

**RESOLUTION NO. 2023-035**

**A RESOLUTION OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, SELECTING FLORIDA ENGINEERING AND DEVELOPMENT CORP. FOR PHASE 1 OF THE BAYWALK NORTH PLAZA PROJECT PURSUANT TO INVITATION TO BID NO. 2022-006; AUTHORIZING NEGOTIATION AND EXECUTION OF A CONTRACT IN AN AMOUNT NOT TO EXCEED \$1,177,465.80; AMENDING THE BUDGET FOR FISCAL YEAR 2022-23; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 18, 2022, North Bay Village (the "Village") issued Invitation to Bid No. ITB-2022-006 ("ITB") for construction of Phase 1 of the Baywalk North Plaza Project (the "Project"); and

**WHEREAS**, two bids were received by the January 12, 2023 deadline; and

**WHEREAS**, Florida Engineering and Development Corp. (the "Contractor") submitted the lowest bid at \$1,060,780.00 for construction of the Project, with a permit allowance and 10% contingency of \$116,685.80, for a total Project cost of \$1,177,465.80; and

**WHEREAS**, the Village Commission desires to select the Contractor for the Project and authorize the Village Manager to negotiate and execute a construction contract (the "Contract") with Contractor in an amount not to exceed \$1,177,465.80, in substantially the form attached hereto as Exhibit "A"; and

**WHEREAS**, on September 29, 2022, the Village Commission adopted Resolution No. 2022-79 approving the budget for fiscal year 2022-2023 (the "Budget"); and

**WHEREAS**, pursuant to Section 166.241(5), Florida Statutes, the Village Commission may amend a budget at any time within a fiscal year; and

**WHEREAS**, pursuant to Section 35.21 of the Village Code of Ordinances and Florida Law, the Village Commission desires to amend the Budget consistent with the staff memorandum accompanying this resolution by authorizing the line item transfers as further provided in Exhibit "B" attached hereto and incorporated herein; and

**WHEREAS**, the Village Commission finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION**

**OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Selection.** That the Village Commission hereby selects the Contractor to construct the Project.

**Section 3. Authorization.** That the Village Commission hereby authorizes the Village Manager to negotiate and execute the Contract in substantially the form attached hereto as Exhibit "A" with Contractor in an amount not to exceed \$1,177,465.80, subject to the final approval of the Village Attorney as to form, content, and legal sufficiency.

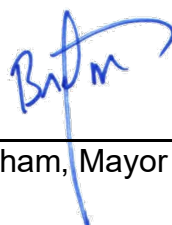
**Section 4. Amending Budget.** That the Village Commission hereby approves an amendment to the budget by authorizing the line item transfers as further provided in Exhibit "B" attached hereto and incorporated herein.

**Section 5. Effective Date.** That this Resolution shall be effective immediately upon adoption.

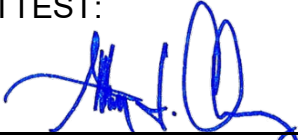
The foregoing Resolution was offered by Vice Mayor Chervony who moved its adoption. The motion was seconded by Commissioner Cuk and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>Yes</u>
Vice Mayor Richard Chervony	<u>Yes</u>
Commissioner Goran Cuk	<u>Yes</u>
Commissioner Andrew Rotondaro	<u>Yes</u>
Commissioner Rachel Streitfeld	<u>Yes</u>

**PASSED AND ADOPTED** on this 8<sup>th</sup> day of March, 2023.

  
\_\_\_\_\_  
Brent Latham, Mayor

ATTEST:



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Alba L. Chang, CMC  
Village Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



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Weiss Serota Helfman Cole & Bierman, PL  
Village Attorney

## EXHIBIT "A"

### CONTRACT FOR CONSTRUCTION

**THIS CONTRACT FOR CONSTRUCTION** (this "Contract") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between the **NORTH BAY VILLAGE, FLORIDA**, a Florida municipal corporation, (the "Village"), and **FLORIDA ENGINEERING AND DEVELOPMENT CORP.**, a Florida For-Profit Entity (the "Contractor").

