Certificate of Occupancy/Certificate of Completion Dates, and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents. The Construction Project Schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Village's review and for approval of submissions by authorities having jurisdiction over the Project. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Construction Project Schedule and shall promptly advise the Village of any delays or potential delays. The accepted Construction Project Schedule shall be updated one time each month to reflect actual conditions and Design-Builder shall provide the Village with a copy of the updated, resource loaded schedule, the electronic files, and a list of all changes made to the schedule, at the time Design-Builder submits its monthly Payment Application. In addition, on a monthly basis, the Design-Builder shall post at the Project site a physical copy of the updated Project Schedule. In the event any progress report or schedule update indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including resequencing of the Work, overtime and/or additional labor, if necessary. In no event shall any updated Project Schedule or progress report constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is agreed to by the Village and authorized pursuant to properly executed written Change Order. Design-Builder shall maintain such progress schedule on a current basis in accordance with the provisions of this Section and shall keep proper records available to inspection by the Village to substantiate actual activity, duration and completion dates.

5.3.3. Extraordinary Measures - The Design-Builder shall perform the Services and the Work in general accordance with the most recent schedules submitted to the Village. In the event the Village

determines that the performance of the Work, or any portion thereof, has not yet progressed or reached the level of completion required by the Construction Project Schedule or the Design-Build Documents due to causes within the control of Design-Builder, the Village shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation: 1) working additional shifts or overtime; 2) supplying additional manpower, equipment, and facilities; and 3) submitting a recovery schedule (in the format set forth in Paragraph 5.3.2 above) for re-sequencing performance of the Work or other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Design-Build Documents. The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the Village under or pursuant to this Section. Should Design-Builder fail to perform the Extraordinary Measures as provided herein, the Village shall give the Design-Builder a three (3) business day notice of default. Design-Builder shall be liable to the Village for all costs incurred by the Village pursuant to this Section. If Design-Builder does not perform its obligations pursuant to this Section, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost incurred pursuant to this Section. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Village.

5.3.4. The Village may exercise the rights furnished the Village under or pursuant to this Section as frequently as the Village deems necessary to ensure that the Design-Builder’s performance of the Work will comply with any milestone dates designated as such in the Construction Project Schedule set forth in the Agreement. Alternatively, the Village may exercise termination rights as provided for in the Agreement.

5.4. Responsibilities - Preconstruction Phase

5.4.1. Extent of Responsibility - The Design-Builder shall be responsible for the architecture, engineering, construction and completion of the Project.

5.4.2. Consultation – The Design-Builder will hold an initial Project meeting with key stakeholders, such as project managers, engineers, construction team leads, and the Village. During this initial meeting, the Design-Builder will discuss goals, timelines, budgets, and scope for the Project, and will also determine protocols for future communication among the parties. The Design-Builder will continue to schedule and attend regular meetings and will consult with the Village regarding site use and improvements, and the selection of materials, building systems, and equipment.

5.4.3. Any information submitted by the Design-Builder, and any interim decisions made by the Village, shall be for the purpose of facilitating the design process and shall not modify the Village’s Design Criteria unless the Village and Design-Builder execute a Modification.

5.4.4. The Design-Builder shall advise the Village on proposed Site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Village with recommendations, consistent with the Village’s Design Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

5.4.5. Evaluation of the Village’s Design Criteria - The Design-Builder shall schedule and conduct

meetings with the Village and any other necessary individuals or entities to discuss and review the Village's Design Criteria as set forth in **Exhibit A**. The Design-Builder shall thereafter again meet with the Village to discuss a preliminary evaluation of the Village's Design Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

5.4.6. Design-Builder's Written Report - After the Design-Builder meets with the Village and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Village, summarizing the Design-Builder's evaluation of the Village's Design Criteria. The report shall also include:

5.4.6.1. Allocations of program functions, detailing each function and their square foot areas;

5.4.6.2. A preliminary estimate of the Contract Sum, and, if necessary, recommendations to adjust the Village's Design Criteria to conform to the Village's budget;

5.4.6.3. A preliminary milestone schedule, updating the milestone schedule attached hereto as **Exhibit G**, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Village; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Village; and

5.4.6.4. The following: the method by which Design-Builder intends to specifically tailor the stormwater backup system to the Village's particular needs, as coordinated with the Project engineers.

5.5. Village's Review Of Design-Builder's Written Report - The Village shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 5.6. The consent to proceed shall not be understood to modify the Village's Design Criteria unless the Village and Design-Builder execute a Modification.

5.6. Preliminary Design - Within seven (7) days of the Village's issuance of a written consent to proceed under Section 5.5, the Design-Builder shall prepare and submit for approval a Preliminary Design to the Village. The Preliminary Design shall include a report identifying any proposed deviations from the Village's Design Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

5.7. Village Review of Preliminary Design - The Village shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Village's Design Criteria unless the Village and Design-Builder execute a Modification.

5.8. Design-Builder's Proposal - Within seven (7) days of the Village's issuance of a written consent to proceed under Section 5.7, the Design-Builder shall prepare and submit for approval the Design-Builder's Proposal to the Village. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Village's Design Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and a written statement of estimated cost organized by trade categories, allowances, contingencies, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion upon which the Contract Sum is based;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, contractors and suppliers;
- .6 A list of the major Subcontracts and purchasing agreements that will be entered into within the first twenty-five (25) days following finalization of the Drawings and Specifications for the Project. A list of all other Subcontracts and purchasing agreements within sixty (60) days thereafter; and
- .7 The date on which the Design-Builder's Proposal expires.

5.9. The Design-Builder's Proposal shall be supported by all subcontractor and material supplier cost documentation with quantities, for the Village's review and acceptance. The Design-Builder shall develop and implement a detailed system of cost control that will provide the Village with timely information specific to tracking the total Cost of the Work. The cost control system shall compare the Contract Sum with the actual cost for activities in progress and committed costs for uncompleted tasks and proposed changes. This information shall be reported to the Village, in writing, no later than the Design-Builder's first Application for Payment and shall be revised and submitted with each Application for Payment in a form approved by the Village.

5.10. Design-Builder shall keep and submit to Village full and detailed records substantiating the Design-Build Proposal, including but not limited to, complete documentation supporting budgeted line items, proposals from Subcontractors and materials suppliers, Subcontracts and contracts with materials suppliers and related parties (as defined herein) and other back up documents, and shall make such records available to Village, and any cost control consultants hired by Village (the "Cost Control Consultant") for inspection, audit and copying during regular business hours and upon reasonable notice.

5.11. If the Village notifies the Design-Builder that the Village has accepted the Design-Build Proposal in writing before the date specified in the Design-Build Proposal, the Design-Build Proposal shall be deemed effective without further acceptance from the Design-Builder. Following acceptance of a Contract Sum, as set forth in the Design-Build Proposal, the Village and Design-Builder shall execute the Design-Build Amendment amending this Agreement, a copy of which shall be attached

hereto as **Exhibit ____**. The Design-Build Amendment shall set forth the agreed upon Contract Sum with the information and assumptions upon which it is based and the Project Schedule.

5.12. The Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Village provides prior written authorization for such costs.

5.13. The Design-Builder shall include in the Contract Sum all sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted, whether or not yet effective, at the time the Design-Build Amendment is executed.

5.14. No recovery for changed market conditions - In entering into the Agreement, the Design-Builder represents and warrants that it has considered all impacts and potential impacts associated with the following: (1) COVID-19 and other worldwide pandemic ("Pandemics"); and (2) the current military conflicts involving Russia and the Ukraine and involving Israel and Hamas (the "Military Conflicts"). Design-Builder further represents and warrants that in entering into this Agreement, it has accounted for any and all labor or material shortages, delivery lead time, or price increases that may be caused by local and or national conditions, including but not limited to impacts from the Pandemics and Military Conflicts. Design-Builder also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Design-Builder has taken into account these impacts from the Pandemics and Military Conflicts, and has included all of those factors in the Project Schedule and Contract Sum. Design-Builder will not seek any price increases or time extensions relating to or arising from any impacts from the Pandemics or the Military Conflicts. The Village shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Design-Builder to comply with the requirements of this Article. For purposes hereof "Force Majeure" shall mean only a delay caused by or resulting from acts of God, fire, flood, restrictions or delays by any governmental or utility authority (including, but not limited to, interruption of or unavailability of electric, water, sewer or other utility service, and construction or development moratoria), and such other actions or matters as are beyond Design-Builder's control occurring on or affecting the Project site or otherwise directly impacting the Project site or its development. As the Pandemics and the Military Conflicts are known as of the time of execution of this Agreement, neither the Pandemics or the Military Conflicts shall be considered a Force Majeure and all impacts to pricing and time of performance of work associated with the Pandemics and the Military Conflicts have been factored into the Contract Sum and the Project Schedule.

5.15. Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. Claims for additional costs or extensions of time because of the failure of Design-Builder to familiarize itself with conditions at the Project site will not be allowed. The Design-Builder shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project and surrounding areas; (2) any limitations as to access associated with the Project; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues. The Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Village shall not be required to make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Design-Builder to comply with the requirements of this Article.

5.16. If the Village and Design-Builder do not agree on a proposal within thirty (30) days (after submission of the Design-Builder's Proposal to the Village, the Village and Design-Builder shall terminate this Agreement in accordance with Article 13 of this Agreement.

5.17. Work Following Execution of the Design-Build Amendment Construction Documents Phase

5.17.1. Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

5.17.2. The Design-Builder shall provide the Construction Documents to the Village for the Village's information at intervals appropriate to the progress of the Construction Documents Phase, but no less often than at the thirty, sixty and ninety percent completion stages of the Construction Documents. The Design-Builder shall consult with the Village and provide documents for the Village's review and comment, which will be made within twenty (20) days of receipt of such interim Construction Documents so as to cause no delay to the Design-Builder, and Design-Builder shall promptly incorporate agreed changes within seven (7) days of receipt of such comments so as to cause no delay to the Project. Upon the Design-Builder's completion of the ninety percent (90%) Construction Documents, the Design-Builder shall deliver to Village a list of all tests, inspections, or reports that are required by the Construction Documents, including, but not limited to those to be provided by the Design-Builder. This list of tests, inspections or reports must be approved by Village, in writing, before any of them are performed. If the Village discovers any deviations between the Construction Documents and the previously approved Design-Build Documents, the Village shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Village and Design-Builder execute a Modification. The failure of the Village to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

5.18. Certifications - Upon the Village's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Village, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Village and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services

5.19. Record Sets of Final Construction Documents - After Village's acceptance of the Construction Documents, the original set of Design-Builder's Construction Documents shall be provided to Village along with three (3) record sets and three (3) working sets of full size prints (including specifications) in electronic form. The Design-Builder shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the Work shown on the endorsed sheets was produced by Design-Builder. With the record set of prints, the Design-Builder shall submit a final set of design computations. The computations shall be bound in an 8 1/2"

by 11" format and shall be endorsed (seal/signature as appropriate) by Design-Builder.

5.20. Instruments of Service - The Instruments of Service prepared by the Design-Builder for this Project are a work made for hire. Design-Builder hereby assigns to Village forever (including initial and extended copyright terms) all right, title and interest, including, but not limited to all rights under copyright and intellectual property laws, in any and all particular Instruments of Service, title to which shall automatically pass to the Village upon payment to Design-Builder for the services to prepare that particular Instrument of Service. Before ownership of a particular Instrument of Service and the copyright and other intellectual property rights in same passes to Village in accordance with this Paragraph, Village shall have an exclusive, perpetual, royalty-free license to use, reproduce and distribute such Instrument of Service as Village sees fit. Notwithstanding the foregoing, the Village shall continue to identify the Design-Builder as the author of the architectural work(s) and pictorial representations contained in the Instruments of Service by the term "Designed by CSR Heavy Construction" or similar means of identification, and the Design-Builder shall retain the exclusive right to so identify itself. The Design-Builder will furnish the Village with reproducible copies, electronic data and computer files of the Drawings and Specifications and other Instruments of Service. The Design-Builder shall be entitled to retain copies of all Instruments of Services for the Design-Builder's records. The Village acknowledges that the Instruments of Services to be provided by the Design-Builder will contain certain standard component design details from the Design-Builder's Best Practices Detail Library which standard component design details shall remain the property of the Design-Builder. These details are repetitive in nature, not Project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. The Village agrees that continued use by the Design-Builder of component design details from the Design-Builder's Best Practices Detail Library shall not infringe on the conveyance of ownership and copyright set forth in this Paragraph.

Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Village's or Design-Builder's rights.

Design-Builder represents and warrants to Village that it is the owner of all Instruments of Service prepared by itself and has the sole authority to grant Village these Instruments of Service in accordance with this Agreement. With respect to Instruments of Service for the Project owned by Design-Builder's consultants, Design-Builder in its agreement with such consultants to provide services for this Project, shall cause such consultants to grant to the Village the same work made for hire, assignment and use provisions as are included in Section 5.20 herein.

5.21. Construction

5.21.1. Commencement - Except as permitted in this Section 5.21.1, construction shall not commence prior to execution of the Design-Build Amendment. If the Village and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Village's right to reject the Design-Builder's Proposal.

5.21.2. The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

5.21.3. The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

5.21.4. The Design-Builder shall continue to hold regular on-site meetings to monitor progress, address issues, and ensure safety compliance. The Design-Builder shall hold daily progress meetings with construction teams and the Village to provide scheduling updates, address Project challenges, and provide the Village with a two-week look ahead as to the Work.

5.21.5. The Design-Builder shall also provide to the Village daily written reports that document progress, deviations, and issue resolutions concerning the Project.

5.22. Labor and Materials - Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

When a material or system is specified in the Design-Build Documents, the Design-Builder shall not make substitutions absent a Modification.

The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

5.23. Concealed or Unknown Conditions

5.23.1. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall provide written notice to the Village within three (3) days before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Village shall promptly investigate such conditions and, if the Village determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Village determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Village shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Village's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

5.23.2. If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Village. Upon receipt of such notice, the Village shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Village but shall continue with all other operations that do not affect those remains or features. Requests for

adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

5.24. Allowances - The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Village may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

Unless otherwise provided in the Design-Build Documents:

- .1 Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 The Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.24.1 and (2) changes in Design-Builder's costs under Section 5.24.2.

The Village shall make selections of materials and equipment with reasonable promptness for allowances requiring Village selection.

5.25. Key Personnel, Contractors and Suppliers

- .1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Village has made reasonable and timely objection.
- .2 Design-Builder shall assign to the Project team the key employees ("Key Employees") including without limitation engineers, a superintendent, and a project manager, a list of which will be included as Exhibit ____ to this Agreement. The Key Employees shall not be replaced without the Village's prior written consent, which shall not be unreasonably withheld. Unauthorized replacement of the Key Employees by the Design-Builder may be deemed to be a material breach of this Agreement.
- .3 In the event any of the individuals identified as Key Employees leave the Project or their time on the Project is less than agreed, Design-Builder shall pay Village a sum equal to 3.0 times 1 year of base salary plus the stipulated burden for each such individual who leaves or whose time is reduced (hereinafter the "Bounty") unless: (1) he or she is discharged by the Design-Builder, (2) leaves the employ of the Design-Builder (including all affiliates), or (3) is placed on leave of absence or becomes Disabled (as defined herein). The term "Disabled" means when one or more of the identified individuals suffers from a physical or mental ailment or condition that causes that individual to be incapable of making decisions for the Design-Builder and otherwise unable to perform the Services, responsibilities and

obligations of the Design-Builder set forth herein. This Bounty shall remain in effect through termination of the Agreement.

- .4 Replacements for any of the Key Employees must have the Village's prior written approval and once approved, the replacements shall be subject to the same Bounty set forth above. Further, the Village may request changes of personnel based on performance, in which case the Design-Builder shall, within seven (7) calendar days, replace the individual with adequate personnel subject to Village's written approval, which approval shall not be unreasonable withheld, with same Bounty for the replaced individual(s).
- .5 The Key Employees will attend regularly scheduled meetings in person to execute the work including but not limited to presentations to the Village and public officials, coordination meetings with the consultant team and public agencies and certain promotional events if requested by the Village.
- .6 Except for those persons or entities already identified as Key Employees, within fourteen (14) calendar days after execution of the Design-Build Amendment, Design-Builder shall furnish in writing to the Village the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Village may reply within fourteen (14) calendar days to the Design-Builder in writing stating (1) whether the Village has reasonable objection to any such proposed person or entity or (2) that the Village requires additional time for review.
- .7 If the Village has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Village has no reasonable objection. This process shall continue pursuant to section 5.25.6 until Village accepts the substitution.

5.26. Documents and Submittals at the Site - The Design-Builder shall maintain at the site for the Village one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Village as a record of the Work as constructed.

5.27. Use of Site - The Design-Builder shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the Site with materials or equipment. If the Work requires the use of sidewalks, public ways or other areas outside of the Village's Project site, the Design-Builder shall be responsible for obtaining all necessary approvals for such work, and Design-Builder shall secure and the Village shall pay for all necessary permits, including but not limited to road closure permits. The Design-Builder shall also arrange for and pay for all local police and fire officers and personnel required to be present at or adjacent to the Project site in connection with the Work. The Design-Builder must secure all materials and equipment that are stored on the Project site and shall take all safety precautions necessary to protect such materials and equipment. The Design-Builder shall be responsible, as a Cost of the Work included as part of the Contract Sum, for all measures to protect the Project site and property adjacent to the Project,

from the Design-Builder's Work. The Design-Builder shall be responsible for all damages and costs for failure to comply with this section. Except for the Design-Builder, no other entity for whom the Design-Builder is responsible shall erect any sign on the Project site without the prior written consent of the Village.

5.28. Cutting and Patching - The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Village or a separate contractor except with written consent of the Village and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Village or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

5.29. Cleaning Up - On a daily basis, the Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall, at its sole cost and expense, remove all waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Village may do so and Village shall be entitled to reimbursement from the Design-Builder.

Design-Builder agrees to immediately repair at its sole cost and expense all damages to the Project site, including, but not limited to, any damages to real or personal property arising from or relating to Design-Builder's performance of the Work to the reasonable satisfaction of the Village.

5.30. Access to Work - The Village and its separate contractors and consultants shall have access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Village regarding Project safety criteria and programs, which the Village, and its contractors and consultants, shall comply with while at the site.

5.31. Construction by Village or by Separate Contractors

5.31.1. Village's Right to Perform Construction and to Award Separate Contracts

- .1 The Village reserves the right to perform construction or operations related to the Project with the Village's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the Site.
- .2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Village.
- .3 The Village shall provide for coordination of the activities of the Village's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Village in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute

the schedules to be used by the Design-Builder, separate contractors and the Village until subsequently revised.

5.31.2. Mutual Responsibility

- .1 The Design-Builder shall afford the Village and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.
- .2 If part of the Design-Builder's Work depends upon construction or operations by the Village or a separate contractor, the Design-Builder shall, seven (7) days prior to proceeding with that portion of the Work, prepare a written report to the Village, identifying apparent discrepancies or defects in the construction or operations by the Village or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Village's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.
- .3 The Design-Builder shall reimburse the Village for costs the Village incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities, or defective construction.
- .4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to be completed or partially completed construction or to property of the Village or separate contractors.
- .5 The Village and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Village or separate contractors.

5.31.3. Village's Right to Clean Up - If a dispute arises among the Design-Builder, separate contractors, and the Village as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Village may clean up and will allocate the cost among those responsible, and the Village may deduct the allocated cost of cleanup from any amounts due the Design-Builder.

5.32. Progress Reports - The Design-Builder shall keep the Village informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Village and Design-Builder, the Design-Builder shall submit written progress reports to the Village, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Village;

- .5 Approved Change Orders and Work Change Directives;
- .6 Pending Change Order and Work Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Village;
- .9 Status of Claims previously submitted in accordance with Article 14; and
- .10 Additional information as agreed to by the Village and Design-Builder.

