

CONSTRUCTION CONTRACT

This Contract (the "Contract") is dated as of the _____ day of _____ 2019 by and between North Bay Village (hereinafter called the "VILLAGE") and _____, LLC (hereinafter called "CONTRACTOR") located at: _____.

VILLAGE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

WHEREAS, the VILLAGE desires to engage _____ to perform the work described herein and all in accordance with the adopted Contract Agreement between _____ and the _____ dated _____ attached as Exhibit "A" to this agreement. This Addendum shall be deemed to supplement and fully incorporate the terms and conditions of Exhibit A. However, to the extent this Addendum contains Terms and Conditions that conflict with or are not contained in Exhibit A, this Addendum shall govern.

ARTICLE 1 – WORK

1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following: The Project consists of **the** _____, all in accordance with the scope of work and exhibits as found in Exhibit "B", which is incorporated herein and made part hereof by this reference.

ARTICLE 2 – VILLAGE'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1 It is understood that the VILLAGE will designate a representative for the Work. The VILLAGE'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is **Jose Olivo, Public Works Director**, at North Bay Village Hall, 1666 Kennedy Causeway, Suite 300, North Bay Village, FL 33141.

2.2 The VILLAGE'S ARCHITECT referred to in any of the Contract Documents designated herein is **N/A**.

2.3 The VILLAGE'S ENGINEER referred to in any of the Contract Documents designated herein is _____.

ARTICLE 3 – TERM

3.1 Contract Times. The Work shall be substantially completed within **60 calendar days** after the date specified in the Notice to Proceed ("Substantial Completion"), and completed and ready for final payment in accordance with the Contract Documents within **30 calendar days** after the date specified in the Notice to Proceed ("Final Completion").

3.2 Term. This Contract shall not be effective until it is fully executed between the VILLAGE and the CONTRACTOR. The term of the Contract shall be through the date of final payment unless

terminated earlier. ~~pursuant to Section 00710 – General Conditions, Article 12, Suspension of Work and Termination.~~

3.3 Survival of Obligations. Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. VILLAGE and CONTRACTOR recognize that time is of the essence in this Contract and that the VILLAGE will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes the delays, expense and difficulties involved in proving the actual loss suffered by VILLAGE if the Work is not completed on time. Accordingly, instead of requiring any such proof, VILLAGE and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay VILLAGE **\$200.00** for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by VILLAGE, CONTRACTOR shall pay VILLAGE **\$200.00** for each calendar day that expires after the time specified in Section 3.1 for completion and readiness for final payment.

3.5 Should the Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any other liquidated damages, all actual additional costs or losses incurred by the VILLAGE including, but not limited to, completion contractor services, financing, professional services, unrealized revenue, will be the responsibility of the CONTRACTOR.

3.6 Monies due to the VILLAGE under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged the CONTRACTOR shall be liable for said amount.

ARTICLE 4 – CONTRACT PRICE

4.1 VILLAGE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to this Article. The CONTRACTOR shall provide the Work at a not to exceed amount of \$_____.

4.1.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated on the Unit Price ~~Bid Form Section 00410~~ sheet provided by the Contractor. Estimated quantities are not guaranteed, and determination of actual quantities and classification are to be made by ENGINEER as provided in the Contract Documents.

4.2 VILLAGE has included a 10% contingency for this Work in the amount of \$0.00. Contingency funds are separate from the not to exceed amount under section 4.1 and require VILLAGE approval prior to being expended.

4.3 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract Documents.

ARTICLE 5 – PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with standard construction industry guidelines with local government agencies. If deemed acceptable, Applications for Payment will be processed by VILLAGE within 30 calendar days.

5.2 Progress Payments, Retainage. VILLAGE shall make progress payments, deducting the amount from the Contract Price above, on the basis of CONTRACTOR'S Applications for Payment as recommended by the VILLAGE'S REPRESENTATIVE, on or about the last day of each month during construction as provided herein. All such payments will be made in accordance with the schedule of values established in the General Conditions or, in the event there is no schedule of values, as provided in the General Conditions.

5.2.1 No progress payment shall be made until CONTRACTOR delivers to the VILLAGE complete original partial releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the VILLAGE, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date.

5.3 The CONTRACTOR agrees that ten percent (10%) of the amount due for Work as set forth in each Application for Payment shall be retained by VILLAGE for each Progress Payment until Final Payment.

5.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as VILLAGE'S REPRESENTATIVE shall determine, or VILLAGE may withhold, in accordance with the General Conditions.

5.4 The payment of any Application for Payment by VILLAGE, including the Final Request, does not constitute approval or acceptance by VILLAGE of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of VILLAGE's rights hereunder or at law or in equity.

5.5 The Final Application for Payment by CONTRACTOR shall not be made until the CONTRACTOR delivers to the VILLAGE complete original releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the VILLAGE, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The CONTRACTOR may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien,

furnish a bond satisfactory to VILLAGE to defend and indemnify VILLAGE and any other property owner, person or entity VILLAGE may be required to indemnify against any lien or claim.