**WHEREAS**, the Village issued Invitation to Bid No. 2022-006 (the "ITB") for construction of Phase 1 of the Baywalk North Plaza Project (the "Project"), which ITB is incorporated herein by reference and made a part hereof as Exhibit "A"; and

**WHEREAS**, in response to the Village's ITB, the Contractor submitted a bid for the Project ("Bid"), which Bid is incorporated herein by reference and made a part hereof as Exhibit "B"; and

**WHEREAS**, Contractor submitted the lowest, responsive, and responsible bid in the amount of \$1,060,780.00 for construction of the Project, with a permit allowance and 10% contingency of \$116,685.80, for a total Project cost of \$1,177,465.80; and

**WHEREAS**, the Contractor was selected and awarded this Contract for performance of the Work (as hereinafter defined); and

**WHEREAS**, Contractor has represented to the Village that it possesses the necessary qualifications, experience and abilities to perform the Work or the Project, and has agreed to provide the Work on the terms and conditions set forth in this Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Village agree as follows:

#### **1. SCOPE OF WORK**

**1.1. Scope of Work.** Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the work described in the Contract Documents (the "Work" or the "Project") including, without limitation as described in the approved plans, drawings and/or specifications prepared by Kimley-Horn and Associates, Inc. dated April 28, 2022 (the "Project Consultant") attached hereto as Exhibit "A" (the "Plans") and any other documents incorporated herein by reference and made a part of this Contract for the following Project:

#### **PHASE 1 OF THE BAYWALK NORTH PLAZA PROJECT**

**1.2. Pre-Construction Conference.** Within fourteen (14) calendar days after this Contract is executed by both parties, and before any Work has commenced, a pre-construction conference will be held between the Village, the Contractor, and the Project Consultant. The Contractor must submit its project schedule and schedule of values, if applicable, prior to this conference.

**1.3. Project Schedule.** Contractor must submit a proposed Project Schedule as follows:

**1.3.1.** Schedule must identify the schedule for each location comprising the Project. The proposed Project schedule must be submitted within ten (10) calendar days from the date this Contract is executed by both parties for the review and approval of the Project Consultant or Village as applicable. This initial schedule shall establish the baseline schedule for the Project.

**1.3.2.** All updates of schedules must be tracked against the baseline schedule and must be at a minimum submitted with each pay application. An updated schedule tracked against the baseline must also be submitted upon execution of each Change Order that impacts the Contract Time. Failure to submit such schedules will result in the rejection of any submitted payment application.

**1.3.3.** All Project Schedules must be prepared in Microsoft Project or approved equal by the Village. At the time of submission of schedules, Contractor must submit a hard copy as well as an electronic version. Electronic versions must not be submitted in a .pdf format.

**1.4. Records.**

**1.4.1. As-Built Drawings.** During the Work, Contractor must maintain records of all deviations from the Drawings as approved by the Project Consultant and prepare two copies of As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Village and to certify in writing that the As-Built Record Drawings are correct and accurate, including the actual location of all infrastructure, internal piping, and electrical/signal conduits in or below the concrete floor (indicating the size, depth, and voltage in each conduit). To record actual construction, Contractor must legibly mark on-site structures and site Work as follows:

**1.4.1.1.** Depths of various elements of foundation in relation to finish first floor datum.

**1.4.1.2.** All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances referenced to permanent surface improvements. Actual installed pipe material, class, etc.