5.33. Design-Builder's Submittals - Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Village's approval. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule, (2) allow the Village reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule for the Village's review and approval, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

By providing Submittals, the Design-Builder represents to the Village that it has: (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so in a timely manner so as to prevent Project delays; and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Village has approved in writing the respective Submittal.

The Work shall be performed in accordance with approved Submittals and the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the following has occurred prior to such deviation: (1) the Design-Builder has notified the Village in writing of a deviation from the Design-Build Documents at the time of the Submittal and (2) a Modification is executed in writing, authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Village's approval of the Submittals.

All professional design services or certifications to be provided by the Design-Builder, including all Drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Village and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

5.34. Royalties, Patents and Copyrights - The Design-Builder shall pay all royalties and license fees. If the Design-Builder has reason to believe that the design, process or product required in the Village's Design Criteria is an infringement of a copyright or a patent, the Design-Builder shall notify the Village in writing within three (3) days of such discovery. Design-Builder shall indemnify the Village against any and all claims and be responsible for such loss unless such information is promptly furnished to the Village.

5.35. Testing – The Design-Builder will perform testing and commissioning of the stormwater backup system, and will hold regular meetings with the Village to review results of such testing and address deficiencies.

5.36. Construction Administration

5.36.1. Those portions of the Work that the Design-Builder does not customarily perform with its own personnel shall be performed under subcontracts or by other appropriate agreements with the Design-Builder.

5.36.2. The Design-Builder shall develop bidders' interest in the Project. A minimum of three (3) competent subcontractors and/or vendors are required per trade.

5.36.3. The Design-Builder shall prepare, for the Village's acceptance, a procurement schedule for items that must be ordered well in advance of construction. Upon the Village's written approval of the procurement schedule, the Design-Builder shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. The Design-Builder shall not contract with anyone to whom the Village has an objection.

5.36.4. The Design-Builder shall schedule and conduct weekly meetings at which the Village and Design-Builder, and appropriate Subcontractors can discuss the status of the Services and the Work. The Design-Builder shall prepare and promptly distribute meeting minutes.

5.37. Shop Drawings and Samples

5.37.1. The Design-Builder shall timely prepare and submit any submittals or shop drawings required for permitting to the authority having jurisdiction, and shall furnish a copy to the Village Manager.

5.37.2. The Design-Builder shall prepare and maintain these shop drawings and submittals and make them available for review by the Village.

5.37.3. Review of the shop drawings by the Village shall be general and shall in no way relieve the Design-Builder of Design-Builder's responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of material or Work required by the Agreement and not indicated on the drawings.

5.38. Supervision and Superintendence - The Design-Builder shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying Design-Builder's best skill, attention and expertise. The Design-Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. The Design-Builder shall be responsible to see that the finished Work complies with the Design-Build Documents.

5.39. Project Management

5.39.1. During the progress of on-site construction, the Design-Builder shall provide full-time (defined to be 8:00 a.m. through 5:00 p.m., Monday through Friday, legal holidays excluded) competent, qualified, and experienced Project supervision and any necessary assistants. The superintendent will be the Design-Builder's representative at the site. The Design-Builder may, with prior written approval of the Village Manager, schedule prosecution of the Work during times not otherwise allowable for construction within the Village.

5.39.2. The day-to-day management of the Project shall be by a competent, qualified, and experienced project manager to whom the superintendent shall report. The project manager will conduct regularly scheduled project meetings for the purpose of project coordination and communication. The project manager shall be included in the cost of the Work.

5.40. Labor

5.40.1. Construction services shall be performed only by qualified construction Design-Builders licensed to do business in the State of Florida and suppliers, selected and paid by the Design-Builder.

5.40.2. The Design-Builder shall provide and pay for competent, suitably qualified personnel to perform the work as required by the Design-Build Documents. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall at all times maintain good discipline and order at the site.

5.41. Materials

5.41.1. Unless otherwise specified herein, and excluding final hook-ups and associated fees for utilities, the Design-Builder shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools, appliances, water, heat, utilities and all other facilities and services necessary for the furnishing, performance, testing, start-up and proper completion of the Work.

5.41.2. Warranty - The Design-Builder expressly warrants that all materials and equipment shall be of good quality and new, unless otherwise provided in the Design-Build Documents and that the work will be free from defects whether patent or latent in nature. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Design-Build Documents.

5.42. Concerning Subcontractors, Suppliers, and Others

5.42.1. The Design-Builder shall be fully responsible to Village and shall indemnify and hold the Village harmless for all acts and omissions of the Design-Builder's employees, agents, Subcontractors, Suppliers and other any other persons directly or indirectly employed by the Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Work under a direct or indirect contract with the Design-Builder. Nothing in the Design-Build Documents shall create any contractual relationship between the Village and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Village to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations.

5.42.2. All Work performed for the Design-Builder by a Subcontractor will be pursuant to an appropriate agreement between the Design-Builder and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Design-Build Documents for the benefit of Village.

5.43. Permits - The Design-Builder shall obtain and pay for all permits and licenses. The Design-Builder shall pay all governmental charges and inspection fees necessary with the exception that the Village hereby waives its own municipal permit, impact and inspection fees relating to the Work and the Project. No waiver is given with respect to any re-inspection fees.

5.44. Laws and Regulations - The Design-Builder shall comply with and give all notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities having jurisdiction over the Project, which are applicable to the performance of the Work. The Village shall not be responsible for monitoring the Design-Builder's compliance with any laws and regulations. Within three (3) days of discovery, the Design-Builder shall notify Village in writing if the Design-Build Documents are observed by the Design-Builder to be at variance therewith.

5.45. Risk of Loss; Title - The risk of loss, injury or destruction shall be on the Design-Builder until acceptance of the Work by the Village. Title to the Work shall pass to the Village upon final acceptance of the Work by the Village in accordance with Section 4.9.

5.46. Taxes - The Design-Builder shall pay all sales, consumer, use and other similar taxes required to be paid by the Design-Builder in accordance with the laws and regulations of the State of Florida and its political subdivisions. The Design-Builder is responsible for reviewing the pertinent state statutes involving such taxes and complying with all requirements.

5.47. Use of Premises

5.47.1. The Design-Builder shall confine equipment, the storage of materials, equipment, and the operations of workers to the Project site and areas identified in and permitted by the Design-Build Documents, and shall not unreasonably encumber the premises with equipment or other materials. The Design-Builder shall assume full responsibility for any damage to any such land or area, or to the Village or occupant thereof or of any land or areas contiguous thereto, resulting from the Design-Builder's performance of the Work. Should any claim be made against the Village because of the performance of the Work, the Design-Builder shall promptly attempt to settle with the party asserting the claim by agreement or otherwise resolve the claim. The general indemnification provided elsewhere in this Agreement specifically applies to claims arising out of Design-Builder's use of the premises.

5.47.2. During the progress of the Work, the Design-Builder shall at all times keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Design-Builder shall promptly remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by Village. The Design-Builder shall restore to original condition all property not designated for alteration by the Design-Build Documents.

5.47.3. The Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure or any component thereof, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.48. Access to Work - The Design-Builder shall provide the Village, the Village's consultants, representatives and personnel, independent testing laboratories and governmental agencies with jurisdictional interests with access to the Work at reasonable times for their observation, inspection and testing. The Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith.

5.49. Safety and Protection

5.49.1. The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to prevent damage, injury or loss to all employees on the Work Site and other persons and organizations who may be affected thereby; all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and other property at the Site or adjacent thereto.

5.49.2. Safety of Persons and Property

The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 Employees on the Work Site and other persons who may be affected thereby;
- .2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

5.49.3. The Design-Builder shall comply with, and give notices as required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

5.49.4. The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Design-Build Documents, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify the Village and users of adjacent sites and utilities of the safeguards and protections.

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

5.49.6. The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under the terms of this Agreement; except damage or loss attributable to the negligent acts or omissions of the Village, or anyone directly or indirectly employed by the Village, or by anyone for whose acts the Village may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's other obligations under the Design-Build Documents.

5.49.7. The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Village.

5.49.8. The Design-Builder shall not permit any part of the construction or Site to be loaded so as to cause damage or create an unsafe condition.

5.49.9. Injury or Damage to Person or Property - If the Village or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding fourteen (14) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

5.50. Hazardous Materials

5.50.1. The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and take precautions not to exacerbate the conditions and notify in writing the Village of the condition. Design-Builder shall comply with all applicable federal, state and local environmental laws, codes, ordinances and regulations including, but not limited to, all OSHA requirements and regulations.

5.50.2. Upon receipt of the Design-Builder's written notice, the Village shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Village and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

5.50.3. The Village shall not be responsible under this Section for materials or substances the Design-Builder brings to the site or causes to be at the site.

5.50.4. The Design-Builder shall indemnify the Village for the cost and expense the Village incurs (1) for remediation of a material or substance the Design-Builder brings to the Site or causes to be at the Site or negligently handles; (2) for Design-Builder's willful misconduct; or (3) where the Design-Builder fails to perform its obligations under Section 5.50, except to the extent that the cost and expense are due to the Village's gross negligence or willful misconduct.

5.50.5. If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance found to be preexisting on the Site solely by reason of performing Work as required by the Design-Build Documents, the Village shall indemnify the Design-Builder for all cost and expense thereby incurred.

5.51. Emergencies - In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

5.52. Indemnification

5.52.1. General Indemnification. To the fullest extent permitted by law, the Design-Builder shall indemnify, defend, save and hold harmless the Village and the Village's elected officials, public employees, consultants and separate contractors, any of their subcontractors, sub-subcontractors, agents and employees (the "Indemnified Parties") from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees (at the trial and appellate levels), arising out of, relating to, or resulting from performance of the Work. The foregoing indemnity shall be applicable up to a monetary limit of \$5 million per occurrence.

5.52.2. In any and all claims against the Indemnified Parties by any employee of the Design-Builder, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or on behalf of Design-Builder, Architect, a Consultant, or a Contractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts.

5.52.3. The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions.

5.52.4. The Indemnitors' indemnity obligations under this Section 5.52 shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by the Design-Builder and/or any of the Indemnitors, or any person or entity for whom they are responsible, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Design-Builder's failure to comply with any provision of the Design-Build Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure permits, fees, approvals, licenses, and inspections as required under this Agreement and/or the other the Design-Build Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder and/or any of the Indemnitors, or any person or entity for whom they are responsible. Moreover, and without limiting the foregoing, the Indemnitor's indemnity obligations under this Section 5.52 include any and all claims by third parties against Indemnified Parties for consequential damages arising from and/or in connection with this Agreement and/or the performance and/or failure of the Work to the extent Design-Builder, or a party for which Design-Builder is responsible, has caused or contributed to such claims.

5.52.5. The Design-Builder shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of the Design-Builder's defense, indemnity and hold-harmless obligations under this Agreement.

5.52.6. The Design-Builder shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Design-Builder and the Indemnified Parties from and

against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Design-Build Documents to the same extent and in the same manner as the Design-Builder is liable to the Village pursuant to this provision.

5.52.7. The provisions of this Section 5.52 shall survive final completion and final payment or termination of this Agreement.

5.52.8. Such obligations shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

5.52.9. Patent and Copyright Indemnification - The Design-Builder agrees to indemnify, defend, save and hold harmless the Village, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and actions of every name and description that may be brought against the Village, its officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent and/or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

5.52.10. The Design-Builder shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees and costs (at the trial and appellate levels).

5.52.11. Nothing contained herein is intended nor shall it be construed to waive the Village's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

5.52.12. Survival of Obligations - All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Design-Build Documents, shall survive final payment, completion and acceptance of the work and termination or completion of this Agreement.

5.53. Uncovering of Work - The Village may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Village and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Village or a separate contractor hired directly by the Village in which event the Village shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

5.54. Correction of Work

5.54.1. Before or After Substantial Completion The Design-Builder shall promptly correct Work rejected by the Village or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any attorneys and design consultants

employed by the Village whose expenses and compensation were made necessary thereby, including any attorneys' fees incurred by the Village (at the trial and appellate levels), shall be at the Design-Builder's expense. The obligations of this Section shall survive completion and final payment or termination of the Agreement.

5.54.2. Within One Year After Substantial Completion - In addition to the Design-Builder's obligations under Section 5.54.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Article 10, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Village to do so. If the Design-Builder fails to correct or commence correct nonconforming Work within five (5) business days after receipt of notice from the Village, the Village may correct the nonconforming Work. Design-Builder and its Surety are obligated to reimburse the Village for all corrective costs and damages incurred as a result of Design-Builder's failure to correct nonconforming Work. This obligation shall survive completion and final payment or termination of the Agreement.

5.54.2.1. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

5.54.2.2. The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section.

5.54.3. The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents.

5.54.4. The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Village or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

5.54.5. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 5.54.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

5.55. Acceptance of Nonconforming Work - If the Village prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Village may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If payments due to the Design-Builder are insufficient to cover the adjustment, the Design-Builder shall pay the difference to the Village.

ARTICLE 6 - VILLAGE'S RESPONSIBILITIES

6.1 The Village shall furnish data required of the Village under the Design-Build Documents with reasonable promptness.

6.2 Except for permits and fees which are the responsibility of the Design-Builder, the Village shall secure necessary easements, assessments, and charges required for construction, use, or occupancy of permanent structures or permanent changes in existing facilities.

6.3 The Village shall designate in writing a representative who shall have express authority to bind the Village with respect to all Project matters requiring the Village's approval or authorization.

6.4 The Village shall render decisions in accordance with the Design-Builder's schedule agreed to by the Village.

6.5 Information and Services Required of the Village

6.5.1 The Village shall provide, to the extent under the Village's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Village shall also provide surveys describing physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site under the Village's control.

6.5.2 The Village shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

6.5.3 The Village shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

6.5.4 The services, information, surveys and reports required to be provided by the Village under this Agreement, shall be furnished at the Village's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Village advises the Design-Builder to the contrary in writing. The Village does not make any representations as to the accuracy or completeness of the documents or any information contained in said documents and Design-Builder shall be responsible for verifying the accuracy and completeness of the document and information provided prior to using or relying upon said documents or information. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

6.5.5 If the Village observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Village shall give reasonable written notice thereof to the Design-Builder.

6.5.6 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Village shall communicate with the Design-Builder through

persons or entities employed or retained by the Design-Builder.

6.5.7 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Village shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

6.5.8 The Village shall purchase and maintain only such insurance as is typical and customary for the Village.

6.6 Village's Review of Submittals

6.6.1 The Village shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Village's action will be taken in accordance with the submittal schedule approved by the Village or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Village's judgment to permit adequate review. The Village's review of Submittals shall not relieve the Design-Builder of its obligations under this Agreement and the Design-Build Documents. The Village's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Village, of any construction means, methods, techniques, sequences or procedures. The Village's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.6.2 Upon review of the Submittals required by the Design-Build Documents, the Village shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Village discovers.

6.7 Visits to the site by the Village shall not be construed to create an obligation on the part of the Village to make on-site inspections to check the quality or quantity of the Work. The Village shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Village shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

6.8 The Village has the authority to reject Work that does not conform to the Design-Build Documents. The Village shall have authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Village nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Village to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing

portions of the Work.

6.9 The Village shall determine the date or dates of Substantial Completion in accordance with Section 4.8 and the date of final completion in accordance with Section 4.9.

6.10 Village's Right to Stop Work - If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents or fails to carry out Work in accordance with the Design-Build Documents, the Village may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Village to stop the Work shall not give rise to a duty on the part of the Village to exercise this right for the benefit of the Design-Builder or any other person or entity.

6.11 Village's Right to Carry Out the Work - If the Design-Builder defaults or neglects to carry out the Work in accordance with the requirements of the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Village to commence and continue correction of such default or neglect with diligence and promptness, the Village may, without prejudice to other remedies the Village may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Village.

ARTICLE 7 - VILLAGE MANAGER OR DESIGNEE'S RESPONSIBILITIES

7.1 The Village Manager will be the Village's contact person during the construction period and until final payment is due to the Design-Builder.

7.2 Visits to Site - The Village Manager will make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work and to determine, in general, if the Work is proceeding in accordance with the Design-Build Documents. On the basis of such visits, the Village Manager shall keep the Village informed of the progress of the work and shall endeavor to guard the Village against defects and deficiencies in the work.

7.3 Rejecting Defective Work - If the Village Manager becomes aware of any fault or default in the Work, he/she shall notify the Design-Builder.

ARTICLE 8 - BUILDING DEPARTMENT'S RESPONSIBILITIES

Building Department inspectors will serve as the Village's representative regarding inspection of the finished Work as it pertains to compliance with the Florida Building Code, and the Village's Code of Ordinances. Inspections by the Building Department shall in no way relieve Design-Builder of its responsibility to properly perform the Work.

ARTICLE 9 - BONDS AND INSURANCE

THE VILLAGE RECOMMENDS DESIGN-BUILDER SHOW THIS SECTION TO INSURANCE AGENTS TO ENSURE MINIMUM COVERAGES AND LIMITATIONS ARE MET AND DECLARATION OF COVERAGE PAGES ARE PROPERLY SUBMITTED.

9.1 Bonds

9.1.1 Design-Builder shall furnish bonds covering faithful performance of the Agreement and payment of obligations arising thereunder as stipulated in the RFP.

9.1.2 Within ten (10) business after the execution of the Design-Build Amendment, the Design-Builder shall deliver to the Village the Bonds required to be provided by Design-Builder hereunder (the bonds referenced in this Section are collectively referred to herein as the “Bonds”) and said Bonds shall be attached to this Agreement as part of **Exhibit D**.

9.1.3 If the Design-Build Amendment is executed, pursuant to and in accordance with Section 255.05, Florida Statutes, the Design-Builder shall obtain and thereafter at all times during the performance of the Work maintain a separate performance bond and labor and material payment bond for the Work, each in an amount equal to one hundred percent (100%) of the Contract Sum and each in the form provided in the Design-Build Documents or in other form satisfactory to and approved in writing by the Village and executed by a surety of recognized standing with a rating of B plus or better. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). All associated costs of the Bonds, including, without limitation, premiums and recording fees are included in the Contract Sum.

9.1.4 The Design-Builder shall, upon approval of the bonds by the Village, record the bonds with the County Clerk’s Office of the county in which the work is to be performed and promptly furnish the Village with a certified copy of the recorded bonds.

9.1.5 If notice of any change affecting the Scope of the Work, the Contract Sum, Contract Time or any of the provisions of the Design-Build Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Design-Builder’s sole responsibility, and the amount of each applicable bond shall be adjusted accordingly.

9.1.6 Both the payment bond and the performance bond under this Article shall display the Surety’s bond number, and attach a rider containing the following provisions:

- .1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Design-Build Documents. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Design-Build Documents, or forbearance on the part of either Village or Design-Builder to the other, shall not release Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived.
- .2 Surety hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Agreement or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed or any moneys due or to become due thereunder. Surety expressly consents to the payment provisions as provided in this Agreement. In any event, even if the Surety fails to include such language in its bond, by incorporating this Agreement into the Payment and

Performance Bonds furnished for this Project, Surety agrees to the provisions of this Article.

- .3 Surety hereby agrees that if, after the 14 day Notice to the Design-Builder and Surety, the Design-Builder and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Design-Builder, without the need to terminate the Design-Builder, shall be liable to the Village for any damages the Village may sustain and be entitled to pursuant to the Agreement and the bonds. No further Notices shall be required by the Village.

9.1.7 Should Design-Builder fail to perform any of its obligations under this Agreement, the Village shall give the Design-Builder and Surety a fourteen day (14) Notice of Default. After receipt of the 14 day Notice provided herein, the Design-Builder and Surety shall have the right and opportunity to cure the default(s). If, after the 14 day Notice, the Design-Builder and Surety do not cure the default as provided in this Section, then the Surety, in addition to the Design-Builder, without the need to terminate the Design-Builder, shall be liable to the Village for any damages the Village may sustain and be entitled to pursuant to this Agreement and the bonds. No further Notices shall be required by Village.