5.6 Final Payment. Upon final completion and acceptance of the Work, VILLAGE shall pay the remainder of the Contract Price and any retainage as recommended by the VILLAGE'S REPRESENTATIVE.

ARTICLE 6 – INSURANCE/INDEMNIFICATION.

6.1 Insurance. The CONTRACTOR shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the VILLAGE against hazards or risks of loss as specified by the Village.

6.2 Indemnification. The CONTRACTOR shall indemnify, defend and hold harmless the VILLAGE, their officials, agents, employees, and volunteers.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS.

In order to induce VILLAGE to enter into this Contract, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has made, or caused to be made, examinations, investigations, tests, or studies as necessary to determine surface and subsurface conditions at or on the site. CONTRACTOR acknowledges that VILLAGE does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to underground facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 The CONTRACTOR is aware of the general nature of Work to be performed by VILLAGE and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 The CONTRACTOR has given the VILLAGE'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the VILLAGE'S REPRESENTATIVE is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.8 The CONTRACTOR warrants the following:

7.8.1 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

7.8.2 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the VILLAGE or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the VILLAGE shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

7.8.3 Licensing and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or VILLAGE.

7.8.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime.

ARTICLE 8 – CONTRACT DOCUMENTS.

8.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Contract as though physically attached as a part thereof:

8.1.1 Change Orders.

8.1.2 Field Orders.

8.1.3 Contract for Construction.

- 8.1.4** Exhibits to this Contract.
- 8.1.5** Any federal, state, county or VILLAGE permits for the Project
- 8.1.6** Specifications bearing the title: (N/A)
- 8.1.7** Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: _____.
- 8.1.8** Bid Documents, including but not limited to: Addendum, Invitation to Bid, Instructions to Bidders, Bid Form provided by CONTRACTOR, Notice of Award and Notice to Proceed.
- 8.1.9** Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.
- 8.1.10** The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).
- 8.1.11** There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.
- 8.1.12** The Contract Documents shall remain the property of the VILLAGE. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the VILLAGE's prior written authorization.
- 8.1.13** The General Conditions discuss the bond and surety requirements of the VILLAGE. This Contract does [], does not [x] require bonds. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

ARTICLE 9 – MISCELLANEOUS.

9.1 ~~Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders also apply to this Contract.~~

9.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment

no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 VILLAGE and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

9.5 Remedies. If and when any default of this Contract occurs, the VILLAGE may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the VILLAGE. Nothing contained in this Contract shall limit the VILLAGE from pursuing any legal or equitable remedies that may apply.

9.6 Ownership and Access to Records and Audits.

9.6.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the Village under this Agreement shall be the property of the Village.

9.6.2 The Village Manager or his 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 Contractor involving transactions related to this Agreement.

9.6.3 In addition to other contract requirements provided by law, Contractor shall comply with public records laws, specifically to: (a) Keep and maintain public records that ordinarily and necessarily would be required by the Village in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the Village would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to the Village all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Village in a format that is compatible with the information technology systems of the Village.

9.6.4 The Village may cancel this Agreement for refusal by the Contractor to allow access by the Village Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

9.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of Termination, the CONTRACTOR shall allow VILLAGE representatives access during reasonable business hours to CONTRACTOR'S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the VILLAGE determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the VILLAGE, the CONTRACTOR shall remit such payments to the VILLAGE.

9.8 Counterparts. This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

9.9 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR VILLAGE:

Ralph Rosado, VILLAGE Manager
North Bay Village
1666 Kennedy Causeway, Suite 300
North Bay Village, Florida 33141

WITH COPY TO:

Daniel Espino
VILLAGE Attorney
Weiss, Serota, Helfman, Cole & Bierman, PL
2525 Ponce De Leon, Suite 700
Miami, Florida 33134

FOR CONTRACTOR:

9.10 WAIVER OF JURY TRIAL AND VENUE. The VILLAGE and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be in Miami-Dade County, Florida.

9.11 Attorneys' Fees. If either the VILLAGE or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees at the trial and appellate level.

9.12 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order.

9.13 Nonassignability. This Agreement shall not be assignable by Contractor unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the Village's area, circumstances and desires.

9.14 Independent Contractor. The Contractor and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the 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, enterprise or venture between the parties.

9.15 Compliance with Laws. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

9.16 Waiver. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

9.17 Survival of Provisions. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

9.18 Prohibition of Contingency Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: NORTH BAY VILLAGE, FLORIDA, signing by and through its VILLAGE Manager, authorized to execute same by the Commission action on the _____ day of _____, 2020, and by _____ (Contractor), signing by and through its _____, duly authorized to execute same.

WITNESS

By: _____
(Signature and Corporate Seal)

(Print Name and Title)

CONTRACTOR

(Contractor)

(Signature)

(Print Name and Title)

_____ day of _____, 20____.

ATTEST

NORTH BAY VILLAGE

Elora Riera, VILLAGE Clerk

Ralph Rosado, VILLAGE Manager

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE NORTH BAY VILLAGE ONLY:

Weiss, Serota, Helfman, Cole & Bierman, PL
VILLAGE Attorney

(* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

Exhibit A

Adopted Contract Agreement

Exhibit B

Scope of Work and Cost Proposal