**1.4.1.3.** Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.

**1.4.1.4.** Field changes in dimensions and details.

**1.4.1.5.** Changes made by Project Consultant's written instructions or by Change Order.

**1.4.1.6.** Details not on original Contract Drawings.

**1.4.1.7.** Equipment, conduit, electrical panel locations.

**1.4.1.8.** Project Consultant's schedule changes according to Contractor's records and shop drawings.

**1.4.1.9.** Specifications and Addenda: Legibly mark each section to record:

**1.4.1.9.1.** Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.

**1.4.1.9.2.** Changes made by Project Consultant's written instructions or by Change Order.

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

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

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

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

**1.4.3. Construction Photographs.** Prior to commencement of the Work the Contractor must take digital photographs and color audio-video recording to document existing conditions and submit copies in an acceptable format to the Village. Contractor must submit with each application for payment photographs that accurately reflect the progress of all aspects of the Work. The number of photographs to be taken will be based on the magnitude of the Work being performed. Contractor must submit one copy of each photograph in print and digitally. The photographs must be printed on 8" X 10" high resolution glossy commercial grade and weight color

photographic print paper or in a format acceptable to the Village. Each photograph must be imprinted on its face with the title of the Project, the date, and time the picture was taken. Digital photographs must be taken using .jpeg format and will be submitted through a file-sharing site (such as Dropbox) or on a CD-ROM or flash drive clearly identifying the name of the Project, the name of the Contractor, and the timeframe in which the pictures were taken. Initial set up prints will be submitted in a three-ring binder with each picture protected by a clear plastic sleeve. Subsequent prints are to be submitted in clear plastic sleeves that can be added to the binder. The three-ring binder must be of such size to be able to hold all print pictures.

### **1.5. Staging Site.**

**1.5.1.** The Contractor is solely responsible for making all arrangements for any staging site(s) that may be necessary for the performance of the Work and the Contractor is responsible for all site security, including any fencing of the site, and any loss, damage or theft to its equipment and materials. Any fencing of the Staging Site is subject to the prior written approval of the Village.

**1.5.2.** The Village at its sole discretion may make a staging site available for use by the Contractor. If such site is made available by the Village, the Village assumes no responsibility or liability for the equipment or materials stored on the site, and the Contractor will be solely responsible for any loss, damage or theft to its equipment and materials. The Contractor must restore the site to its pre-existing condition prior to the Contractor's use of the site.

**1.5.3.** The Contractor may be required to provide or may choose to use an office trailer for the duration of the Project. The Contractor must have the prior written approval of the Village as to the use of any office trailer and the placement location for the office trailer. The Contractor must obtain all required permits from the appropriate regulatory agencies.

**1.5.4.** No parking is permitted at a Village provided staging site without the prior written approval of the Village.

**1.6. Purchase and Delivery, Storage and Installation.** All materials must be F.O.B. delivered and included in the cost of the Work. The Contractor is solely responsible for the purchase, delivery, off-loading and installation of all equipment and material(s). Contractor must make all arrangement for delivery. Contractor is liable for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, state (including FDOT), Miami-Dade County, and local laws, rules and regulations. No materials will be stored on-site without the prior written approval of the Village.

**1.7. Approval of Subcontractors.** For any scope of work that the Contractor will utilize a subcontractor, the Contractor may only retain or utilize the services of the particular subcontractor with the prior written approval of the Village Manager, which approval may be granted or withheld in the Village Manager's sole and absolute discretion. The Contractor shall provide at least fourteen (14) days notice to the Village Manager and the Project Consultant of its intent to retain or utilize a subcontractor.

**1.8. Project Signage.** Contractor must furnish and install two (2) Project signs at the Project Site in accordance with the requirements provided by the Project Consultant or the Village as applicable.

## **2. CONTRACT TIME**

**2.1.** Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed providing a commencement date and issued by the Village Manager or designee. The Notice to Proceed will not be issued until Contractor's submission to Village of all required documents and after execution of this Contract.