9.1.8 If the surety is declared bankrupt or becomes insolvent or its right to do business in Florida is terminated or it ceases to meet applicable law or regulations, the Design-Builder shall, within five (5) days of any such event, substitute another bond (or Bonds as applicable) and surety, all of which must be satisfactory to the Village.

9.2 Insurance

9.2.1 UPON EXECUTION OF THE AGREEMENT, THE DESIGN-BUILDER SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE VILLAGE OF KEY BISCAYNE IS AN ADDITIONAL NAMED INSURED BY ENDORSEMENT WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE DESIGN-BUILDER UNDER THE AGREEMENT AND UPON ACCEPTANCE BY THE VILLAGE SAID CERTIFICATES SHALL BE ATTACHED TO THIS AGREEMENT AS PART OF EXHIBIT D. The certificates of insurance shall not only name the types of policies provided, but shall also specifically refer to this Agreement and shall state that such insurance is as required by Article 9 and its subparts of this Agreement. Design-Builder shall not commence work under this Agreement until after Design-Builder has obtained all of the minimum insurance herein described and the policies of such insurance detailing the provisions of coverage have been received and approved by Village. Design-Builder shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, then in that event, Design-Builder shall furnish, at least thirty (30) calendar days prior to expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage and extension thereunder is in effect. Design-Builder shall not continue to perform the services required by this Agreement unless all required insurance remains in full force and effect.

9.2.2 Insurance Companies selected must be acceptable the Village. The Design-Builder shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and having an

A.M. BEST's rating of "A-X" or better. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to Village by certified mail.

9.2.3 The Design-Builder shall procure and maintain at its own expense and keep in effect during the full term of the Agreement a policy or policies of insurance which must include the following coverage and minimum limits of liability:

- a. Contractual/Professional Liability (Errors and Omissions) Insurance for architectural and engineering services and the services of any other professional used in the performance of the work of this Agreement in the amount of \$1,000,000 with a deductible (if applicable) not to exceed \$25,000.00 per claim. The deductible shall at all times be paid by the Design-Builder. The certificate of insurance for professional liability shall reference any applicable deductible and the work of this Agreement. This coverage shall be carried, on a blanket broad form basis, throughout the period of time that the Work is being performed and thereafter for a period of three (3) years. This coverage is to insure Design-Builder's indemnity under the Design-Build Documents, and shall insure against the risks enumerated therein.
- b. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Million and xx/100 dollars (\$1,00,000.00) per accident. Design-Builder agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.
- c. Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Design-Builder in the performance of the work with the following minimum limits of liability:
 - One Million and xx/100 dollars (\$1,000,000.00) Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence
- d. Commercial General Liability Insurance (occurrence form) with the following minimum limits of liability:
 - Two Million and xx/100 dollars (\$2,000,000.00) Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage must be offered in a 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 shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- Premises and Operations;
- Independent Contractors;

- Product and Completed Operations Liability;
- Broad Form Property Damage;
- Broad Form Contractual Coverage applicable to the Agreement and specifically confirming the indemnification and hold harmless agreement in this Agreement; and
- Personal Injury coverage with employment contractual exclusions removed and deleted.
- Explosion, collapse, underground coverage (XC-U)

e. [Omitted].

f. Builder's Risk Insurance upon the entire Work to the full replacement cost value thereof. This insurance shall include the interest of Village and Contractor and shall provide All-Risk coverage against loss by physical damage including, but not limited to, Fire, Extended Coverage, Theft, Vandalism and Malicious Mischief. If Builder's Risk insurance is not required for this Project, the Village shall select this box: ☐.

g. [Omitted].

9.2.4 Design-Builder shall maintain the Products/Completed Operations Liability Insurance and the Pollution Liability Insurance for a period of at least three (3) years after final payment for the Work and furnish Village with evidence of continuation of such insurance at final payment.

9.2.5 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Village with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.

9.2.6 The Design-Builder shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against Village for payment or assessments in any form on any policy of insurance.

9.2.7 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which the Village is named as an additional named insured shall not apply to the Village. The Village shall provide written notice of occurrence within fifteen (15) working days of Village's actual notice of such an event.

9.2.8 The Design-Builder shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

9.2.9 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Village with the express intention of the parties being that the required insurance

coverages protect both parties as the primary coverages for any and all losses covered by the above described insurance.

9.2.10 The Design-Builder agrees to perform the work under the Agreement as an independent contractor, and not as a subcontractor, agent or employee of Village.

9.2.11 The Design-Builder shall require each of its subcontractors of any tier to maintain the insurance required herein for each category, and Design-Builder shall provide verification thereof to Village upon request of Village.

9.2.12 The Village's Liability and Insurance - The Village shall not be responsible for purchasing and maintaining any insurance to protect the interests of Design-Builder, subcontractors or others on the Work. Village specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes and Section 95.11, Florida Statutes.

ARTICLE 10 - WARRANTIES; TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

10.1 Warranty of Title - The Design-Builder warrants to the Village that it possesses good, clear and marketable title to all equipment and materials provided hereunder and there are no pending liens, claims or encumbrances whatsoever against said equipment and materials.

10.2 Warranty of Specifications - The Design-Builder warrants that all equipment, materials and workmanship furnished, whether furnished by the Design-Builder or its subcontractors and suppliers, will be of good quality and new and comply with the Design-Build Documents and that all services will be performed in a workmanlike manner.

10.3 Warranty of Merchantability - The Design-Builder warrants that any and all equipment to be supplied pursuant to the Agreement is merchantable, free from defects, whether patent or latent in material or workmanship and fit for the ordinary purposes for which it is intended.

10.4 Warranty against Defects - Design-Builder represents and warrants to the Village that all labor, materials and/or services furnished, and all Work performed by Design-Builder, will be free of defects for a period of two (2) years, unless otherwise provided herein for a longer period, from the date of the Village's final acceptance of the Project. This warranty is not in lieu of, but is in addition to any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers.

10.5 Warranty Forms - Design-Builder shall obtain warranties, for a minimum period of two (2) years, from all subcontractors manufacturers and suppliers. Design-Builder agrees that it shall at no additional cost to Village, secure Extended Warranties for all items having Extended Warranties from the applicable subcontractors, or equipment or material manufacturers. Any warranties obtained by the Design-Builder which deviate from the forms attached hereto must be approved by the Village. All material, equipment, or other special warranties required by the Design-Build Documents shall be issued in the name of the Village, or shall be transferable to the Village.

10.6 Design-Builder shall provide to the Village three (3) bound hard-cover books and one (1) electronic copy of same containing the following information: (1) All Subcontractor warranties fully executed in the form approved by the Village; (2) All Extended Warranties required by the Design-Build Documents; (3) The Design-Builder's warranty; (4) A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities.

10.7 The delivery, endorsement or assignment of such warranties shall not release the Design-Builder from obligations pursuant to the Design-Build Documents.

10.8 If the Design-Builder fails to commence to correct defective or nonconforming Work within three (3) business days from written notice to Design-Builder, the Village may correct such defective or nonconforming Work. If the Design-Builder commences to correct such defective or nonconforming Work but fails to diligently and continuously work on such correction, the Village may upon an additional three (3) business days' notice to Design-Builder, correct such item at Design-Builder and Surety's (if any) sole cost and expense. The Village may deduct such costs from any monies due Design-Builder. If the defective or nonconforming Work is discovered after final payment, then Design-Builder and its Surety (if any) shall pay such cost and expense, including attorney's fees incurred. The Design-Builder and its Surety (if any) shall bear all costs of correcting such defective Work.

10.9 The warranty obligations of this Article shall survive completion and final payment or termination of this Design-Build Agreement for work performed to the date of termination.

10.10 In the case of an emergency, Design-Builder, within twenty four (24) hours of written notice by the Village, shall diligently and continuously pursue any necessary repairs or replacements of defects until corrected and will restore the Work to the condition required by the Design-Build Documents. Design-Builder shall restore surface, subsurface, collateral and primary conditions disturbed during warranty work to their prior condition. Design-Builder agrees that if Design-Builder fails to diligently pursue correction of any deficiency in a continuous and expeditious manner until completion, the Village may, in its sole discretion, correct such deficiencies at Design-Builder and Design-Builder's sole and exclusive expense and that such action shall not invalidate any conditions of the Design-Build Documents. Design-Builder and its Surety (if any) shall indemnify and hold Village harmless from any claims, loss, damage or expense due to defects in the Work.

10.11 For a period of two (2) years, Design-Builder and its Surety, jointly and severally, shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Village or separate contractors caused by the correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents without reimbursement from the Village.

10.12 If the Village prefers to accept Work which is not in accordance with the requirements of the Design-Build Documents, the Village may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

10.13 Additional Warranties:

10.13.1 Design-Builder warrants to the Village that it will comply with all applicable federal, state and local laws, regulations and orders in carrying out its obligations under the Agreement.

10.13.2 Design-Builder warrants to the Village that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Agreement.

10.13.3 Design-Builder warrants to the Village that the consummation of the Work provided for in the Design-Build Documents will not result in the breach of any term or provision of, or constitute a default under any indenture, mortgage, contract, or agreement to which the Design-Builder is a party.

10.13.4 Design-Builder warrants that there has been no violation or copyrights of patent rights either in the United States of America or in foreign countries in connection with the work of the Agreement.

10.13.5 No warranty, either express or implied, may be modified, excluded or disclaimed in any way by Design-Builder. All warranties shall remain in full force and effect, notwithstanding acceptance and payment by Village.

10.14 Tests and Inspections

10.14.1 Design-Builder shall give Village timely notice of readiness of the Work for all required inspections, tests or approvals. Design-Builder shall assume full responsibility, pay all costs in connection therewith and furnish Village the required certificates of inspection, testing or approval for all materials, equipment or the Work, or any part thereof.

10.14.2 Inspectors shall have no authority to permit deviations from nor to relax any of the provisions of the Design-Build Documents, nor to delay the Agreement by failure to inspect the materials and Work with reasonable promptness.

10.14.3 The payment of any compensation whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Design-Builder to any inspectors, directly or indirectly is strictly prohibited and any such action on the part of the Design-Builder will constitute a breach of this Agreement.

10.14.4 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Village, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Village timely notice of when and where tests and inspections are to be made so that the Village may be present for such procedures. The Village shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Village from delegating their cost to the Design-Builder.

10.14.5 If the Village determines that portions of the Work require additional testing, inspection or approval not included under Section 10.14.4, the Village will instruct the Design-Builder to make

arrangements for such additional testing, inspection or approval by an entity acceptable to the Village, and the Design-Builder shall give timely notice to the Village of when and where tests and inspections are to be made so that the Village may be present for such procedures.

10.14.6 If such procedures for testing, inspection or approval under this Section 10.14 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs related to or stemming from such failure shall be at the Design-Builder's expense.

10.14.7 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Village.

10.14.8 If the Village is to observe tests, inspections or approvals required by the Design-Build Documents, the Village will do so promptly and, where practicable, at the normal place of testing.

10.14.9 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

ARTICLE 11 - CONTRACT TIME

11.1 Change of Contract Time - **ALL TIME LIMITS STATED IN THE DESIGN-BUILD DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE VILLAGE BY REASON OF ANY DELAYS.**

11.2 No Damage for Delays - Except for delays due to the active interference by the Village, Design-Builder's sole and exclusive remedy for delays shall be an increase to the Contract Time. Design-Builder shall not be entitled to an increase in the Contract Sum or to payment of any other additional monies from the Village for costs incurred as a result of such delay, including additional or extended General Conditions costs or General Requirements costs. Village's exercise of its rights under this Agreement shall in no way be considered active interference. Specifically, Design-Builder shall not be entitled to an increase in the construction cost or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

11.3 Extensions of Time - If Design-Builder is delayed at any time in the progress of the Work by (1) an act or neglect of the Village's employees, (2) by changes ordered in the Work, (3) by labor disputes, fire, unusual delay in deliveries impacting the South Florida construction industry, unavoidable casualties or other causes beyond the Design-Builder's control, or (4) by delay authorized by the Village pending mediation, arbitration, or binding dispute resolution, then the Contract Time shall be reasonably extended by Change Order for such reasonable time as the Village may determine is justified by the impact. The items set forth in this Agreement, including the Pandemics and the Military Conflicts, shall not constitute a basis for an extension of Contract Time or an increase in the Contract Sum. They do not constitute force majeure events or events supporting a Claim for excusable delay.

11.4 Adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused by the Design-Builder or any persons/entities under its control; (2) could not be avoided by the Design-Builder's timely notice to the Village of the delay; (3) is of a duration not less than one (1) Business day; (4) impacts the critical path of the Project and (5) was reasonably mitigated by the Design-Builder. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to the Village within fourteen (14) days of the event giving rise to the delay. Failure to so request an extension will constitute a waiver of any right for an extension of time.

11.5 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at its Weather Station located in Miami-Dade County.

11.6 No Recovery for Early Completion - If the Design-Builder submits a schedule or expresses an intention to complete the Work earlier than any required milestone or completion date, the Village shall not be liable to the Design-Builder for any costs incurred because of delay or hindrance should the Design-Builder be unable to complete the Work before such milestone or completion date. The duties, obligations and warranties of the Village to the Design-Builder shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Agreement.

11.7 Float - All schedule float is the property of the Village and may not be used by the Design-Builder.

ARTICLE 12 – MODIFICATIONS DUE TO CHANGES IN THE WORK

12.1 The Village, without invalidating this Agreement, may order additions, deletions or revisions to the Work. Such additions, deletions or revisions shall be authorized by a Modification. The Contract Sum and Contract Time shall be changed only by Modification approved by the Village Council.

12.2 Design-Builder shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any work performed that is not required by the Design-Build Documents as amended, modified and supplemented in writing.

12.3 If notice of any change affecting the general scope of the Work or the provisions of the Design-Build Documents is required by the provisions of any bond to be given, the giving of any such notice will be Design-Builder's responsibility and the amount of each applicable bond shall be adjusted accordingly.

12.4 A Change Order shall be based upon written agreement between the Village and Design-Builder. The Village may issue a Work Change Directive without agreement by the Design-Builder.

12.5 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Work Change Directive.

12.6 Change Orders

A Change Order is a written instrument signed by the Village and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

12.7 All Claims arising out of or relating to a Change Order shall be deemed waived unless expressly reserved in such Change Order. Design-Builder is specifically prohibited from unilaterally preserving Claims, including Claims for extension of the Contract Time. Notwithstanding any other provision to the Agreement, only the Village will have authority to authorize changes to the Design-Build Documents.

12.8 Agreement on any Change Order shall constitute a final settlement of all matters which the Design-Builder knew or should have known relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and all adjustments to the Contract Sum and Contract Time. If the Village and Design-Builder cannot agree on the amount of the adjustment to Contract Sum or Contract Time, the Village and Design-Builder shall execute a Change Order that includes a reservation of Claim rights for the portion of the adjustment to Contract Sum and Contract Time not accepted by the Village. Notwithstanding anything in the Design-Build Documents to the contrary, the Design-Builder shall not be entitled to an adjustment to the Contract Sum or Contract Time unless and until such adjustment is incorporated in a written Change Order signed by the Village and Design-Builder.

12.9 Change Order requests shall not be considered unless and until submitted in writing together with documentation detailing the change and supporting the requested increase or decrease in the Contract Sum and/or Contract Time. Such documentation must show: (i) all materials by quantity and price, (ii) all labor by unit price, (iii) insurance, (iv) permits, (v) payroll taxes and employee benefits, (vi) equipment by quantity and rate, (vii) Design-Builder's Fee; (viii) a clear and concise statement of the basis for the claim, including dates and names of parties and people involved, with back up information, Design-Build Documents relied upon, including reference to sections of the Drawings and Specifications, daily reports, weather reports, meeting minutes, correspondence and the like; and (ix) an updated schedule meeting the requirements of the Design-Build Documents, showing the impact of the Change to the agreed upon Project Schedule.

12.10 Under no circumstances shall increase in the cost of materials or labor be considered the basis for a Claims by the Design-Builder for additional compensation, no matter how severe the increase of the cost of the materials or labor to the Design-Builder.

12.11 In the event of any dispute between Village and Design-Builder arising out of or relating to the requirements of the Agreement, any modification, or the terms of a pending Change Order, the Design Builder shall continue to perform the Work, including any Work required by pending Change Orders (if specifically ordered by the Village in writing to perform said disputed Work), and the Village shall continue to make payments of undisputed sums in accordance with the Design-Build Documents, pending final resolution of such dispute.

12.12 Proposed Change Orders shall be prepared by the Design-Builder. Any Claim by Design-Builder for adjustment in the Contract Sum or Contract Time shall be subject to the requirements of Article 14 and shall be based upon written notice delivered to the Village Manager no later than ten (10) business days after the occurrence or event giving rise to the Claims and stating the general nature of the Claim. No Claim for an adjustment in the Contract Sum or an extension of the Contract Time will be valid if not submitted in accordance with this Paragraph.

12.13 Change Orders which decrease the cost of the work to Village or which extend the time for completion may be authorized and approved by the Village Manager or his/her authorized designee prior to their issuance. No Claim against Village for extra Work in furtherance of such Change Order shall be allowed unless prior approval has been obtained.

12.14 Work Change Directives

- .1 A Work Change Directive is a written order signed by the Village directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Village may by Work Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.
- .2 A Work Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- .3 If the Work Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:
 - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. Unit prices stated in the Design-Build Documents or subsequently agreed upon; or
 - c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

12.15 Within three (3) days of receipt of a Work Change Directive, the Design-Builder shall proceed with the change in the Work involved and advise the Village of the Design-Builder's agreement or disagreement with the method, if any, provided in the Work Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

12.16 A Work Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the

method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

12.17 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Village shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Design-Builder shall keep and present, in such form as the Village may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 12.17 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

12.18 The amount of credit to be allowed by the Design-Builder to the Village for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

12.19 Pending final determination of the total cost of a Work Change Directive to the Village, the Design-Builder may request payment for Work completed under the Work Change Directive in Applications for Payment. The Village will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Village's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

ARTICLE 13 - TERMINATION OF THE AGREEMENT

13.1 Village's Right to Terminate for Cause - Upon the occurrence of any one or more of the following events, which shall constitute a material default:

13.1.1 If Design-Builder commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect, or if Design-Builder takes any equivalent or similar action by filing a

petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

13.1.2 If a petition is filed against Design-Builder under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Design-Builder under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

13.1.3 If Design-Builder makes a general assignment for the benefit of creditors.

13.1.4 If a trustee, receiver, custodian or agent of Design-Builder is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Design-Builder is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Design-Builder's creditors.

13.1.5 If Design-Builder admits in writing an inability to pay its debts generally, as they become due.

13.1.6 If Design-Builder otherwise violates in any provisions of the Design-Build Documents.

13.1.7 If Design-Builder fails to submit the Design-Build Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion.

13.1.8 If Design-Builder refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials.

13.1.9 If Design-Builder fails to timely make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder.

13.1.10 If Design-Builder disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority.

13.1.11 If Design-Builder submits an Application for Payment, sworn statement, waiver of lien, affidavit or document that is intentionally falsely filed.

When any of the above reasons exist, the Village may without prejudice to any other remedy it may have and after giving the Design-Builder and the Design-Builder's surety, seven (7) days' written notice, terminate the Agreement and take possession of the site and all materials, tools, and construction equipment and machinery thereon owned by the Design-Builder. Design-Builder's Surety shall then promptly complete the Project and failing same, the Village may finish the Work by whatever reasonable method the Village may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished.

The Village's right to terminate the Agreement, pursuant to this Article, shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant thereto or at law or in equity.

13.2 Design-Builder's Right to Terminate or Suspend the Work for Cause

13.2.1 If Village fails to make undisputed payment for a period of thirty (30) calendar days after it is due, Design-Builder may, upon thirty (30) additional days written notice to Village, terminate the Agreement and recover from the Village payment for Work executed (including profit thereon) through the date of termination and for proven loss with respect to materials, equipment, tools and construction equipment and machinery.