**2.2.** Time is of the essence throughout this Contract. The Contractor shall prosecute the Work with faithfulness and diligence and the **Work shall be substantially completed by November 30, 2023 ("Contract Time")**. Substantial Completion shall be defined for this purpose as the date on which Village receives beneficial use of the Project. **The Work shall be fully completed in accordance with the Contract Documents by December 31, 2023 ("Final Completion Time")**. The Final Completion date is defined as the date determined by the Village when all Work, including punch list items, has been completed in accordance with the Contract Documents and Contractor has delivered to Village all documentation required herein.

**2.3.** Upon failure of Contractor to substantially complete the Work as defined in this Agreement within the Contract Time, Contractor shall pay to Village the sum of **\$1,694** for each calendar day after the expiration of the Contract Time that the Contractor fails to achieve Substantial Completion up until the date that the Contractor achieves Substantial Completion. Upon failure of Contractor to fully complete the Work and achieve Final Completion within the Final Completion Time, Contractor shall pay to Village the sum of **\$1,694** for each calendar day after expiration of the Final Completion Time that the Contractor fails to achieve Final Completion up until the date that the Contractor achieves Final Completion. These amounts are not penalties but are liquidated damages payable by Contractor to Village for the failure to provide full beneficial occupancy and use of the Project as required. Liquidated damages are hereby fixed and agreed upon between the parties who hereby acknowledge the difficulty of determining the amount of damages that will be sustained by Village as a consequence of Contractor's delay and failure of Contractor to complete the Work on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for completion is given.

**2.4.** Village is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract. In case the liquidated damage amount due to Village by Contractor exceeds monies due Contractor from Village, Contractor shall be liable and shall immediately upon demand by Village pay to Village the amount of said excess.

## **3. CONTRACT PRICE AND PAYMENT PROCEDURES**

**3.1. Guaranteed Maximum Price.** The Village shall pay the Contractor an amount not to exceed **\$1,177,465.80** for the performance of the Work in accordance with the line items and unit prices included in Exhibit "B" (the "Contract Price"). The Contract Price shall be full compensation for all services, labor, materials, equipment, and costs, including



overhead and profit, associated with completion of all the Work in full conformity with the Contract Documents and adjusted only by written change orders signed by both parties and approved as required by local law. The Contract Price shall include all applicable sales taxes as required by law.

**3.2. Schedule of Values.** The Contractor must submit two copies of schedule of values within ten (10) calendar days from the date this Contract is executed by both parties. The schedule of values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. Contractor's overhead and profit must be listed as separate line items. Each line item must be identified with the number and title of the major specification section or major components of the items. The Project Consultant or Village as applicable may require further breakdown after review of the Contractor's submittal. The Village reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the schedule of values. The combined total value for mobilization under the Schedule of Values shall not exceed 5% of the value of the Contract. The accepted Schedule of Values must be incorporated into the Contractor's payment application form. The Contractor guarantees that each individual line item contained in the schedule of values submitted as part of a competitive solicitation shall not be increased without written approval by the Village Manager.

**3.3. Payment Application Procedures.** Village shall make progress payments, deducting the amount from the Contract Price above on the basis of Contractor's Applications for Payment on or before twenty (20) days after receipt of the Pay Application. Rejection of a Pay Application by the Village shall be within twenty (20) days after receipt of the Pay Application. Any rejection shall specify the applicable deficiency and necessary corrective action. Any undisputed portion shall be paid as specified above. All such payments will be made in accordance with the Schedule of Values established in the Contract Documents or, in the event there is no Schedule of Values, as otherwise provided in the Contract Documents. In the event the Contract Documents do not provide a Schedule of Values or other payment schedule, Applications for Payment shall be submitted monthly by Contractor on or before the 10<sup>th</sup> of each month for the prior month to the Project Consultant. Progress payments shall be made in an amount equal to the percentage of Work completed as determined by the Village or Village's Project Consultant, but, in each case, less the aggregate of payments previously made and less such amounts as Village shall determine or Village may withhold taking into account the aggregate of payments made and the percentage of Project completion in accordance with the Contract Documents and Schedule of Values, if any. The Contractor agrees that five percent (5%) of the amount due for each progress payment or Pay Application (the "Retainage") shall be retained by Village until final completion and acceptance of the Work by Village. In the event there is a dispute between Contractor and Village concerning a Pay Application, dispute resolution procedures shall be conducted by Village commencing within 45 days of receipt of the disputed Payment Application. The Village shall reach a conclusion within 15 days thereafter and promptly notify Contractor of the outcome, including payment, if applicable.