13.2.2 At the Design-Builder's option, if cause under Section 13.2.1 exists for termination by Design-Builder, the Design-Builder may instead suspend performance of Work under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give thirty (30) days' written notice to the Village before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Village for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension. The Design-Builder's time to complete the remaining Work shall be equitably adjusted.

13.2.3 The Village may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Village may determine. If the Village suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder's time to complete the remaining Work shall be equitably adjusted. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or (2) that an equitable adjustment is made or denied under another provision of the Agreement.

13.3 Termination By Village for Convenience - The Village may terminate this Agreement upon not less than thirty (30) days' written notice to the Design-Builder for the Village's convenience and without cause.

In the event of termination for the Village's Convenience, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. The Village shall not be liable to the Design-Builder for lost profits on any Work not executed, home office overhead, or any other type of consequential, special or indirect damages and Design-Builder hereby waives same. All costs of performance claimed by Design-Builder must be fully supported by the Design-Builder's invoices and other documentation acceptable to the Village, and shall be subject to the Village's audit. The Design-Builder shall make its records available at reasonable times and place for the Village's audit. Payments to the Design-Builder shall be reduced by any setoffs, damages, claims to which the Village is entitled under this Agreement.

Upon receipt of written notice from the Village of such termination for the Village's convenience, the Design-Builder shall:

- .1 Cease operations as directed by the Village in the notice;
- .2 Take actions necessary, or that the Village may direct, for the protection and preservation of the Work; and,

- .3 Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

ARTICLE 14 - CLAIMS AND DISPUTE RESOLUTION

14.1 Claims Definition - A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Village and Design-Builder arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim. Submittal of a request for Change Order shall not be considered notice of a Claim required by this Article.

14.2 Time Limits on Claims - The Village and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Agreement in accordance with the requirements of this Article 14 and within the time period specified by applicable law. The Village and Design-Builder waive all claims and causes of action not commenced in accordance with this Article.

14.3 Notice of Claims Prior To Final Payment - Prior to Final Payment, Claims by the Design-Builder must be initiated by written notice to the Village within five (5) days after occurrence of the event giving rise to such Claim.

14.4 Claims Arising After Final Payment - After Final Payment, Claims by either the Village or Design-Builder that have not otherwise been waived, must be initiated by prompt written notice to the other party.

14.5 Continuing Contract Performance - Pending final resolution of a Claim, except as otherwise agreed in writing, the Design-Builder shall proceed diligently with performance of the Work and the Village shall continue to make payments for undisputed sums in accordance with the Design-Build Documents.

14.6 Claims for Additional Cost - If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property.

14.7 Claims for Additional Time - If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

14.8 Procedure For Initial Decision on Claims

14.8.1 Claims Initiated by the Village - If the Village initiates a Claim, the Design-Builder shall provide a written response to the Village within ten (10) days after receipt of the notice. Thereafter, the Village's representative or other designated consultant shall render an initial decision within ten (10) days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part; (2) approving the Claim in whole or in part; or (3) suggesting a compromise.

14.8.2 Claims Initiated by the Design-Builder - If the Design-Builder initiates a Claim, the Village will take one or more of the following actions within ten (10) days after receipt of the notice: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Village lacks sufficient information to evaluate the merits of the Claim.

14.8.3 Claims for Consequential, Special, Indirect, and Punitive Damages - The Design-Builder waives Claims against the Village for consequential, special, indirect, and punitive damages arising out of or relating to this Agreement. This waiver includes:

- .1 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work;
- .2 damages incurred by the Design-Builder for any business interruption;
- .3 punitive damages; and
- .4 other special or indirect damages not expressly set forth herein.

This waiver is applicable, without limitation, to all of Design-Builder's consequential, special, indirect, and punitive damages due to the Village's termination of Design-Builder in accordance with this Agreement. Nothing contained in this Section 14.8.3 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

14.8.4 In evaluating Claims, the Village may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Village in rendering a decision. The retention of such persons shall be at the Village's expense.

14.8.5 If the Village requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either: (1) provide a response on the requested supporting data; (2) advise the Village when the response or supporting data will be furnished; or (3) advise the Village that no supporting data will be furnished. Within thirty (30) days of receipt of the response or supporting data, if any, the Village will either reject or approve the Claim in whole or in part.

14.8.6 The Village's initial decision shall (1) be in writing; (2) state the reasons for it; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision is subject to mediation.

14.8.7 In the event of a Claim against the Design-Builder, the Village will notify the Surety and may request the surety's assistance in resolving the controversy.

14.9 Mediation - Any controversy or Claim arising out of or relating to this Agreement or any breach of it shall be, at the election of either party, subject to mediation as a condition precedent to the commencement of litigation.

14.9.1 During mediation or dispute resolution, unless otherwise agreed in writing, the parties shall continue and proceed diligently to complete portions of the Project not the subject of the pending Claim(s) during dispute resolution proceedings.

14.9.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

14.9.3 Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of either party's election to mediate. The proposed mediator shall disclose any past or present affiliation, relationship or any other potential conflicts of interest to both parties and either party may use such disclosure to disqualify that proposed mediator.

14.10 Time of Claim - The notice of Claim shall provide reasonably sufficient detail of the nature of the Claim and the basis for it. The mediator shall be selected by the parties within twenty (20) days following the date that a party requests that the selection process commence. Unless the parties otherwise agree in writing, mediation may be commenced on or after the thirtieth (30th) calendar day after the mediator is selected. Both parties shall endeavor, in good faith, to reach a resolution of the claim during the mediation.

14.11 Litigation - Litigation of Claims, disputes or other matters in question between the Village and Design-Builder arising out of or relating to this Agreement or breach thereof, which are not resolved by mediation, shall be subject to and decided by litigation exclusively in the state courts of Miami-Dade County, Florida. Design-Builder and the Village consent to the venue of the State Courts of Miami-Dade County, Florida and specifically recognize and acknowledge the waiver of any right to remove any action to federal court on the basis of diversity jurisdiction or on any other basis.

14.12 Attorneys' Fees/Prevailing Party - In the event that any litigation arises out of or under this Agreement, then the prevailing party in such litigation shall be entitled to recover from the non-prevailing party, all reasonable costs of such action, including but not limited to reasonable expert fees, attorneys' fees and paralegal fees for all trial and appellate levels. In any suit, action, or other proceeding, including bankruptcy, arising out of or in any manner relating to the Design-Build Documents, including without limitation, (i) the enforcement or interpretation of a party's rights or obligations under the Design-Build Documents (whether in contract, tort, or both), or (ii) the declaration of any rights or obligations under the Design-Build Documents, the successful or prevailing party, as determined by the court, shall be entitled to recover from the losing party, as determined by the court, reasonable attorneys' fees, paralegal fees, and disbursements (including disbursements which would not otherwise be taxable as cost in the proceeding) and expert witness fees. All references in the Design-Build Documents to attorneys' fees shall be deemed to include all attorney and paralegal fees and costs incurred pre-litigation as well as through all post-judgment and appellate levels and in connection with collection, and bankruptcy proceedings. In addition to the above, the prevailing party shall be entitled to recover from the non-prevailing party, all litigation

costs associated with discovery and production of Electronically Stored Information (ESI).

14.13 Liquidated Damages

14.13.1 In the event that the Design-Builder fails to perform the Work within a timely manner as set forth in this Agreement, and the time to complete such services has not been extended by a properly executed Change Order, if such delay is caused by the Design-Builder, or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder, the Village shall be entitled to collect liquidated damages from the Design-Builder. Design-Builder and the Village agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the sum of Five Hundred (\$500.00) shall be assessed for each calendar day of delay in reaching Substantial Completion of the Work. It is hereby agreed that the amount of the per diem assessment is not a penalty and not excessive in light of the circumstances known to the parties at the time this Contract is executed.

14.13.2 The above liquidated damage provision shall not affect either party's right to terminate this Contract nor shall it limit any of the other remedies as provided in the Agreement. The Village's exercise of its right to terminate this Contract shall not release the Design-Builder from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the Village or, at the Village's option may be deducted from payments that may be due and owing to the Design-Builder.

ARTICLE 15 - NOTICE, COMPUTATION OF TIME

15.1 Giving Notice - All notices required by any of the Design-Build Documents shall be in writing and shall be deemed delivered upon mailing by certified mail, return receipt requested to the following:

DESIGN-BUILDER:

Paul F. Arcella, President
CSR Heavy Construction, Inc.
90 SE 3rd Ct.
Deerfield Beach, FL 33441
Email: paul@csrheavy.com
Telephone: 954-421-1264

VILLAGE:

Steven C. Williamson, Village Manager
88 W. McIntyre Street
Key Biscayne, FL 33149
Email: swilliamson@keybiscayne.fl.gov
Telephone: 305-365-5514

WITH A COPY TO:

WITH A COPY TO:

Chad S. Friedman
Village Attorney
Weiss Serota Helfman
Cole & Bierman, P.L.
2800 Ponce de Leon Blvd., Suite 1200
Coral Gables, Florida 33134
Email: CFriedman@wsh-law.com
Telephone: 305-854-0800

15.2 Computation of Time - When any period of time is referred to in the Design-Build Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by Section 683.01, Florida Statutes, such day will be omitted from the computation. A calendar day of twenty four (24) hours measured from midnight to the next midnight shall constitute a day.

ARTICLE 16 – MISCELLANEOUS

16.1 The duties and obligations imposed by the Design-Build Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon Design-Builder and all of the rights and remedies available to Village thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Design-Build Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Design-Build Documents, and the provisions of this Paragraph will survive final payment and termination or completion of the Agreement.

16.2 Design-Builder shall not assign or transfer the Agreement or its rights, title or interests therein without Village's prior written approval, such approval not to be unreasonably withheld or delayed. Violation of the terms of this Paragraph shall constitute a breach of Agreement by Design-Builder and the Village may, at its discretion, cancel the Agreement and all rights, title and interest of Design-Builder shall thereupon cease and terminate.

16.3 Design-Builder and its partners, employees, volunteers and agents shall be and remain independent contractors and not agents or employees of Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

16.4 The remedies expressly provided in this Agreement to Village shall not be deemed to be exclusive but shall be cumulative and in addition to all other remedies in favor of Village now or hereafter existing at law or in equity.

16.5 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida without regard to conflicts of law provisions. Venue for litigation of any claim, objection or dispute arising out of this Agreement shall be in a court of competent jurisdiction in Miami-Dade County, Florida.

16.6 Should any part, term or provision of this Agreement be by a court of competent jurisdiction decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.

16.7 No action or failure to act by the Village shall constitute a waiver of a right or duty afforded the Village under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. Any waiver by the Village of any breach of the Design-Build Documents shall not be held to be a waiver of any other

or subsequent breach, and any waiver by the Village of any right to terminate the Agreement shall not be held to be a waiver of any breach of the Design-Build Documents, but the Village retains all its rights to recover damages therefor.

16.8 Flow Down - Design-Builder shall cause this Agreement to be incorporated by reference in all agreements entered into between it and its Subcontractors, such that the terms and conditions of the Agreement flow down to and bind all Subcontractors, whether specifically required or not by any provision of the Design-Build Documents. No provisions of the Subcontracts shall flow up or apply to the Village.

ARTICLE 17 - NONDISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT

17.1 During the performance of this Agreement, Design-Builder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Design-Builder will take affirmative action to ensure that employees are treated during employment, without regard to their race, creed, color or national origin. Such action must include, but not be limited to the following: employment, upgrading; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design-Builder shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

17.2 Design-Builder shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor Regulations (41 CFR Part 60).

17.3 Design-Builder shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

17.4 Design-Builder shall comply with the Contract Work Hours and Safety Standards Act (40 US 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

17.5 Design-Builder shall comply with the Florida Trench Safety Act.

17.6 Design-Builder shall comply with the OSHA Safety Act.

ARTICLE 18 – VILLAGE OF KEY BISCAYNE ADDITIONAL CONTRACT REQUIREMENTS

18.1 The Design-Builder hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village. Design-Builder further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

18.2 The Design-Builder represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Design-

Builder have been duly authorized, and this Agreement is binding on Design-Builder and enforceable against Design-Builder in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

18.3 To avoid any conflict of interest or any appearance thereof, Design-Builder shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the Village.

18.4 Ownership and Access to Records and Audits

18.4.1 Design-Builder acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Design-Builder during the term of this Agreement (“Work Product”) belong to the Village. Design-Builder shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

18.4.2 Design-Builder agrees to keep and maintain public records in Design-Builder’s possession or control in connection with Design-Builder’s performance under this Agreement. The Village Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Design-Builder involving transactions related to this Agreement. Design-Builder additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Design-Builder shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.

18.4.3 Upon request from the Village’s custodian of public records, Design-Builder shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

18.4.4 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.

18.4.5 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Design-Builder shall be delivered by the Design-Builder to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Design-Builder shall be delivered to the Village in a format that is compatible with the Village’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Design-Builder shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

18.4.6 Any compensation due to Design-Builder shall be withheld until all records are received as provided herein.

18.4.7 Design-Builder's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

18.4.8

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Jocelyn B. Koch
Mailing address: 88 West McIntyre Street
Key Biscayne, FL 33149
Telephone number: 305-365-5506
Email: jkoch@keybiscayne.fl.gov

18.5 **Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.

18.6 **State Required Affidavits.** By entering into this Agreement, the Design-Builder agrees to review and comply with the following state affidavit requirements:

18.6.1 **Public Entity Crimes Affidavit.** Design-Builder shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

18.6.2 **Scrutinized Companies.** Design-Builder certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Village may immediately terminate this Agreement at its sole option if the Consultant is found to have submitted a false certification; or if the Consultant is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the Consultant certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the Village may immediately terminate this Agreement at its sole option if the Consultant is found to have submitted a false certification; or if the Consultant is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism

Sectors List, Scrutinized Companies with Activities in Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- 18.6.3 **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Design-Builder acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
- 18.6.4 **Noncoercive Conduct Affidavit.** Pursuant to Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By entering into this Agreement, the Design-Builder acknowledges that it has read Section 787.06, Florida Statutes, and will comply with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.
- 18.6.5 **Prohibition on Contracting with Entities of Foreign Concern.** Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern. By entering into this Agreement, the Design-Builder acknowledges that it has read Section 287.138, Florida Statutes, and complies with the requirements therein, and has executed the required affidavit attached hereto and incorporated herein.

(Intentionally Left Blank -Signature on Next Page)

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E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the Village requires all contractors doing business with the Village to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Village will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

☐ **Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

**AFFIDAVIT ATTESTING TO
NONCOERCIVE CONDUCT FOR LABOR OR SERVICES**

Effective July 1, 2024, Section 787.06, Florida Statutes, a nongovernmental entity executing, renewing, or extending a contract with a governmental entity is required to provide an affidavit, signed by an officer or a representative of the nongovernmental entity under penalty of perjury, attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06(2)(a), Florida Statutes. By signing below, **I hereby affirm under penalty of perjury that:**

1. I have read Section 787.06, Florida Statutes, and understand that this affidavit is provided in compliance with the requirement that, upon execution, renewal, or extension of a contract between a nongovernmental entity and a governmental entity, the nongovernmental entity must attest to the absence of coercion in labor or services.
2. I am an officer or representative of _____, a nongovernmental entity.
3. _____ does not use coercion for labor or services as defined in the relevant section of the law.

In the presence of:

**Under penalties of perjury, I declare that I
have read the foregoing and the facts
stated in it are true:**

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____
(name of person) as _____ (type of authority) for _____
(name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as
Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

**AFFIDAVIT REGARDING PROHIBITION ON CONTRACTING WITH
ENTITIES OF FOREIGN COUNTRIES OF CONCERN**

Pursuant to Section 287.138, Florida Statutes (which is expressly incorporated herein by reference), a governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if (a) the entity is owned by the government of a foreign country of concern; (b) the government of a foreign country of concern has a controlling interest in the entity; or (c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

This affidavit must be completed by an officer or representative of an entity submitting a bid, proposal, or reply to, or entering into, renewing, or extending, a contract with a governmental entity which would grant the entity access to an individual's personal identifying information.

1. _____ ("entity") does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, F.S.

In the presence of:

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true:

Witness #1 Print Name: _____

Print Name: _____

Title: _____

Witness #2 Print Name: _____

Entity Name: _____

OATH OR AFFIRMATION

State of Florida

County of _____

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath

ENUMERATION OF DESIGN-BUILD DOCUMENTS

This page is attached to the Design-Build Agreement for the _____ between the Village of Key Biscayne, Florida and _____.

Article 2.1 lists certain Design-Build Documents which are attached to the Agreement, and this page constitutes the attachment as follows:

This Agreement (pages 1-____)

Exhibit A – Request for Proposals No. 2024-15

Exhibit B - Design-Builder's Response to RFP

Exhibit C - Design-Build Amendment, if executed

Exhibit D - Insurance Certificates and Performance and Payment Bonds

Exhibit E - Hourly Billing Rates for Design-Builder's Personnel

Exhibit F – Site Location

Exhibit G - Preliminary Project Milestone Schedule allocating the total timeframe for the Project among major milestones, with the Contract Time and detailed Project Schedule to be included as part of Exhibit C, Design-Build Amendment, if executed

Exhibit H - Notice to Proceed Form; if the Design-Build Amendment is executed, then the Notice to Proceed will be issued by the Village.

All applicable provisions of State, Federal or local law.

Any Modification, including all Change Orders, Written Amendments and Work Change Directive duly delivered after execution of Agreement.

EXHIBIT A

REQUEST FOR PROPOSALS NO. 2024-15

DRAFT

EXHIBIT B

DESIGN-BUILDER'S PROPOSAL

DRAFT

EXHIBIT C

FORM OF DESIGN-BUILD AMENDMENT

This Amendment dated this ____ day of _____ 2025 is incorporated into the accompanying Design-Build Agreement between the Village of Key Biscayne, Florida (the “Village”) and **CSR HEAVY CONSTRUCTION, INC.**, a Florida profit corporation (the “Design-Builder”) dated _____, 2025 (the “Agreement”) for the following PROJECT:

Design-Build For the Design-Build Artificial Turf Field at St. Agnes

The Village and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS

ARTICLE A.1 CONTRACT SUM

A.1.1 The Village shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Contract after the execution of this Amendment. The Contract Sum shall be a stipulated sum and shall not include compensation the Village paid the Design-Builder for Work performed prior to execution of this Amendment.

A.1.2 Stipulated Sum

A.1.2.1 The Stipulated Sum shall be **\$1,754,086.78 (inclusive of \$59,601 design costs)**, subject to authorized adjustments as provided in the Design-Build Documents and shall include the Design-Builder’s Contingency.

A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Village:

(State the numbers or other identification of accepted alternates. If the Village is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item Units and Limitations Price per Unit (\$0.00)

A.1.3 Payments

A.1.3.1 Progress Payment Procedures

A.1.3.1.1 Based upon Applications for Payment submitted to the Village by the Design-Builder, the Village shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

A.1.3.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

A.1.3.1.3 The Village shall make progress payments to the Design-Builder after receiving an Application for Payment of the certified amount not later than the 20 days after receipt of the Application. Reject of a Payment for Application shall be made within 20 days after receipt of the Payment for Application.

A.1.3.1.4 With each Application for Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Village may require. This schedule of values, unless objected to by the Village, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

A.1.3.1.5 In taking action on the Design-Builder's Applications for Payment, the Village shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Village, will be performed by the Village's auditors acting in the sole interest of the Village.

A.1.3.1.6 Except with the Village's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

A.1.3.2 Progress Payment Applications

A.1.3.2.1 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

A.1.3.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work

- by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%) on the Work. Pending final determination of cost to the Village of Changes in the Work, amounts not in dispute shall be included;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Village, suitably stored off the site at a location agreed upon in writing), less (i) retainage of ten percent (10%) up through 50% completion or (ii) less retainage of five percent (5%) from 50% completion through Substantial Completion;
 - .3 Subtract the aggregate of previous payments made by the Village; and
 - .4 Subtract amounts, if any, the Village has withheld or nullified.