**3.4. Progress Payment Applications.** Each progress payment application submitted to the Village must include:

**3.4.1.** A sworn and certified progress payment affidavit indicating that all laborers, material suppliers, and subcontractors dealing with the Contractor were paid in full as it relates to all Work performed up to the time of the request for payment;

**3.4.2.** Partial conditional releases or waivers of lien by the Contractor, material suppliers, subcontractors, and any lienors serving a Notice to the Village and evidence of proof of payment of any indebtedness incurred with respect to the Work of the Contractor as may be required by the Village;

**3.4.3.** Evidence that all Work was fully performed as required by the Contract Documents up to the time of the request for payment and that the Work was inspected and accepted by the Village and any other governmental authorities required to inspect the Work; and

**3.4.4.** An updated Project schedule, including a two-week look-ahead schedule, as approved in writing by the Village Manager.

**3.4.5.** All Buy-Out Savings, including supporting documentation relating to the calculation of the Buy-Out Savings.

**3.5. Final Payment.** Upon Final Completion of the Work by Contractor in accordance with the Contract Documents and acceptance by the Village, and upon receipt of consent by any surety, Village shall pay the remainder of the Contract Price (including Retainage) as recommended by the Village's Project Consultant and Building Official. Final payment is contingent upon receipt by Village from Contractor of:

**3.5.1.** An affidavit that payrolls, bills for materials, equipment, and other indebtedness were paid in full as it relates to all Work performed under this Contract;

**3.5.2.** A certificate evidencing that insurance required by the Contract Documents shall remain in effect after final payment is made;

**3.5.3.** A written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;

**3.5.4.** Documentation of any special warranties, including, but not limited to, any manufactures' warranties or specific subcontractor warranties;

**3.5.5.** Evidence that all Punch List items have been fully completed to the satisfaction of the Village;

**3.5.6.** All previously undelivered manufacturer and subcontractor guarantees, warranties, and manuals and documents required by the Contract Documents;

**3.5.7.** Final releases of lien, waivers of claim, satisfactions of liens or claims, and such other affidavits as may be reasonably required by the Village to assure a lien-free and claim-free completion of the Work;

**3.5.8.** Evidence that the Contractor has fully cleaned and restored the site, including removal of all rubbish and debris;

**3.5.9.** At least one complete set of as-built plans, reflecting an accurate depiction of Contractor's Work;

**3.5.10.** Such other documents necessary to show that the Contractor has complied with all other requirements of the Contract Documents; and

**3.5.11.** Cost Savings, including supporting documentation used to calculate the Cost Savings.

**3.6. Payment Withholding.** The Village may withhold any payment, including a final payment, for application to such extent as may be necessary, as determined by the Village's Project Consultant, to protect the Village from loss for which the Contractor is responsible in the event that:

**3.6.1.** The Contractor performs defective Work and such Work has not been corrected, provided that the amount withheld shall be limited to the amount sufficient to cover such defective Work;

**3.6.2.** A third-party files a claim or lien in connection with the Work or this Contract;

**3.6.3.** The Contractor fails to make payments properly to subcontractors or suppliers for labor, materials, or equipment which has been paid by the Village, provided that the amount withheld shall be limited to the amount sufficient to cover such payments to subcontractors or suppliers for labor, materials, or equipment;