A.1.3.2.3 The progress payment amount determined in accordance with Section A.1.3.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Village shall determine for incomplete Work, retainage applicable to such work and unsettled claims.

A.1.3.3 Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Village to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and all of the other requirements of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE A.2 CONTRACT TIME

A.2.1 The Design-Builder shall achieve Substantial Completion of the Work not later than 180 consecutive calendar days and Final Completion of the Work not later than 210 consecutive calendar days from the date specified for Commencement of the Work in the Notice to Proceed (the "Contract Time"), subject to adjustments as provided in the Design-Build Documents.

A.2.2 Progress and Completion

The Design-Builder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure completion of it within the time specified. Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

The Design-Builder shall not, except by agreement of the Village in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

Delays and Extensions of Time

If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Village or of a consultant or separate contractor employed by the Village; or by changes ordered in the Work by the Village; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Village pending mediation and binding dispute resolution or by other causes that the Village determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Village may determine.

Claims relating to time shall be made in accordance with applicable provisions of Article 14.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

A.3.1.4 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

A.3.1.5 Design-Builder's assumptions and clarifications:

A.3.1.6 Deviations from the Village's Design Criteria as adjusted by a Modification:

A.3.1.7 To the extent the Design-Builder shall be required to submit any additional Submittals to the Village for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

- .1 Superintendent
- .2 Project Manager
- .3 Others

A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Village upon the Village's written request.

This Amendment to the Agreement entered into as of the day and year first written above.

[This space intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, Village and Design-Builder have signed this Amendment in triplicate.

ATTEST:

VILLAGE OF KEY BISCAYNE, FLORIDA

JOCELYN B. KOCH, CMC
VILLAGE CLERK

STEVEN C. WILLAMSON
VILLAGE MANAGER

APPROVED AS TO FORM:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

CSR HEAVY CONSTRUCTION, INC.

PAUL F. ARCELLA
PRESIDENT

_____, a _____

State of Florida)
) ss:
County of _____)

On this, the ____ day of _____, 202_, before me, the undersigned Notary Public of the State of Florida, by means of ☐ physical presence or ☐ online notarization, the foregoing instrument was acknowledged by _____ (name of officer), _____ (title), of _____ (name of Design-Builder), a _____ (corporate form), on behalf of the _____ (corporate form), who is personally known to me or has produced _____ as identification.

My Commission Expires:

Notary Public, State of Florida

Printed, typed or stamped name of Notary Public

EXHIBIT D

**CERTIFICATE OF INSURANCE
AND EXECUTED PERFORMANCE AND PAYMENT BONDS**

DRAFT

EXHIBIT E

HOURLY BILLING RATES FOR DESIGN-BUILDER'S PERSONNEL

Principal / Licensed Architect - \$145 / hr

Principal / Licensed Engineer - \$145 / hr

Project Engineer - \$ 95 / hr

Project Manager - \$ 85 / hr

CAD Operator - \$65 / hr

Clerical - \$40 / hr

DRAFT

EXHIBIT F
SITE LOCATION

DRAFT

EXHIBIT G

PRELIMINARY PROJECT MILESTONE SCHEDULE

DRAFT

EXHIBIT H

FORM OF NOTICE TO PROCEED

Dated: _____, 20__

To:

Project Name: **[INSERT PROJECT NAME]**

Contract No.: **[INSERT NUMBER]**

You are hereby notified that the Contract Times under the above Contract will commence to run on _____, 20__. By that date, you are to start performing your obligations under the Contract Documents. In accordance with **Article 2** of the Design-Build Amendment to the Contract, the dates of Substantial Completion and completion and readiness for final payment are _____, 20__ and _____, 20__, ____/____ days, respectively.

Before you may start any Work at the site, you must deliver to the Village (____ check here if applicable, with copies to _____ and other identified additional insureds) Certificates of Insurance in accordance with the Contract Documents.

In addition, before you may start any Work at the site, you must: (add any additional requirements)

VILLAGE OF KEY BISCAYNE, FLORIDA

By: _____

Steven C. Williamson, Village Manager

ACCEPTANCE OF NOTICE TO PROCEED

CSR HEAVY CONSTRUCTION, INC.

By: _____

Name: _____

Title: _____

Date: _____



VILLAGE OF KEY BISCAINE

PROCUREMENT DOCUMENTS LINK

RFP # 2024-15 Design-Build Artificial Turf Field at St. Agnes

Below are links to procurement documents for:
(click on each line for document)

1. [Request for Proposal \(RFP\)](#)
2. [Addendum No.1 to RFP](#)
3. [Addendum No. 2 to RFP](#)
4. [Bid Tabulation Sheet](#)
5. [Evaluation Committee Meeting Minutes](#)
6. [Evaluation Recommendation](#)
7. [Recommended Proposal – CSR Construction Inc.](#)
8. [Purchase Requisition – N/A](#)

Daren Jairam, MBA, MHC
Procurement Officer
djairam@keybiscayne.fl.gov
305-365-7577



VILLAGE OF KEY BISCAINE

MEMORANDUM

Village Council
Joe I. Rasco, Mayor
Oscar Sardiñas, Vice Mayor
Michael F. Bracken
Franklin H. Caplan
Edward London
Nancy Stoner
Fernando A. Vazquez

Village Manager
Steven C. Williamson

DATE: January 28, 2025
TO: Honorable Mayor and Councilmembers
FROM: Steven C. Williamson, Village Manager
RE: Fifth Amendment to the Agreement for the Use of St. Agnes Catholic Church Athletic Fields

RECOMMENDATION

Recommend the Village Council authorize the Village Manager to negotiate and enter into the fifth amendment to the agreement for the use of the athletic fields at St. Agnes Catholic Church.

BACKGROUND

The Village of Key Biscayne initially entered into an agreement with the Archdiocese of Miami for the use of the St. Agnes Catholic Church athletic fields in June 2004. This agreement has been amended and extended four times, with the most recent amendment executed on October 14, 2022, and attached as Exhibit "D."

The proposed fifth amendment extends the term of the agreement for an additional ten (10) years, effective upon adoption. This amendment also permits the Village to install artificial turf and perform related improvements to the athletic fields, as detailed in the Scope of Work attached as Exhibit "A." The schedule for the artificial turf improvements is provided in Exhibit "B."

In the event the Agreement is terminated early, as outlined in Section 24, the Owner shall reimburse the Village for the costs incurred for the turf Improvements. The total costs will be amortized over a 10-year period, with the Owner responsible for reimbursing the remaining amortized costs calculated from the termination date until the expiration of the 10-year amortization period. The Amortization/Payment Schedule is attached as Exhibit "C." The reimbursement or payment by the Owner to the Village must occur on or thirty (30) days before the termination date.

SECTION 2. PROJECT DESCRIPTION

2.1 SCOPE OF WORK:

The Project is a design-build project including completing the design, construction, and installation of artificial turf at St. Agnes playfield, as set forth in the Design Criteria Package and attached hereto as Attachment A.

2.2 THE REQUIREMENTS:

- A. Wherever the term Project is used in these documents, it shall be construed to mean all WORK associated with the ARTIFICIAL TURF AT ST. AGNES FIELD. The Village of Key Biscayne wishes to implement an Artificial Turf upgrade to existing natural grass playfield utilized by the village for recreational purposes.
- B. WORK to be performed under this Contract shall consist of furnishing and installing all tools, equipment, materials, supplies, and manufactured articles and furnishing all labor, transportation, and services, including fuel, power, water, and essential communications, and performing all WORK, or other operations required for the fulfillment of the Contract in strict accordance with the Contract Documents. The WORK shall be complete, and all WORK, materials, and services not expressly indicated or called for in the Contract Documents which may be necessary for the complete and proper construction of the WORK in good faith shall be provided by the DESIGN / BUILD FIRM as though originally so indicated, at no increase in cost to the VILLAGE.
- C. Experience of Design Build Team
 - 1. The Prime DESIGN / BUILD FIRM shall have a minimum of 5 years of experience of working with Artificial Turf projects for the public Sector. The Contractor shall show a minimum of 5 projects with relevant experience.
 - 2. The preparation, construction and installation of the field subgrade, drainage, turf anchor, base stone and finishing stone shall be completed by a specialty firm, Base Contractor, who shall have completed ten (10) synthetic turf field projects, each 80,000sf or larger, in the last five (5) years.
 - 3. Infilled Synthetic Turf System shall be provided by an experienced Infilled Synthetic Turf Vendor which shall have supplied at least thirty (30) outdoor athletic field systems of 80,000 s.f. or greater of the type and installation process herein specified within the last three (3) year period.
 - 4. Infilled Synthetic Turf System installation shall be performed by an experienced Infilled Synthetic Turf Contractor which shall have laid at least twenty (20) outdoor athletic field systems of 80,000 s.f. or greater of the type and installation process herein specified within the last three (3) year period.
 - 5. All installation operations shall be performed by personnel fully familiar with the materials and their application under the full-time direction and supervision of a qualified technical supervisor, Infilled Synthetic Turf Installer, directly employed by the Infilled Synthetic Turf System Contractor. Installation supervisors shall have a minimum of five

(5) years' experience in the installation of Infilled Synthetic Turf Systems and shall have supervised the installation of at least fifteen (15) outdoor athletic field systems of 80,000s.f. or greater of the type and installation process herein specified within the last three (3) year period.

- D. Wherever the term CONSULTANT is used in these documents, it shall be construed to mean the registered professional engineer, architect, and/or landscape architect who has contracted with or who is employed by the DESIGN / BUILD FIRM to provide professional services for the design and permitting of the Project. The CONSULTANT shall be the Engineer of Record and shall be licensed by the State of Florida to provide said services.
- E. Wherever the term CONTRACTOR is used in these documents, it shall be construed to mean the DESIGN / BUILD FIRM.
- F. Wherever the term DESIGN CRITERIA PROFESSIONAL is used in these documents, it shall be construed to mean the entity responsible for the development of the Design Criteria Package Conceptual Specifications and Plans, for the Project, on behalf of the VILLAGE. The DESIGN CRITERIA PROFESSIONAL for this Project is Stantec Consulting Services, Inc. The DESIGN CRITERIA PROFESSIONAL shall also be responsible for reviewing the contract documents in support of the VILLAGE, during the design and construction. The DESIGN / BUILD FIRM shall interact with the DESIGN CRITERIA PROFESSIONAL through the VILLAGE.
- G. Whenever a reference to number of days is noted, it shall be construed to mean calendar days.
- H. The DESIGN / BUILD FIRM shall note that the use of Microsoft Project Scheduling and Management software is required during construction activities.

2.3 PROFESSIONAL SERVICES:

- A. Work to be performed in this Section includes providing professional consulting services to design and permit a project meeting the intent of the Design Criteria Package (DCP). The DCP is a multi-volume document including the following items:

Volume 1: - Request for Proposals

Volume 2: - Preliminary Plans and Details

Volume 3: - Property Survey

Volume 4: - Geotechnical Report

Volume 5 - Sportlighting As-builts

Volume 6 - Irrigation As-builts

Volume 7 - Technical Specifications

This document and the Technical Specifications include Project requirements to be adhered to by the DESIGN / BUILD FIRM. These documents require that the CONSULTANT provide plans and specifications capable of being permitted through any and all applicable agencies having jurisdiction over this project.

2.4 SCOPE OF PROFESSIONAL SERVICES:

- A. The work to be performed requires professional engineering services to be provided. Services of the professional engineer shall adhere to professional guidelines established in Florida Administrative Rule 61 G15. The CONSULTANT shall be registered in the state of Florida at the time of execution of the project.
- B. Due to the presence of trees on site that may need to be removed or relocated, as well as sodding and irrigation modifications, the services of a Landscape Architect registered in Florida may also be required.
- C. The DESIGN / BUILD FIRM shall make the necessary changes, revisions, modifications, etc. to prepare a signed and sealed contract document set that incorporates the intent of the preliminary plans, which have been supplied for reference only. In this capacity, the DESIGN / BUILD FIRM shall make all requisite changes and revisions required by the VILLAGE and/or jurisdictional agencies at no additional cost.
- D. Information regarding existing conditions for the project has been developed and is included in this design criteria package as follows:
 - 1. Preliminary Design Plans: A set of preliminary design plans and associated documents is included in this package as an outline of the intended construction.
 - 2. Property Survey with Subsurface Utility Identification as performed by KCI, Engineers Planners, Scientists, Construction Managers. Dated July 25th, 2024.
 - 3. Geotechnical Report as performed by GCME dated August 19, 2024
- E. The DESIGN / BUILD FIRM shall prepare signed and sealed contract documents for the VILLAGE's review to verify that the Project intent is complied with.
- F. All construction shall be in accordance with the 2023 Florida Building Code and applicable sections of the Village of Key Biscayne Code of Ordinances and the Miami Dade County Code of Ordinances as applicable.
- G. The DESIGN / BUILD FIRM shall utilize the Miami Dade County Design Standards, current version with all updates to supplement any details required to complete the Project.
- H. Contract Document Preparation (Drawings / Specifications): The DESIGN / BUILD FIRM shall review the Design Criteria Package and additional provided documentation. The DESIGN / BUILD FIRM shall make the necessary changes, revisions, modifications, etc. to prepare its contract document set that incorporates the intent of the conceptual specifications, conceptual plans and the requirements of Division 1. The DESIGN / BUILD FIRM's contract document set shall be submitted to the DESIGN CRITERIA PROFESSIONAL and VILLAGE to verify that the Project intent is complied with at the 60%, 90% and 100% design milestones. Plans and specifications for all of the intended renovations to the field complex. These include, but are not limited to:

- a. Provide temporary fencing to enclose the site safely from public access during construction.
- b. Clearing and grubbing of existing ground surface including miscellaneous demolition.
- c. Removal / Relocation of trees within the turf area if necessary in accordance with the preliminary plans and subsequent permit requirements.
- d. Removal and disposal of excess fill off site to achieve the necessary subgrade elevations.
- e. Perimeter metal picket fencing and entry gates.
- f. Provide two self standing ball screens behind goals to be 45' tall by 50' wide with integrated cables, poles, nets and retracting mechanism
- g. Perimeter curb with nailer
- h. Underground drainage system integrated into the turf system
- i. Provision for embedded and removable rugby goal post with replaceable covers
- j. Provisions of a full depth artificial turf system to include filter fabric, drain rock, finish stone, pads, turf, infill and striping
- k. Take down, storage and reinstallation of the existing lightning detection system to include provision for re-establishing the power feed.
- l. Bermuda Tifway turf to all areas not receiving Artificial Turf within the fenced area
- m. Reconfiguration of the existing irrigation system with new distribution piping and heads to meet final conditions.
- n. An Add/Deduct price per square foot of turf is requested for any changes to the size of the turf field that results during design. The square foot price will be utilized to adjust the final price for the actual provided turf if it deviates from the size shown in these documents. For the purpose of this estimate, it can be assumed that the maximum change will be plus or minus 10% of the current projected size.
- I. Construction Sequencing Plan: The DESIGN / BUILD FIRM shall incorporate the construction sequencing restrictions presented in this document into its contract documents. The VILLAGE will consider minor, non-substantial deviations from the construction sequencing restrictions on a case-by-case basis.
- J. Review of Contract Documents by VILLAGE: The DESIGN / BUILD FIRM shall submit to the DESIGN CRITERIA PROFESSIONAL and VILLAGE for review and comments, the contract documents at the 60%, 90% and 100% completion stages. The submittal of the progress review contract documents shall be in compliance with the requirements of the DCP for each completion stage. All review comments generated by the DESIGN CRITERIA PROFESSIONAL and VILLAGE shall be addressed and included in the subsequent submittal.

- K. **Design Review Meeting (DRM) and Pre-Construction Meeting (PCM):** The DESIGN / BUILD FIRM shall prepare necessary presentation materials and attend one (1) pre-DRM and one (1) DRM following the acceptance of the 60% contract documents by the VILLAGE. The purpose of the DRM is to review the progress and concept during the development of the design. The DESIGN / BUILD FIRM shall also prepare necessary presentation materials and attend one (1) review PCM and one (1) PCM following the acceptance of the 100% contract documents by the VILLAGE. The purpose of the PCM is to advise the VILLAGE and residents on the schedule and sequencing of the upcoming construction activities. The VILLAGE will schedule, find locations for, and notify residents of all such meetings. The DESIGN / BUILD FIRM shall prepare draft meeting minutes and forward them to the DESIGN CRITERIA PROFESSIONAL and VILLAGE who shall review, provide comments and distribute accordingly. Based upon the input provided by the residents, The DESIGN / BUILD FIRM shall incorporate necessary contract document revisions, as approved by the VILLAGE.
- L. **Contract Document Permitting:** The DESIGN / BUILD FIRM shall prepare applications and such documents and design data as may be required to procure approvals from all such governmental authorities that have jurisdiction over the Project as represented in its contract documents. Permit Fees shall be included in the Bid Price. DESIGN / BUILD FIRM shall be responsible for meetings, submissions, resubmissions and negotiations with such authorities. VILLAGE will attend meetings with governmental authorities as deemed necessary by the VILLAGE. DESIGN / BUILD FIRM shall respond to comments by such authorities within ten working days of receipt of comments. It is recognized by the VILLAGE that the time period for obtaining permits is beyond the control of the DESIGN / BUILD FIRM except for issues concerning the timely submittals of high quality design documents and the DESIGN / BUILD FIRM's ability to respond to permitting agency requests for information. The DESIGN / BUILD FIRM shall be responsible for monitoring and tracking progress on the preparation and review of permits and subsequent requests for information. The DESIGN / BUILD FIRM shall correspond with noted jurisdictional authorities to establish permitting requirements, revise its documents and respond to permitting inquiries as required. The DESIGN / BUILD FIRM shall copy the DESIGN CRITERIA PROFESSIONAL and VILLAGE on all correspondences and also attend meetings with the DESIGN CRITERIA PROFESSIONAL, and VILLAGE staff to review and discuss permitting status. The following governmental authorities that have or may have jurisdiction over Project have been identified:
1. Village of Key Biscayne Building Department
 2. Village of Key Biscayne Public Works Department
 3. Village of Key Biscayne Tree Removal/Relocation
 4. Miami Dade County Department of Regulatory and Economic Resources (RER)
 5. South Florida Water Management District
 6. Florida Department of Environmental Protection for Drainage Wells (if required)
 7. Florida Department of Environmental Protection NOI for NPDES

Failure to identify governmental authorities that have jurisdiction over the Project at the time of permitting does not relieve DESIGN / BUILD FIRM from responsibility to pursue the permit as described above. Note that this effort includes the procurement of permit extensions, whether existing or new.

- M. Construction Inspections: The VILLAGE shall provide on-site inspections through their DCP services. However, the DESIGN / BUILD FIRM shall coordinate all on-site inspections and schedule all necessary inspections to insure compliance with the final design documents and for compliance to quality standards. The DESIGN / BUILD FIRM shall make certification to the VILLAGE at the end of the project that the project was constructed in accordance with all approved plans and applicable codes. The DESIGN / BUILD FIRM shall provide all certifications, inspection reports and project information necessary to close out all permits for the project.
- N. Warranty and O&M Manuals: The DESIGN / BUILD FIRM shall produce a closeout book inclusive of all warranties and guarantees associated with all materials, equipment and labor associated with this work. The O&M manual shall include recommendations for maintenance, upkeep, cleaning and warranty requirements for the turf system. Included with the manual shall be training for staff for all new equipment, materials and processes to familiarize the staff with the new elements.

2.5 PROJECT LOCATION:

- A. The WORK of this Contract comprises the ARTIFICIAL TURF CONVERSION AT ST. AGNES FIELD (Project). The WORK will include but not be limited to Demolition, Clearing and Grubbing, Earthwork, Artificial Turf, Underground Drainage, Curbing, Fencing and modifications to existing Irrigation and Lighting Detection Systems.
- B. The location of the WORK section is as follows:

The Project Area is located at the St. Agnes Catholic Church at 100 Harbor Drive, Key Biscayne, FL 33149

The area affected by the proposed improvements includes the west end of the property that currently is occupied by a natural grass playfield. Please note that the field is operated under a joint use agreement and all permits will need to be coordinated through the Church leadership.

2.6 WORK COVERED BY CONTRACTOR DOCUMENTS:

- A. The scope of the work shall incorporate the following specific areas of work as well as all miscellaneous construction necessary to accomplish these major goals.
- B. Clearing and grubbing of existing ground surface including miscellaneous demolition.
 - 1. All site areas shall be stripped of existing vegetation and ground cover except as otherwise noted in the Landscape Plans. The DESIGN / BUILD FIRM shall perform all clearing, grubbing, root-raking, and necessary clean-up operations in connection with the construction of the work and its related sitework.

2. The work shall consist of the removal and disposal of trees, stumps, roots, limbs, brush, fences, asphalt, sod, concrete, etc. from all project areas as designated on the drawings, specified herein, and as directed by the VILLAGE and/or its representatives on the site.
 3. Completely perform Depths of Removal of Roots, Stumps, and Other Debris. In all areas where excavation is to be performed, remove roots and other debris to a depth of 12 inches [300 mm] below the ground surface. Remove roots and other debris from all excavated material to be used in the construction roadway base. Plow the surface to a depth of at least 6 inches [150 mm], and remove all roots thereby exposed to a depth of at least 12 inches [300 mm]. Completely remove and dispose of all stumps within the roadway right-of-way.
 4. All topsoil and vegetation shall be removed from the site and disposed of by the DESIGN / BUILD FIRM
 5. The DESIGN / BUILD FIRM shall remove and dispose of all refuse, asphalt pavement, concrete pavement, glass, metal, stone, plaster, lumber, paper materials, and any and all trash found in clearing as directed by the VILLAGE and/or its representatives.
 6. It should be noted that the site contains a layer of underlying organic soils as identified in the provided Geotechnical Report. The City has determined that the organic soils will need to remain in place under the turf areas with the exception of the perimeter drains. All perimeter trenches should penetrate through the organic soils to a depth necessary to eliminate the organic soils beneath the drains. Furthermore, all unsuitable material shall be removed from beneath any drainage structure. The DESIGN / BUILD FIRM should increase subgrade preparation to (ie rolling and compacting) in a way to increase the consolidation and stability of the underlying organic soils.
 7. Remove waste material, including unsatisfactory soil, trash, and debris, and legally dispose of it off Owner's property.
- C. Protect existing trees within the project area and along adjacent boundaries in accordance with the preliminary plans and subsequent permit requirements.
1. Prepare a Tree Disposition Plan regarding the removal and/or replacement of existing trees within the turf area.
 2. Tree Disposition Plan shall address protection of trees and roots of existing trees along the perimeter of the turf area
 3. Apply, process and achieve a permit through the Village of Key Biscayne Planning and Zoning office for tree removal
 4. Any tree canopy mitigation requirements will be managed by the Village with off-site planting.
 5. Provide a root barrier along the entire perimeter of the concrete curb to avoid future intrusion of roots beneath the field. Root barrier shall be a fabric sheeting product with embedded herbicide nodules. The fabric shall be 24" minimum overlapping 6" with curb and extending 18" below the curb. Product to be BioBarrier Weed Control Barrier or approved equal.

D. Removal and disposal of excess fill off site to achieve the necessary subgrade elevations.

1. Excavate site as needed to achieve the subgrade elevations necessary for the full depth turf system
2. Excess material removal will include the excavation for perimeter drainage trenches and curb areas.
3. Disposal: Transport surplus satisfactory soil to designated storage areas on Owner's property. If it is determined that the Owner does not want the excess satisfactory soil, the DESIGN / BUILD FIRM shall dispose of it off site.
4. Remove waste material, including unsatisfactory soil, trash, and debris, and legally dispose of it off Owner's property.
5. Compact subgrade to a minimum relative density of 95%.

E. Perimeter fencing

1. Design and construct new fencing perimeter around the entire site.
 - a Fencing along all perimeters shall be 6' Black Powder Coated Galvanized Steel Picket Fence
 - b Implement gates as follows
 - i. One 4' gate in the north face adjacent to the ball screen
 - ii. One 5' gate in the east face in alignment with the crosswalk from the school
 - iii. Double 4' gates in the south face at locations designated on the plans
 - iv. One 14' wide vehicle entry gate in the south face
 - v. All fence gates to be equipped with latching and locking mechanisms for security
 - c Cast miscellaneous 4" thick concrete sidewalks connecting from the back of field curbing to the adjoining walkway as shown in the preliminary documents
 - d Cast miscellaneous 6" thick concrete sidewalk connecting the vehicle gate from the curb to the back of adjoining sidewalk.
 - e In the central part of the north and south perimeter, provide a screen ball stop to prevent balls from leaving the playing field. The ball stop shall 45' tall by 50' wide. Product to be Sportsfield Specialties or approved equal.
 - f Provide a single free standing powder coated galvanized steel post for the mounting of the lighting protection system outlined below.
 - g Fencing and Ball Stops shall be in accordance with the most recent edition of the Florida Building Code High Velocity Hurricane Zones Section 2224.

- h All posts, foundations, bracing, etc. should be designed as part of the overall project designed and presented on signed and sealed plans or shop drawings
 - i Refer to preliminary plan documents for additional details
- F. Perimeter curb with nailer
 - 1. A perimeter curb 12"x12" in diameter shall be cast around the turf area
 - 2. Curb shall sandwich the fence posts with the fence posts at the centerline of curb
 - 3. Curb shall be reinforced with 4-#5 reinforcing bars with two bars on each side of the fence posts.
 - 4. Implement expansion joints or hand tooled joints at each fence post to control transverse cracking in the curb
- G. Provisions of a full depth artificial turf system to include filter fabric, drainrock, finish stone, pads, turf, infill and striping
 - 1. Compact existing subgrade to limit settlement
 - 2. Provide a filter fabric across the compacted existing subgrade. The geotextile fabric shall be Mirafi 180N by Tencate or approved equal
 - 3. Provide an underdrain system beneath the artificial turf field as designed by the DESIGN/BUILD firm and design engineer. Underdrains should typically be horizontal flat drains laid in a herringbone pattern at 20' maximum on center. Flat drains should overlap into the perimeter drains.
 - 4. Provide exfiltration trenches around the full perimeter of the field. Trenches shall be minimum 36" wide filled with drainrock and piping. drainrock shall be contiguous with the underlying field to provide maximum drainage flow. Piping shall be minimum 12" ADS N12 HDPE piping or approved equal.
 - 5. Exfiltration trench depth shall extend downward to a depth to ensure that all organic soils are removed from beneath the trench and that the trench penetrates into the substrate below a minimum of 12" for maximum drainage benefits
 - 6. Provide corner basins connecting all perimeter piping. Basins shall be 18" Nyloplast basins or approved equal. Basins shall be buried below the turf with the tops set to be exactly flush with the top of the rock surface. Provide a 4"x4" tick mark in the turf to mark the location of the basin.
 - 7. Provide two additional basins to the outside of the field on opposite ends of the field. These basins shall be open to the surface to act as air vents for pressure relief.
 - 8. The Infilled Synthetic Turf Contractor and Turf Vendor shall inspect the subgrade and drainage system to verify their acceptance of installation and condition and shall confirm acceptance in writing. Commencement of subsequent installation in a given work area indicates acceptance of underlying substrates and systems.

9. Provide an artificial turf system complete with backing, fibers, infill, padding and striping to conform to the following.
 - a The DESIGN / BUILD FIRM shall propose a Turf Product that will best meet the needs of the Village for the use, maintenance, playability, durability and safety of the field. The Village will evaluate the offered turf as part of its scoring as outlined elsewhere in this document. Vendors are expected to offer their best available products that fit the criteria outlined as this will weigh heavily in the evaluation.
 - b The Vendor shall fully outline the design of the proposed turf product including
 - i. Fiber type, shape and composition
 - ii. Fiber length
 - iii. Infill components
 - iv. Infill Layering
 - v. Backing strength, adherence and drainage criteria
 - vi. Resiliency and/or shock pads if required
 - vii. Overall drainage characteristics
 - c The Vendor shall provide additional data to assist the Village in evaluating the product
 - i. Company history and reputation
 - ii. Nationally recognized clients and users
 - iii. Product testing protocols
 - iv. Additional industry research
 - v. Unique design protocols and patents
 - vi. References for current users of the product
 - vii. References to any nearby installations available for review
 - d As an additive bid alternate, the Vendor shall offer an alternate infill topping designed to improve the heat performance of the overall product. The Vendor shall provide documentation on the product to include all of the proposed benefits to the Village to assist in evaluation of the product.
 - e The turf is anticipated to be utilized for Soccer and Rugby. The turf shall be striped for soccer as shown in the enclosed drawings but rugby striping is not required. However, the system shall adhere to the requirements of the One Turf system as outlined by World Rugby.
 - f Rolls shall be a minimum of 15 feet wide. Rolls shall be of sufficient length to cover from sideline to sideline without head seams.
 - g The Infilled Synthetic Turf Contractor shall provide sewn or glued seams at all turf panels in accordance with the accepted product data approved by the County. The Infilled Synthetic Turf Contractor is informed that all seams shall be flat and indiscernible upon installation. Shearing of the fiber pile will not be permitted as a

means of achieving a flat seam. Infilling shall not commence until the Owner's Representative is satisfied that all seams are flat.

- h The majority of field striping shall be factory sewn into the turf (ie tufted-in). Only secondary markings may be in-laid in the field with shearing and glue. Shop drawings shall properly identify the striping intentions.
- i Infill Materials shall be uniformly filled to a depth which leaves no more than 1/2" of exposed pile after settlement and consists of a free draining homogenous mixture of silica sand and recycled rubber granules meeting the criteria outlined below.
- j If Silica sand shall be produced specifically for infill purposes and shall meet the following criteria:
 - i. Hardness 7.0 Mohs
 - ii. Moisture Content <0.1% per ASTM C-566
 - iii. Specific Gravity 2.65 g/cm3 per ASTM C-128
 - iv. Aerated Bulk Density 92-102 lb/ft2 per ASTM C-29
 - v. Compacted Bulk Density 98-110 lb/ft2 per ASTM C-29
- k The Infilled Synthetic Turf System shall be tested for G-Max rating per ASTM F355-A. A G-Max rating of less than 75 or in excess of 125 at any time from acceptance through the end of the Warranty Period is unacceptable. The DESIGN / BUILD FIRM shall test the finished system for compliance prior to completion and provide a certified test report to the Village.
- l If SBR Rubber: Granules shall be processed recycled rubber containing no dust or contaminants. Rubber shall work to hold the infill sand in suspension.
- m Samples of the homogeneously blended infill and individual sand and rubber materials shall be submitted to the Owner's Representative for review.
- n The DESIGN / BUILD FIRM shall include in the contract the purchase of a piece of tow-behind maintenance equipment recommended by the manufacturer for regular grooming and sweeping.
- o Approved Infilled Synthetic Turf System Contractors include:
 - i. Fieldturf Tarkett, Calhoun Ga (800) 724-2969
 - ii. AstroTurf, Dalton, GA (800) 723-8873
 - iii. Approved Equal as determined solely by the Village based on submitted data prior to bid
- p Any vendor beyond those listed above wishing to seek approval shall submit product data in advance of the bid date for evaluation and approval. Product data

shall include all of the characteristics outlined above as well as proof of relevant experience as outlined elsewhere in this document. The determination of acceptance as an “or equal” is solely at the discretion of the Village.

H. Rugby goal post with replaceable cover

1. Provide two removal rugby goal posts for the field. 32’ feet high with integrated hinge for removal. Model number RG32H by Sports field Specialties Inc or approved equal
2. Provide four Rugby Goal Access Frame Kits for accessing the removable rugby goal bases and for providing the closure turf for the two conditions of goal in or goal out. Model number RG4570 by Sports field Specialties Inc or approved equal
3. Foundation for Rugby Pole system to be designed and included in final plans or shop drawings. Design to be signed and sealed and be in accordance with Florida Building Code 2023
4. Set the access frame kits with an additional 2 cubic feet of drain rock for the drain stub to drain the box.

I. Existing lightning detection system

1. The current field has a lightning detection system on the northern perimeter. The system is mounted on the ball screen posts
2. The DESIGN / BUILD FIRM shall carefully take down and store the system for later installation
3. As outlined above, a free standing post shall be installed behind the north fence for re-mounting of the system.
4. Reinstallation shall include re-establishing the electrical connection including necessary handholds, conduits, wiring, disconnects, permitting, electricians.
5. Reinstallation shall include any miscellaneous connectors necessary for the connection.

J. Irrigation and Sod

1. The artificial turf area will not be irrigated. Remove all piping and heads from the turf area and cap off piping accordingly.
2. The area around the west and south of the field will receive new sod and irrigation connected to the existing system
3. The irrigation main running along the east side interferes with the fenceline and the edge of turf. Replace this main in kind and reconnect existing valves servicing zones areas to the east of the field.

4. The irrigation main in the south end of the park shall be maintained and utilized in the reconfiguration of the irrigation to service the remaining part of the park.
5. Supply new zone valved, distribution piping and heads to provide complete coverage to the remaining sod areas. Heads should be organized along the field spraying away to minimize overspray onto the field. Heads and zones shall be in accordance with the brand preferred by the City
6. The irrigation timeclock shall be reconnected and reprogrammed for the new zone arrangement.
7. The irrigation time clock is currently mounted on the building face across from the east fence of the field. The time clock system shall be relocated to the sportslighting electrical panels located at the northeast corner of the field. The panels are anticipated to be require a stepdown transformer and sub-panel for the revised voltage needed. Re-route all zone wiring to the new location as needed.
8. Provide sodding for all areas not receiving artificial turf. Sod shall be Tifway Bermuda.

K. Existing Utilities

1. Existing utilities are noted for the turf area in the survey and preliminary plans. These utilities are noted for informational purposes only and are not guaranteed. The DESIGN / BUILD FIRM shall take additional measures to electronically and physically locate the utilities within the field area.
2. Electrical conduits and wiring for the sports lighting runs within the field area and must remain in place under the turf. Design shall work around these facilities to eliminate conflicts. Construction must protect and preserve the electrical elements.
3. All lighting and other elements should be tested for full function before and after construction
4. Irrigation runs within the area of the field conversion but will no longer be required. The heads, distribution lines and mains no longer needed will be removed and disposed of. Connection points will be capped off at the field perimeter. DESIGN / BUILD FIRM will work with the OWNER to reprogram the irrigation system accordingly.
5. Existing drainage lines with yard drains along the west perimeter of the project shall be removed and replaced with the perimeter drainage designed into the field

2.7 STANDARD SPECIFICATIONS:

- A. Except as noted, all materials and workmanship shall meet the requirements of the attached standard construction specifications:

2.8 SITE INVESTIGATION:

- A. The DESIGN / BUILD FIRM, by virtue of signing the Agreement, acknowledges that it has satisfied itself to the nature and location of the WORK, the general and local conditions including, but not restricted to: those bearing upon transportation; disposal, handling and storage of materials, availability of water and electric power; access roads to the site; the conformation and conditions of the WORK area; and the character of equipment and facilities needed preliminary to and during the performance of the WORK. Failure on the part of the DESIGN / BUILD FIRM to completely or properly evaluate the site conditions shall not be grounds for additional compensation. Failure by the DESIGN / BUILD FIRM to acquaint itself with all available information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the WORK. The VILLAGE assumes no responsibility for any conclusions or interpretations made by the DESIGN / BUILD FIRM on the basis of the information made available by the VILLAGE.
- B. Soil boring information has been furnished to the DESIGN / BUILD FIRM for its general information. Such data is not warranted to be correct; the DESIGN / BUILD FIRM, by virtue of signing the Agreement, acknowledges that it has satisfied itself as to the nature and extent of soil and (underground) water conditions on the project site. No additional payment will be made to the DESIGN / BUILD FIRM because of differences between actual conditions and those shown by the boring logs.

2.9 WORK BY OTHERS:

- A. Concurrent work by Other Contractors. The DESIGN / BUILD FIRM'S attention is directed to the fact that work may be conducted at the site by other Contractors during the performance of the WORK under this Contract. The DESIGN / BUILD FIRM shall conduct its operations so as to cause little or no delay to work of such other Contractors and shall cooperate fully with such Contractors to provide continued safe access to their respective portions of the site, as required to perform work under their respective contracts.
- B. Interference With Work on Facilities By VILLAGE. The DESIGN / BUILD FIRM shall cooperate fully with all maintenance forces of the VILLAGE or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities which interfere with the progress of the WORK, and shall schedule the WORK so as to minimize interference with said relocation, altering, or other rearranging of facilities.

2.10 WORK SEQUENCE AND PHASING:

- A. The DESIGN / BUILD FIRM shall schedule and perform the WORK in such a manner as to result in the least possible disruption to the public's use of the remainder of the park facilities. Prior to commencing with the WORK, the DESIGN / BUILD FIRM shall have obtained all required permits and permissions. The DESIGN / BUILD FIRM shall also deliver written notice to the VILLAGE of all planned disruption to sidewalks, driveways, and utilities within the park a minimum of 72 hours in advance of any planned disruption. In addition, all notifications of planned disruptions shall be coordinated with the VILLAGE's Capital Improvement Project Office (CIP) and the DESIGN CRITERIA PROFESSIONAL.

- B. The DESIGN / BUILD FIRM shall sequence the WORK so as to minimize impact on residents and other users of the park. A sequencing plan shall be required to be submitted and approved by the VILLAGE prior to start of construction.
- C. The DESIGN / BUILD FIRM shall consider that the field is shared by the St Agnes Catholic Church and St Agnes Academy. The DESIGN / BUILD FIRM shall exercise extreme caution in securing the site and sequencing the work for the overall protection of the students, as well as for all park users. No access will be allowed to church/school property and any time without prior written consent by the VILLAGE and Church. All requests for such consent shall be directed through VILLAGE staff associated with the project.
- D. Due to the critical time frame needed for completion of the project, it is expected that the DESIGN / BUILD FIRM might employ multiple crews for each phase of work so that construction can be carried on concurrently on any and all portions of the facility. The phasing plan shall also incorporate the following as a minimum:
 - 1. The WORK shall be sequenced so all necessary testing and inspections can be performed intermittently without disruption to the remainder of the work. It is the DESIGN / BUILD FIRM'S responsibility to schedule all necessary milestone events accordingly and incorporate those milestones into the schedule and the phasing plan. The phasing plans shall clearly illustrate the DESIGN / BUILD FIRM's WORK intent. If necessary, each phase shall be broken down into sub-phases that allow work on different areas simultaneously.
 - 2. Access for emergency vehicles shall be maintained to all portions of the park.
 - 3. The DESIGN / BUILD FIRM shall coordinate with the appropriate local agencies and private companies, which provide services to the school, park and local residents, as required in order to provide uninterrupted bus, school bus, garbage collection, mail delivery and other service during the WORK period. A construction traffic maintenance plan indicating proposed on-site pedestrian and vehicular routes, shall be submitted to the VILLAGE for approval prior to start of construction.
 - 4. Transportation provisions for handicapped or disabled residents shall be made by the DESIGN / BUILD FIRM if construction prevents access to any portion of the park outside of the WORK zone.
 - 5. Materials and equipment shall be stored in a fenced or otherwise enclosed area during non-working hours. The DESIGN / BUILD FIRM shall store material on site only within designated areas shown on the Construction Documents. It is anticipated that a certain portion of the adjacent parking lot shall be dedicated for use by the DESIGN / BUILD FIRM for material storage, temporary trailers and containers, parking and vehicular access to the work zone.
 - 6. Street and Park lighting shall be maintained in operation at all times during construction. The DESIGN / BUILD FIRM shall provide a temporary power supply and/or temporary lighting, if necessary, to maintain lighting conditions meeting the existing lighting conditions.
 - 7. The DESIGN / BUILD FIRM shall develop a staging plan for review and acceptance by the DESIGN CRITERIA PROFESSIONAL. The plan shall provide for the staging of necessary

equipment, material and field operation trailers. The DESIGN / BUILD FIRM shall restrict parking for its employees and subcontractors within the approved staging areas of the work zone. If necessary, the DESIGN / BUILD FIRM shall provide additional off-site storage, staging and parking as necessary at no additional cost to the contract. DESIGN / BUILD FIRM shall maintain all staging areas until the project is completed.