**3.6.4.** The Village has reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

**3.6.5.** The Contractor, its employees, subcontractors, or agents have damaged the Village;

**3.6.6.** The Village has reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay;

**3.6.7.** The Contractor has failed to progress the Work satisfactorily and/or according to the Contract Schedule;

**3.6.8.** The Contractor has failed to carry out the Work in accordance with the Contract Documents;

**3.6.9.** The Contractor has failed to provide requisite releases of lien for each payment application in accordance with the Contract Documents; and/or

**3.6.10.** Any other failure to perform a material obligation contained in the Contract Documents.

**3.7. No Waiver of Village Rights.** The payment of any Application for Payment by the Village, including the final request for payment, does not constitute approval or acceptance by the Village of any item of the Work reflected in such Application for Payment, nor shall it be construed as a waiver of any of the Village 's rights hereunder or at law or in equity.

**3.8. Payment to Sub-Contractors; Certification of Payment to Subcontractors.** The term "subcontractor," as used herein, includes persons or firms furnishing labor, materials or equipment incorporated into or to be incorporated into the Work or Project. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts as a condition precedent to payment to Contractor by the Village. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete and accepted by the Village.

**3.9. Cost Savings and Value Engineering.**

**3.9.1. Cost Savings.** In the event the Contractor rebids or renegotiates with any subcontractor to reduce subcontractor costs for the performance of the Work, then the difference between (i) the sum of the subcontractor costs used to establish the Contract Price, as set forth in the Schedule of Values, and (ii) the sum of the revised subcontractor costs, including any early payment or similar discounts (the "Cost Savings"), shall revert to the Village. The Contract Price shall be adjusted in accordance with any Cost Savings through a Change and the Schedule of Values shall also be revised to reflect the new Contract Price.

**3.9.2. Value Engineering.** Contractor shall participate in Value Engineering the Contract Documents with the Village and the Architect with the goal of finding acceptable means for reducing the cost of the Work. Upon acceptance by the Village of recommendation for Value Engineering, the Contract Documents shall be modified to reflect such changes. All savings in connection with Value Engineering of the Work shall revert to Village.

**4. CONTRACT DOCUMENTS**

**4.1.** The Contract Documents, which comprise the entire agreement between the Village and the Contractor concerning the Work, consist of this Contract for Construction (including any change orders and amendments thereto), the Plans and Specifications attached hereto as Exhibit "A" (the "Plans and Technical Specifications"), the ITB, the General, Special, and Supplemental Conditions attached hereto as Exhibit "C," the LAP Division 1 Specifications attached hereto as Exhibit "D," and the FHWA-1273 attached hereto as Exhibit "E," and any Bidding Documents or procurement documents for the Project, the Contractor's Bid for the Project (including the Schedule of Bid Items-Pricing) attached hereto as Exhibit "B", the Bonds (defined herein), Insurance Certificates, the

Notice of Award, and the Notice to Proceed, all of which are deemed incorporated into and made a part of this Contract by this reference and govern this Project.

**4.2.** This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**4.3.** 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; however in no circumstances 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.

**4.4. Conflicts; Order of Priority.** This document without exhibits is referred to as the "Base Agreement." In the event of a conflict between the terms of this Base Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Work shall apply:

**4.4.1.** First Priority: Change Orders with later date taking precedence;

**4.4.2.** Second Priority: Exhibit "E," FHWA-1273;

**4.4.3.** Third Priority: Exhibit "D," LAP Division 1 Specifications;

**4.4.4.** Fourth Priority: Exhibit "A," the Plans and Technical Specifications;

**4.4.5.** Fifth Priority: Exhibit "C," General, Special, and Supplemental Terms and Conditions;

**4.4.6.** Sixth Priority: This Base Agreement;

**4.4.7.** Seventh Priority: Exhibit "B," the Bid; and

**4.4.8.** Eighth Priority: Contract Documents, excluding this Base Agreement and Exhibits listed in this Section.

## **5. INDEMNIFICATION**

**5.1.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Village, its officers, agents, consultants, and employees, from and against any and all demands, claims, losses, expenses, suits, liabilities, causes of action, judgment or damages, including but not limited to legal fees and costs and through appeal, arising out of, related to, resulting from, or in any way connected with Contractor's negligence, recklessness, or intentional misconduct in the Contractor's performance or non-performance of this Contract, Contractor's obligations, or the Work related to the Contract, including but not limited to by reason of any damage to property, or bodily injury or death incurred or sustained by any person, or to injury to or destruction of tangible property or any other property (other than the Work itself) including the loss of use resulting therefrom, caused in whole

or in part by any willful, wanton, or negligent, or grossly negligent acts or omissions of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by applicable law and regardless of the negligence of any such party.. Additionally, the Contractor shall defend, indemnify, and hold the Village harmless from all losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this Contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other employment related litigation or worker's compensation claims under federal, state, or local law.

**5.2.** The provisions of this section shall survive termination of this Contract.

## **6. INSURANCE AND BONDS**

### **6.1. Insurance.**

**6.1.1.** Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts not less than those specified below as satisfactory to the Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by Bests Rating and qualified to do business in the State of Florida. Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured, no later than ten (10) days after award of this Contract and prior to the execution of this Contract by Village and prior to commencing any Work. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 6.1.

**6.1.1.1.** Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit (except for Products/Completed Operations) shall be in the amount of \$2,000,000.

**6.1.1.2.** Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the

Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

**6.1.1.3.** Business Automobile Liability with minimum limits of \$2,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned, Hired, and Non-Owned Vehicles.

**6.1.1.4.** Builder's Risk property 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: .

**6.1.1.5.** Contractor acknowledges that it shall bear the full risk of loss for any portion of the Work damaged, destroyed, lost or stolen until Final Completion has been achieved for the Project, and all such Work shall be fully restored by the Contractor, at its sole cost and expense, in accordance with the Contract Documents.

**6.1.2. Certificate of Insurance.** On or before the Effective Date of this Contract, the Contractor shall provide the Village with Certificates of Insurance for all required policies. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Contract, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Work, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be

provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

**6.1.2.1. Additional Insured.** The Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Work performed by or on behalf of the Contractor in performance of this Contract. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

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

**6.1.3.** The provisions of this section shall survive termination of this Contract.

**6.2. Bonds.** Prior to performing any portion of the Work the Contractor shall deliver to Village the Bonds required to be provided by Contractor hereunder (the bonds referenced in this Section are collectively referred to herein as the "Bonds"). Pursuant to and in accordance with Section 255.05, Florida Statutes, the Contractor 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 Price and each in the form provided in the Contract Documents or in other form satisfactory to and approved in writing by Village and executed by a surety of recognized standing with a rating of B plus or better for bonds up to Two Million Dollars. The surety providing such Bonds must be licensed, authorized and admitted to do business in the State of Florida and must be listed in the Federal Register (Dept. of Treasury, Circular 570). The cost of the premiums for such Bonds is included in the Contract Price. If notice of any change affecting the Scope of the Work, the Contract Price, Contract Time or any of the provisions of the Contract Documents is required by the provisions of any bond to be given to a surety, the giving of any such notice shall be Contractor's sole responsibility, and the amount of each applicable bond shall be adjusted accordingly. 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 Contractor 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 Village As authorized by Section 255.05(1)(a), Florida Statutes, if this Project is exempt from posting of a payment and performance bond, the Village shall select this box: .

## **7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**



**7.1.** In order to induce the Village to enter into this Contract, the Contractor makes the following representations and warranties:

**7.1.1.** Contractor represents the following:

**7.1.1.1.** Contractor has examined and carefully studied the Contract Documents and the other data identified in the bidding documents, including, without limitation, the “technical data” and plans and specifications and the Plans.

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

**7.1.1.3.** Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Work. Contractor agrees that it will at all times comply with all requirements of the foregoing laws, regulations and permits.