2.11 TRAFFIC CONTROL:

- A. The DESIGN / BUILD FIRM shall submit a conceptual Traffic Control Plan at the Pre-Construction Conference. This preliminary plan shall identify the phases of construction that the DESIGN / BUILD FIRM plans to proceed with and identify traffic flows throughout the park during each phase. The DESIGN / BUILD FIRM will be required to submit a detailed plan showing each phase's Maintenance and Protection Plan prior to starting construction of any phase.
- B. The Maintenance of Traffic Plans shall be prepared in accordance the Current Edition of the Florida Department of Transportation Standard Specification for Road and Bridge Construction, Florida Department of Transportation Design Standard for Road and Bridge Construction, and the Miami-Dade County Public Works Department Manual for Design and Construction.
- C. The "Maintenance of Traffic" plan shall specifically address pedestrian traffic as well as vehicular traffic.
- D. The DESIGN / BUILD FIRM, at all times, shall conduct the WORK in such a manner as to insure the least obstruction to traffic as is practical. Convenience of the general public and of the residents adjacent to the work shall be provided for in a satisfactory manner, as determined by the VILLAGE.
- E. Fire hydrants on or adjacent to the WORK shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within twenty (20) feet of any such hydrant.
- F. All existing signs and pavement markings shall be maintained in operating conditions at all times during construction.
- G. The DESIGN / BUILD FIRM shall furnish a sufficient number of protective devices to protect and divert the vehicular and pedestrian traffic from working areas closed to traffic or pedestrian access, or to protect any new work. Failure to comply with this requirement will result in the shutdown of the work until the DESIGN / BUILD FIRM provides the necessary protection.

2.12 WORK SCHEDULE:

- A. Substantial Completion: Project Substantial Completion, as defined in the General Conditions, shall be achieved within 180 calendar days of the Notice-to-Proceed.
- B. Final Completion: Project Final Completion, as defined in the General Conditions, shall be achieved within 270 calendar days of the Notice-to-Proceed.
- C. Time is of the essence in completing this project. Because time is of the essence, the DESIGN / BUILD FIRM shall commit the necessary resources to this project to complete it in a timely manner. Note that a typical workday will be based on hours between 8:00 am and 5:30 pm, Monday through Friday, excluding holidays. If the DESIGN / BUILD FIRM wishes to work longer

hours than those specified herein, it shall request so, in writing, by Friday of each week. Work completed at other than regular working hours should be easily observable by VILLAGE and DESIGN CRITERIA PROFESSIONAL staff on the subsequent day. If the DESIGN / BUILD FIRM proposes to complete work that will be “covered up” after normal working hours, it shall reimburse VILLAGE for costs associated with the observation of such work.

- D. The Construction progress will be measured with the construction schedule submitted by the DESIGN / BUILD FIRM. If the DESIGN CRITERIA PROFESSIONAL and VILLAGE determine that the progress of the DESIGN / BUILD FIRM does not meet the Critical Path Method (CPM) as specified in the Section entitled “Schedules and Reports”, the DESIGN / BUILD FIRM will be required to commit those resources necessary to ensure the completion of the project in a timely manner. All costs incurred to implement measures to complete the WORK in a timely manner will be borne by the DESIGN / BUILD FIRM.

E. SCHEDULE TRACKING

1. DESIGN / BUILD FIRM shall submit scheduling information monthly as a minimum. Typically, schedule updates will take place with the monthly request for payment
2. No separate payment shall be made for preparation and/or revision of the schedule.
3. If the project falls behind, the schedule shall address efforts to get the project back on target for on-time completion.

2.13 COMPUTATION OF CONTRACT TIME:

- A. It is the DESIGN / BUILD FIRM's responsibility to provide clear and convincing documentation to the DESIGN CRITERIA PROFESSIONAL as to the effect additional WORK will have with respect to additional contract time extension requirements. If additional quantities of WORK can be carried out concurrent with other existing construction activities without disrupting the critical path of the project, then no contract time extension will be granted. The DESIGN / BUILD FIRM is obligated to provide documentation to the DESIGN CRITERIA PROFESSIONAL if additional elements of WORK affect the critical path of the project. If WORK set forth in the original scope of the project is deleted, the contract time may be reduced. This contract is a calendar day contract. While the DESIGN / BUILD FIRM may be granted time to suspend WORK operations for vacations or holidays, contract time will not be suspended. During suspensions, the DESIGN / BUILD FIRM shall be responsible for all maintenance of traffic and liability without additional compensation from the VILLAGE. In addition, DESIGN / BUILD FIRM shall comply with timely notice requirements as specified in the General Conditions.

2.14 PRE-CONSTRUCTION CONFERENCE:

- A. Thirty (30) days prior to the start of construction activities, a Pre-Construction Conference will be held between the DESIGN / BUILD FIRM, DESIGN CRITERIA PROFESSIONAL, VILLAGE, other interested agencies, representatives of utility companies and others affected by the WORK. The time and place of this conference will be set by the VILLAGE. The DESIGN / BUILD FIRM shall bring to the conference a copy of its preliminary WORK schedule for review and comment by the DESIGN CRITERIA PROFESSIONAL and the VILLAGE. The schedule shall include sequences of operation and time schedule. The final schedule will be due as noted in the Section entitled

“Schedules and Reports”. The WORK shall be performed in accordance with such schedule or approved amendments thereto.

2.15 UTILITY LOCATIONS:

- A. To the extent possible, the existing utility lines in the project area are shown on the original design plans. However, neither the DESIGN CRITERIA PROFESSIONAL, and/or VILLAGE guarantee that all lines are shown, or that said lines are in their true location. It shall be the DESIGN / BUILD FIRM's responsibility to identify and locate all underground or overhead utility lines or equipment affected by the project. No additional payment will be made to the DESIGN / BUILD FIRM because of discrepancies in actual and plan location of utilities and damages suffered as a result thereof of lines shown on the plans.
- B. The DESIGN / BUILD FIRM shall notify the VILLAGE and any utility company involved at least thirty (30) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Bear in mind that there are many utility lines buried adjacent to the proposed work zone that feed other portions of the park. Relocation of any non-project related utilities for the convenience of the DESIGN / BUILD FIRM shall be paid for by the DESIGN / BUILD FIRM. All charges by utility companies for temporary support of their utilities and permanent utility relocations to avoid conflict shall be the responsibility of the DESIGN / BUILD FIRM and the utility company involved.
- C. The DESIGN / BUILD FIRM shall schedule and coordinate its WORK in such a manner that it is not delayed by the utility companies relocating or supporting their utilities. No compensation will be paid to the DESIGN / BUILD FIRM for any loss of time or delay.
- D. All overhead, surface or underground structures and/or utilities encountered are to be carefully protected from damage or displacement. All damage to said structures and/or utilities is to be completely repaired within a reasonable time; needless delay will not be tolerated. The VILLAGE reserves the right to remedy any damage by ordering outside parties to make repairs at the expense of the DESIGN / BUILD FIRM. All repairs made by the DESIGN / BUILD FIRM are to be made to the satisfaction of the Utility Owner and shall be inspected by a representative of the Utility Owner and the VILLAGE.
- E. Within forty-eight (48) hours before excavating, the DESIGN / BUILD FIRM should call the VILLAGE, for assistance with locating VILLAGE-owned utilities. The DESIGN / BUILD FIRM shall contact Sunshine State One Call of Florida (1-800-432-4770) for free locating service for utilities for contractors and excavators. Within forty-eight (48) hours before excavating, the DESIGN / BUILD FIRM should call Sunshine State One Call of Florida Inc., and a locator will be dispatched to the WORK location. The DESIGN / BUILD FIRM shall coordinate with the utility companies not included in the Sunshine State One Call of Florida, Inc. location service.

2.16 LINE AND GRADE:

- A. The DESIGN / BUILD FIRM shall provide vertical and horizontal control for layout of the WORK in the form of benchmarks and reference points located adjacent to the WORK. From these controls provided, the DESIGN / BUILD FIRM shall develop and make all detailed surveys needed for construction and shall establish all working points, lines and elevations necessary to perform

the WORK. This surveying WORK shall be supervised by a Professional Land Surveyor registered in the State of Florida.

2.17 PROTECTION AND RESTORATION OF SURVEY MONUMENTS:

- A. The DESIGN / BUILD FIRM shall carefully protect from disturbance all survey monuments, stakes and benchmarks, whether or not established by it, and shall not remove or destroy any surveying point until it has been properly witnessed by a representative of the VILLAGE. All major survey monuments that have been damaged by the DESIGN / BUILD FIRM such as section corners, 1/4 section corners, property corners or block control points, shall be replaced at the DESIGN / BUILD FIRM's expense with markers of a size and type approved by the VILLAGE. Their replacement shall be under the supervision of a Florida Registered Land Surveyor. The DESIGN / BUILD FIRM shall document survey monuments prior to construction and submit the location and type of all markers to the VILLAGE.

2.18 EQUIPMENT / MATERIAL STORAGE:

- A. All equipment necessary and required for the proper construction of all work shall be on the construction site, in first-class working conditions.
- B. Staging areas shall be maintained secure from access by pedestrians, particularly students and park users. The DESIGN / BUILD FIRM shall secure the staging area with temporary fencing and gates designed to separate equipment and materials from non-work personnel. The staging area shall be completely restored to its original condition once construction is complete at no additional cost to the VILLAGE.
- C. Materials shall not be kept exposed for long periods of time prior to being incorporated into the construction of the project.

2.19 OWNERSHIP OF EXISTING MATERIALS:

- A. All materials removed or excavated from the job site shall remain the property of the VILLAGE until released by the VILLAGE, at which time it shall become the property of the DESIGN / BUILD FIRM, who shall dispose of it in a manner, complying with all applicable jurisdictional requirements.

2.20 EXCESS MATERIAL:

- A. All vegetation, debris, concrete or other unsuitable materials shall be disposed of off-site in approved areas provided by the DESIGN / BUILD FIRM. Storage of unsuitable materials on site shall not be allowed. All unsuitable materials are to be removed from the work site as they are generated. Any excess material desired to be retained by the VILLAGE shall be delivered by the DESIGN / BUILD FIRM to a designated area within a 5-mile radius of the project, at no extra cost to the VILLAGE.

2.21 AUDIO-VISUAL PRECONSTRUCTION RECORD:

- A. General:

1. The DESIGN / BUILD FIRM shall produce a color audio-video tape prepared by a responsible commercial firm known to be skilled and regularly engaged in the business of preconstruction color audio video tape documentation.
2. The video shall be dated, and copies provided to the VILLAGE and DESIGN CRITERIA PROFESSIONAL.

2.22 ENVIRONMENTAL PROTECTION

- A. The DESIGN / BUILD FIRM shall furnish all labor and equipment and perform all WORK required for the prevention of environmental pollution during and as a result of the WORK under this contract. For the purpose of this contract, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life, affect other species of importance to man, or degrade the utility of the environment for aesthetic and recreational purposes. The control of environmental pollution requires consideration of air, water, land and involves noise, solid waste management and management of radiant energy and radioactive materials, as well as other pollutants.
- B. The DESIGN / BUILD FIRM shall take all steps necessary to protect water quality in the connected storm water system around the project and shall utilize such additional measures as directed by the VILLAGE. Silt screens shall not be removed until earthwork activities have been completed.
- C. The DESIGN / BUILD FIRM shall implement a Stormwater Pollution Prevention Plan in accordance with the Florida Department of Environmental Protection minimum requirements. The DESIGN / BUILD FIRM shall obtain and prepare all documents necessary to obtain a Florida Department of Environmental Protection National Pollution Discharge Elimination System Permit for Construction Activities.
- D. All protection requirements covered by this subsection shall be in compliance with all applicable jurisdictional agency requirements.

2.23 BASIS OF PAYMENT

- A. Upon completion of the work, The DESIGN / BUILD FIRM's Professional Land Surveyor will provide an "As-built" and Certification verifying that the Field will meet the required conditions. This WORK shall be supervised by a Florida Licensed Registered Professional Land Surveyor. Additionally, the as-built quantities shall serve as the basis for final payment.
- B. Monthly progress payments shall be allowed and quantities shall be as agreed upon jointly by the DESIGN / BUILD FIRM, the VILLAGE and the DESIGN CRITERIA PROFESSIONAL. In the event of disputes as to quantity, the VILLAGE shall make the final determination. Progress payments shall be based on percentages of items completed at specific cutoff dates as per the approved schedule of values submitted by the DESIGN / BUILD FIRM at the start of the project.
- C. The DESIGN / BUILD FIRM shall not be permitted to invoice for quantities of WORK beyond those contained in the contract and all previously approved change orders. Invoice for partial payment shall not be accepted by DESIGN CRITERIA PROFESSIONAL as complete without the following:
 1. Certificate of Payment to Subcontractors.

2. Updated Construction Schedule
3. Release of Liens from Subcontractors
4. Invoice for Stored Materials

2.24 APPLICATION FOR PAYMENT FOR STORED MATERIALS

- A. The DESIGN / BUILD FIRM is advised that the VILLAGE will pay for stored materials if approved in advance at the time the schedule of values is submitted. Only critical materials and equipment shall be considered acceptable for partial payments.

2.25 REPORTING OF DAMAGE CLAIMS

- A. The DESIGN / BUILD FIRM shall keep the DESIGN CRITERIA PROFESSIONAL informed of any damage claims made against the DESIGN / BUILD FIRM during the construction period. All claims for automobile damage, property damage and/or bodily injury will be reported to the VILLAGE within 24 hours of receipt of notice. DESIGN / BUILD FIRM will conduct a timely investigation of the claim and determine if they will honor claim and/or report to their insurance carrier and provide periodic updates, each quarter, until final disposition of claims. The DESIGN / BUILD FIRM will advise the VILLAGE in writing of its decision/referral to carrier.

2.26 PERMITS

- A. It shall be the DESIGN / BUILD FIRM's responsibility to secure all permits of every description required to initiate and complete the work under this Contract.
- B. The DESIGN / BUILD FIRM shall furnish signed and sealed sets of Contract Documents for permit use as required.
- C. The DESIGN / BUILD FIRM shall furnish to the DESIGN CRITERIA ENGINEER and VILLAGE copies of all permits prior to commencement of work requiring permits.
- D. The DESIGN / BUILD FIRM shall be responsible for procuring extension permits as required throughout the duration of the project. An allowance for Permit Fees shall be included in the approved Schedule of Values.

2.27 DIMENSIONS OF EXISTING FACILITIES

- A. Where the dimensions and locations of existing improvements are of critical importance in the installation or connection of new work, the DESIGN / BUILD FIRM shall verify such dimensions and locations in the field prior to the fabrication and/or installation of materials or equipment which are dependent on the correctness of such information.

END OF SECTION

Exhibit B

CSR Athletic Construction

Proposed Design Build Schedule St Agnes Park Turf Field

Date printed: Mon 12/23/24

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Successors	Total Slack	
1		Award From Village	1 day	Thu 1/16/25	Thu 1/16/25		2	3 days	
2		Design and permitting	60 days	Fri 1/17/25	Thu 4/10/25	1	4,3	3 days	
3		Shop Drawings and material acquisition	33 days	Fri 4/11/25	Tue 5/27/25	2	4FS-30 days	3 days	
4		Mobilization	3 days	Wed 4/16/25	Fri 4/18/25	2,3FS-30 days	5	3 days	
5		Construction Fence and Erosion Control	5 days	Mon 4/21/25	Fri 4/25/25	4	6	3 days	
6		Demolition	5 days	Mon 4/28/25	Fri 5/2/25	5	7	3 days	
7		Demuck & Rough Subgrade	8 days	Mon 5/5/25	Wed 5/14/25	6	8,9	3 days	
8		Field Trunkline Drainage	10 days	Thu 5/15/25	Wed 5/28/25	7	10	10 days	
9		Perimeter Curb	7 days	Thu 5/15/25	Fri 5/23/25	7	16,17,14	3 days	
10		Laser Grade and Filter Cloth	5 days	Thu 5/29/25	Wed 6/4/25	8	11,12	10 days	
11		Open Graded Base	5 days	Thu 6/5/25	Wed 6/11/25	10	13,14	10 days	
12		Flat Panel Drain	3 days	Thu 6/5/25	Mon 6/9/25	10	13	13 days	
13		Finishing Stone	4 days	Thu 6/12/25	Tue 6/17/25	11,12	15	11 days	
14		Nailer Board	5 days	Thu 6/12/25	Wed 6/18/25	9,11	15	10 days	
15		Turf Installation	14 days	Thu 6/19/25	Tue 7/8/25	14,13	18	10 days	
16		Sidewalk Installation	3 days	Mon 5/26/25	Wed 5/28/25	9		54 days	
17		Perimeter Fence	10 days	Mon 5/26/25	Fri 6/6/25	9	20,19	3 days	
18		Install Goals	4 days	Wed 7/9/25	Mon 7/14/25	15	25	10 days	
19		Install Lightning Detection	4 days	Mon 6/9/25	Thu 6/12/25	17	21	14 days	
20		Relocate Irrigation Control and Reconstruct Irrigation System	15 days	Mon 6/9/25	Fri 6/27/25	17	21	3 days	

CSR Athletic Construction

Proposed Design Build Schedule
St Agnes Park Turf Field

Date printed: Mon 12/23/24

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Successors	Total Slack	Qtr 1, 2025											
									Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep		
21		Grade perimeter	3 days	Mon 6/30/25	Wed 7/2/25	20,19	22	3 days	Qtr 3, 2025 Grade perimeter 6/30 7/2											
22		Import Topsoil	2 days	Thu 7/3/25	Fri 7/4/25	21	23FS-2 days	3 days	Import Topsoil 7/3 7/4											
23		Place & Fine Grade Topsoil	3 days	Thu 7/3/25	Mon 7/7/25	22FS-2 days	24	3 days	Place & Fine Grade Topsoil 7/3 7/7											
24		Bermuda Sod	1 day	Tue 7/8/25	Tue 7/8/25	23	27,25	3 days	Bermuda Sod 7/8 7/8											
25		Substantial Completion	1 day	Tue 7/15/25	Tue 7/15/25	24,18	26	10 days	Substantial Completion 7/15 7/15											
26		Punchout	10 days	Wed 7/16/25	Tue 7/29/25	25	28	10 days	Punchout 7/16 7/29											
27		Grow In For Sod	22 days	Wed 7/9/25	Thu 8/7/25	24	28	3 days	Grow In For Sod 7/9 8/7											
28		Final Completion	0 days	Wed 8/13/25	Wed 8/13/25	27,26		0 days	Final Completion 8/13 8/13											

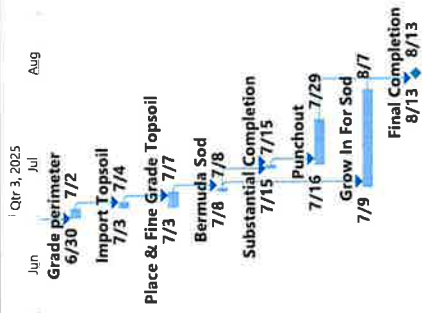


EXHIBIT "C"

AMORTIZATION SCHEDULE FOR TURF IMPROVEMENTS

10-Year Term Commencing February __, 2025

Total Cost of Improvements: Starting Balance of \$1,768,827.00

Month	Interest	Principal	Ending Balance
Year 1			
1			
February, 2025	\$0.00	\$14,740.23	\$1,754,086.78
2	\$0.00	\$14,740.23	\$1,739,346.55
3	\$0.00	\$14,740.23	\$1,724,606.33
4	\$0.00	\$14,740.23	\$1,709,866.10
5	\$0.00	\$14,740.23	\$1,695,125.88
6	\$0.00	\$14,740.23	\$1,680,385.65
7	\$0.00	\$14,740.23	\$1,665,645.43
8	\$0.00	\$14,740.23	\$1,650,905.20
9	\$0.00	\$14,740.23	\$1,636,164.98
10	\$0.00	\$14,740.23	\$1,621,424.75
11	\$0.00	\$14,740.23	\$1,606,684.53
12	\$0.00	\$14,740.23	\$1,591,944.30
January 2026			
End of Year 1			

Year 2			
13			
February 2026	\$0.00	\$14,740.23	\$1,577,204.08
14	\$0.00	\$14,740.23	\$1,562,463.85
15	\$0.00	\$14,740.23	\$1,547,723.63
16	\$0.00	\$14,740.23	\$1,532,983.40
17	\$0.00	\$14,740.23	\$1,518,243.18
18	\$0.00	\$14,740.23	\$1,503,502.95
19	\$0.00	\$14,740.23	\$1,488,762.73
20	\$0.00	\$14,740.23	\$1,474,022.50
21	\$0.00	\$14,740.23	\$1,459,282.28
22	\$0.00	\$14,740.23	\$1,444,542.05
23	\$0.00	\$14,740.23	\$1,429,801.83
24			
January 2027	\$0.00	\$14,740.23	\$1,415,061.60
End of Year 2			
Year 3			
25			
February 2027	\$0.00	\$14,740.23	\$1,400,321.38
26	\$0.00	\$14,740.23	\$1,385,581.15
27	\$0.00	\$14,740.23	\$1,370,840.93
28	\$0.00	\$14,740.23	\$1,356,100.70

29	\$0.00	\$14,740.23	\$1,341,360.48
30	\$0.00	\$14,740.23	\$1,326,620.25
31	\$0.00	\$14,740.23	\$1,311,880.03
32	\$0.00	\$14,740.23	\$1,297,139.80
33	\$0.00	\$14,740.23	\$1,282,399.58
34	\$0.00	\$14,740.23	\$1,267,659.35
35	\$0.00	\$14,740.23	\$1,252,919.13
36 January 2028	\$0.00	\$14,740.23	\$1,238,178.90

End of Year 3

Year 4			
37 February 2028	\$0.00	\$14,740.23	\$1,223,438.68
38	\$0.00	\$14,740.23	\$1,208,698.45
39	\$0.00	\$14,740.23	\$1,193,958.23
40	\$0.00	\$14,740.23	\$1,179,218.00
41	\$0.00	\$14,740.23	\$1,164,477.78
42	\$0.00	\$14,740.23	\$1,149,737.55
43	\$0.00	\$14,740.23	\$1,134,997.33
44	\$0.00	\$14,740.23	\$1,120,257.10
45	\$0.00	\$14,740.23	\$1,105,516.88
46	\$0.00	\$14,740.23	\$1,090,776.65
47	\$0.00	\$14,740.23	\$1,076,036.43

48			
January 2029	\$0.00	\$14,740.23	\$1,061,296.20
End of Year 4			
Year 5			
49			
February 2029	\$0.00	\$14,740.23	\$1,046,555.98
50	\$0.00	\$14,740.23	\$1,031,815.75
51	\$0.00	\$14,740.23	\$1,017,075.53
52	\$0.00	\$14,740.23	\$1,002,335.30
53	\$0.00	\$14,740.23	\$987,595.07
54	\$0.00	\$14,740.23	\$972,854.85
55	\$0.00	\$14,740.23	\$958,114.62
56	\$0.00	\$14,740.23	\$943,374.40
57	\$0.00	\$14,740.23	\$928,634.17
58	\$0.00	\$14,740.23	\$913,893.95
59	\$0.00	\$14,740.23	\$899,153.72
60			
January 2030	\$0.00	\$14,740.23	\$884,413.50
End of Year 5			

Year 6			
61			
February 2030	\$0.00	\$14,740.23	\$869,673.27
62	\$0.00	\$14,740.23	\$854,933.05
63	\$0.00	\$14,740.23	\$840,192.82
64	\$0.00	\$14,740.23	\$825,452.60
65	\$0.00	\$14,740.23	\$810,712.37
66	\$0.00	\$14,740.23	\$795,972.15
67	\$0.00	\$14,740.23	\$781,231.92
68	\$0.00	\$14,740.23	\$766,491.70
69	\$0.00	\$14,740.23	\$751,751.47
70	\$0.00	\$14,740.23	\$737,011.25
71	\$0.00	\$14,740.23	\$722,271.02
72			
January 2031	\$0.00	\$14,740.23	\$707,530.80
End of Year 6			
Year 7			
73			
February 2031	\$0.00	\$14,740.23	\$692,790.57
74	\$0.00	\$14,740.23	\$678,050.35
75	\$0.00	\$14,740.23	\$663,310.12
76	\$0.00	\$14,740.23	\$648,569.90
77	\$0.00	\$14,740.23	\$633,829.67

78	\$0.00	\$14,740.23	\$619,089.45
79	\$0.00	\$14,740.23	\$604,349.22
80	\$0.00	\$14,740.23	\$589,609.00
81	\$0.00	\$14,740.23	\$574,868.77
82	\$0.00	\$14,740.23	\$560,128.55
83	\$0.00	\$14,740.23	\$545,388.32
84	\$0.00	\$14,740.23	\$530,648.10
January 2032			

End of Year 7

Year 8			
85	\$0.00	\$14,740.23	\$515,907.87
February 2032			
86	\$0.00	\$14,740.23	\$501,167.65
87	\$0.00	\$14,740.23	\$486,427.42
88	\$0.00	\$14,740.23	\$471,687.20
89	\$0.00	\$14,740.23	\$456,946.97
90	\$0.00	\$14,740.23	\$442,206.75
91	\$0.00	\$14,740.23	\$427,466.52
92	\$0.00	\$14,740.23	\$412,726.30
93	\$0.00	\$14,740.23	\$397,986.07
94	\$0.00	\$14,740.23	\$383,245.85
95	\$0.00	\$14,740.23	\$368,505.62
96	\$0.00	\$14,740.23	\$353,765.40

January 2033

End of Year 8

Year 9			
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97
\$0.00 \$14,740.23 \$339,025.17

February 2023

98
\$0.00 \$14,740.23 \$324,284.95

99
\$0.00 \$14,740.23 \$309,544.72

100
\$0.00 \$14,740.23 \$294,804.50

101
\$0.00 \$14,740.23 \$280,064.27

102
\$0.00 \$14,740.23 \$265,324.05

103
\$0.00 \$14,740.23 \$250,583.82

104
\$0.00 \$14,740.23 \$235,843.60

105
\$0.00 \$14,740.23 \$221,103.37

106
\$0.00 \$14,740.23 \$206,363.15

107
\$0.00 \$14,740.23 \$191,622.92

108
\$0.00 \$14,740.23 \$176,882.70

January 2034

End of Year 9

Year 10			
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+
-109
\$0.00 \$14,740.23 \$162,142.47

February 2034

110
\$0.00 \$14,740.23 \$147,402.25

111
\$0.00 \$14,740.23 \$132,662.02

112	\$0.00	\$14,740.23	\$117,921.80
113	\$0.00	\$14,740.23	\$103,181.57
114	\$0.00	\$14,740.23	\$88,441.35
115	\$0.00	\$14,740.23	\$73,701.12
116	\$0.00	\$14,740.23	\$58,960.90
117	\$0.00	\$14,740.23	\$44,220.67
118	\$0.00	\$14,740.23	\$29,480.45
119	\$0.00	\$14,740.23	\$14,740.22
120	\$0.00	\$14,740.23	\$-0.00
January 2035			
End of Year 10 and Term			

FOURTH AMENDMENT TO AGREEMENT
FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD

THIS FOURTH AMENDMENT TO THE AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD (this "Fourth Amendment") is entered into as of this 14th day of October, 2022 by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (the "Village") and **THE MOST REVEREND THOMAS WENSKI, ARCHBISHOP OF THE ARCHDIOCESE OF MIAMI**, his successors in office, a corporation sole (hereinafter the "Owner").

WITNESSETH:

WHEREAS, the Village and the Owner entered into that certain Agreement dated June 23, 2004 (the "Agreement") for the Village's use of the St. Agnes Catholic Church's Athletic Field; and

WHEREAS, the Village and the Owner entered into an Amendment to the Agreement on August 31, 2009 (the "First Amendment"); a Second Amendment to the Agreement on September 19, 2014 (the "Second Amendment"); and a Third Amendment to the Agreement on May 23, 2019 (the "Third Amendment"), wherein the parties modified the fees payable, the term of the Agreement, and provided for termination of the Agreement; and

WHEREAS, the Village and Owner wish to further modify the Agreement in accordance with the terms and conditions set forth herein in this Fourth Amendment to the Agreement to extend the term of the Agreement and provide for ownership rights of lighting fixtures that the Village will retrofit and upgrade on the St. Agnes Catholic Church Athletic Field;

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

2. Owner agrees that the Village has paid the annual license fee under the Agreement entitling the Village to use the St. Agnes Catholic Church's athletic field through September 30, 2022.

3. Section 3.1 of the Agreement is hereby deleted and replaced as follows:

3.1 The term of this Agreement has previously commenced and shall be extended for an additional ten (10) year period commencing on October 1, 2022 and expire at 11:59 p.m. on September 30, 2032 (the "Term").

4. Section 4 of the Agreement is hereby deleted and replaced as follows:

[Handwritten signature and date]
 Oct. 7. 2022

4. **Fees.** Beginning October 1, 2022, the Village shall pay the Owner an annual license fee of \$62,000.00 for the licenses granted to Village herein, which fee shall be paid in equal monthly installments of \$5,166.66 on the first day of each month during the Term. For any partial month during the Term, the monthly installment payment shall be prorated on a per diem basis based on the number of days in such month. The annual license fee shall increase by three percent (3%) on October 1, 2023 and each October 1st thereafter by an additional three percent (3%) over the previous year's annual license fee. The equal monthly installments will be adjusted accordingly starting in October of each year. Owner hereby directs the Village to make all payments required hereunder directly to St. Agnes Catholic Church at 100 Harbor Drive, Key Biscayne, Florida 33149. Notwithstanding the foregoing, the Village, at its sole option, may elect to pay the annual fee in one (1) annual payment provided such payment is made before October 15th of each year of the Term.

5. Section 5.3, "Athletic Field Lighting Improvements," is hereby created to read as follows:

The Village intends to retrofit and upgrade lighting equipment and/or poles on the St. Agnes Catholic Church Athletic Field (the "Improvements"). In the event that the Agreement is terminated, the Improvements installed by the Village and any related equipment shall remain the property of the Village and may be relocated at its own expense.

6. Section 8(111) of the Agreement is hereby deleted and replaced as follows:

On each day the Village uses the Athletic Field, the Village will turn off all lighting at the Athletic Field by 10:00 PM without exception.

7. Section 24 of the Agreement is hereby deleted and replaced as follows:

The Owner or the Village shall be entitled to terminate this Agreement for any reason whatsoever upon at least six (6) months prior written notice to the other party. To prevent termination of this Agreement during an athletic sport season, this Agreement may only be terminated as of March 1st of a particular calendar year (e.g. to terminate the Agreement on October 1, 2023, notice must be given no later than March 1, 2022).

8. In the event of any conflict or ambiguity between the terms and provisions of this Fourth Amendment and the terms and provisions of the Agreement, the First Amendment, Second Amendment, and Third Amendment, the terms and provisions of this Fourth Amendment shall control.

9. Except as otherwise specifically set forth herein, the Agreement is hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

A handwritten signature in blue ink, followed by the date "Oct. 7. 2022" written vertically.

10. This Fourth Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this Fourth Amendment shall have the same force and effect as an original hereof.

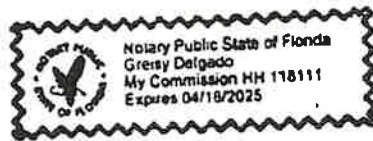
**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.]**

Handwritten signature in blue ink, followed by the date "02.17.2022" written vertically.

FOR VILLAGE:

STATE OF FLORIDA)
) ss:
COUNTY OF Miami-Dade)

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization this September day of 2023 by Steven C Williamson
Steven C Williamson on behalf of Village of Key Biscayne
She/he ☒ is personally known to me or ☐ has produced
as identification.



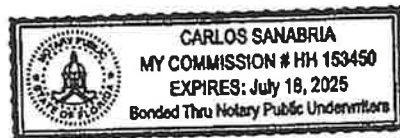
[SEAL]

[Signature]
Notary Public
Greisy Delgado
Print Name

**FOR THE MOST REVEREND THOMAS WENSKI, ARCHBISHOP OF THE
ARCHDIOCESE OF MIAMI:**

STATE OF FLORIDA)
) ss:
COUNTY OF Dade)

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization this 14 day of October, 2022, by Sister Elizabeth Worley
Sister Elizabeth Worley on behalf of _____
She/he ☒ is personally known to me or ☐ has produced
as identification.



[SEAL]

[Signature]
Notary Public
Carlos Sanabria
Print Name

RESOLUTION NO. 2025- _____

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A
FIFTH AMENDMENT TO THE AGREEMENT FOR USE OF
ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD WITH
THE ARCHDIOCESE OF MIAMI; PROVIDING FOR
AUTHORIZATION; PROVIDING FOR IMPLEMENTATION;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, pursuant to Resolution No. 2004-28, the Village Council of the Village of Key Biscayne (the “Village”) approved and authorized an Agreement for Use of the St. Agnes Catholic Church Athletic Field (the “Agreement”) with the Archdiocese of Miami (the “Archdiocese”); and

WHEREAS, the Agreement has been amended four times since its execution on June 23, 2004, and was most recently amended for the fourth time on October 14, 2022, pursuant to Resolution 2022-19, to extend the term of the Agreement and adjust the fees to be paid to the Archdiocese; and

WHEREAS, the Village Council and the Archdiocese desire to, among other things, further extend the term of the Agreement and provide for the Village’s installation and maintenance of artificial turf and related work and improvements to the Athletic Field, as particularly described in the Fifth Amendment to the Agreement attached hereto as Exhibit “A” (the “Fifth Amendment”); and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the citizens of the Village.

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

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Amendment Approved. That the Fifth Amendment between the Village and the Archdiocese, in substantially the form attached hereto as Exhibit “A,” is hereby approved.

Section 3. **Authorization.** That the Village Manager is authorized to execute the Fifth Amendment to the Agreement, in substantially the form attached hereto as Exhibit “A,” subject to approval by the Village Attorney as to form, content, and legal sufficiency.

Section 4. **Implementation.** That the Village Manager is authorized to take any and all action necessary to implement the intent and purpose of this Resolution.

Section 5. **Effective Date.** That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____ 2025.

JOE I. RASCO, MAYOR

ATTEST:

JOCELYN B. KOCH
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

FIFTH AMENDMENT TO AGREEMENT
FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD

THIS FIFTH AMENDMENT TO THE AGREEMENT FOR USE OF ST. AGNES CATHOLIC CHURCH ATHLETIC FIELD (this "Fifth Amendment") is entered into as of this ____ day of _____, 2025 by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (the "Village") and **THE MOST REVEREND THOMAS WENSKI, ARCHBISHOP OF THE ARCHDIOCESE OF MIAMI**, his successors in office, a corporation sole (hereinafter the "Owner").

WITNESSETH:

WHEREAS, the Village and the Owner entered into that certain Agreement dated June 23, 2004 (the "Agreement") for the Village's use of the St. Agnes Catholic Church's Athletic Field (the "Athletic Field") for recreational and youth athletic programs and activities; and

WHEREAS, the Village and the Owner entered into an Amendment to the Agreement on August 31, 2009 (the "First Amendment"); a Second Amendment to the Agreement on September 19, 2014 (the "Second Amendment"); a Third Amendment to the Agreement on May 23, 2019 (the "Third Amendment"); and a Fourth Amendment to the Agreement on October 14, 2022 (the "Fourth Amendment"); wherein the parties modified the fees payable, the term of the Agreement, provided for Village improvements to the Athletic Field, and provided for termination of the Agreement; and

WHEREAS, the Village and Owner wish to further modify the Agreement in accordance with the terms and conditions set forth herein in this Fifth Amendment to the Agreement to extend the term of the Agreement and provide for the Village's installation and maintenance of new artificial turf and related work and improvements in, to, on or at the Athletic Field (which improvements are further described herein below).

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. **Recitals Adopted.** The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

2. **Term of the Agreement.** Section 3.1 of the Agreement is hereby deleted and replaced as follows:

3.1 The term of this Agreement has previously commenced and shall be extended to run for a ten (10) year period commencing as of January ___, 2025 and expiring at 11:59 p.m. on January ___, 2035. (the "Term").

3. **Section 5; Improvements by the Village.** Section 5.1 of the Agreement pertaining to "Field Improvements" is hereby amended and replaced as follows:

5.1 The Village agrees to install artificial turf and perform related work and improvements in, to, on or at the Athletic Field, as detailed in the Scope of Work and costs attached hereto as Exhibit "A" (the "Turf Improvements"). A schedule for the Turf Improvements is attached hereto as Exhibit "B." Subject to "force majeure," the Village intends to install and complete the Turf Improvements pursuant to the schedule attached hereto as Exhibit "B." "Force majeure" as used in this Agreement shall mean any exigent or emergency cause or event which results in the prevention or delay of performance by the Village of its obligations under this Agreement, and any cause or event which is beyond the reasonable control of the Village, including, but not limited to, pandemics, health emergencies, strikes, lockouts, labor troubles, materials supply and shortages, fire or other casualty, severe weather events, governmental preemption or any rule or order of governmental agencies, and inability to secure materials or labor. Owner hereby acknowledges and agrees that the Village (as permitting agent) will obtain all permits and approvals required for the Turf Improvements, and Owner shall cooperate with the Village, to the extent necessary or required, in the attainment and processing of all permits and approvals for the Turf Improvements. Owner shall provide the Village, and its agents and contractors, access to the Athletic Field and surrounding property, as necessary, for the installation and maintenance of the Turf Improvements. The Village shall maintain the Turf Improvements in accordance with the manufacturer's standards and general maintenance standards established by the Village's Parks and Recreation Department

In the event that the Agreement is terminated early pursuant to Section 24 of the Agreement, Owner shall reimburse the Village for the portion of the total costs incurred by the Village for the Turf Improvements calculated as follows: The total costs incurred by the Village for the Turf Improvements shall be amortized over a 10-year period, and the Owner shall reimburse and pay the Village for the amortized costs remaining from the date of termination until the expiration date of the 10-year amortizations period as set forth in the Amortization/Payment Schedule attached hereto as Exhibit "C." Said reimbursement or payment by the Owner to Village shall occur on or 30 days before the termination date.

4. **Section 17; Expiration.**

Section 17 of the Agreement is hereby deleted and replaced as follows (with changes red-lined as shown):

17. At the expiration or termination of this Agreement, as herein provided, the Village will within five (5) business days remove any of the Village's property located at the Athletic Field. Additionally, the Village shall surrender the Athletic Field in the same condition as when it took possession (except for the ~~Field~~ Turf Improvements) ordinary wear and tear excepted.

5. In the event of any conflict or ambiguity between the terms and provisions of this Fifth Amendment and the terms and provisions of the Agreement, the First Amendment, Second Amendment, Third Amendment and Fourth Amendment, the terms and provisions of this Fifth Amendment shall control.

6. Except as otherwise specifically set forth herein, the Agreement is hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

7. This Fifth Amendment may be executed in several counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this Fifth Amendment shall have the same force and effect as an original hereof.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.]**

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____, _____, as the Village Manager, on behalf of the Village of Key Biscayne. He/She ☐ is personally known to me or ☐ has produced _____ as identification.

Notary Public

Print Name

[SEAL]

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____, on behalf of _____. He/She ☐ is personally known to me or ☐ has produced _____ as identification.

Notary Public

Print Name

[SEAL]