**7.1.1.4.** Contractor has made, or caused to be made, examinations, investigations, tests and/or studies as necessary to determine surface and subsurface conditions at or on the site. Contractor acknowledges that the 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 or ground facilities at, contiguous or near the site or for existing improvements at or near 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 and improvements) at, contiguous or near 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 Time and in accordance with the other terms and conditions of the Contract Documents.

**7.1.1.5.** Contractor is aware of the general nature of Work to be performed by the Village and others at the site that relates to the Work as indicated in the Contract Documents.

**7.1.1.6.** 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.

**7.1.1.7.** Contractor has given Village written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract

Documents and the written resolution thereof by Village is acceptable to Contactor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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

## **7.2. No recovery for changed market conditions.**

**7.2.1.** In entering into the Contract, Contractor represents and warrants that it has accounted for any and all inflation-related events, recession, labor or material shortages, supply chain disruptions, delivery lead time, or price increases that may be caused by local and or national conditions, whether known or unknown at the time of entering into the Contract (the “Market Conditions”). Contractor further specifically represents and warrants that it has considered all impacts and potential impacts, including any current and future supply chain disruptions and labor shortages, associated with the following events: (1) worldwide pandemics including, but not limited to, COVID-19 and Monkey Pox (the “Pandemics”) and (2) the current military conflict involving Russia and the Ukraine (the “Ukraine Military Conflict”). Contractor also represents and warrants that in determining time requirements for procurement, installation, and construction completion, Contractor has taken into account the impacts of Market Conditions, the Pandemics, and the Ukraine Military Conflict, and has included all of those factors in the Construction Schedule and Contract Sum.

**7.2.2.** Contractor shall not seek any price increases or time extensions relating to or arising from the impacts of any Market Conditions, the Pandemics or Ukraine Military Conflict.

**7.2.3.** The Village shall not make any adjustment in the Contract Sum or grant an extension to the Contract Time in connection with any failure by the Contractor to comply with the requirements of this Section.

## **7.3. Contractor warrants the following:**

**7.3.1. Anti-Discrimination.** 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 agrees to abide by all federal and state laws regarding non-discrimination.

**7.3.2. Anti-Kickback.** 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 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.

**7.3.3. Licensing.** Contractor represents that it is a properly qualified and licensed contractor in good standing within the jurisdiction within which the Project is located. Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required licenses from the federal, state, Miami-Dade County, Village, or other governmental or regulatory entity. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses required for this Project, including Village building permits. Prior to commencement of the Work, the Contractor shall provide the Village with copies of all required licenses.

**7.3.4. Permits.** Contractor warrants that it shall have, prior to commencement of Work under this Contract and at all times during said Work, all required permits from the federal, state, Miami-Dade County, Village, or other governmental or regulatory entity with jurisdiction over the site that are necessary to perform the Work. Contractor acknowledges that it is the obligation of Contractor to obtain all permits required for this Project, including Village building permits. Prior to commencement of the Work, the Contractor shall provide the Village with copies of all required permits. Village building permit fees may be waived for this Project. If permits are required by any other governing body or agency, the Contractor shall be obligated to pay the fees.

#### **7.4. Defective Work; Warranty and Guarantee.**

**7.4.1.** Village shall have the authority to reject or disapprove Work which the Village finds to be defective. If required by the Village, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

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

**7.4.3.** The Contractor shall unconditionally warrant and guarantee all labor, materials and equipment furnished and Work performed for a period of three (3) years from the date of Substantial Completion. If, within three (3) years after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Village, shall promptly correct such defective or nonconforming Work within the time specified by Village without cost to Village. Should the manufacturer of any materials and equipment furnished provide for a longer warranty, then the Contractor shall transfer such warranty to the Village prior to Final Completion. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects. Contractor shall provide and assign to Village all material and equipment warranties upon completion of the Work hereunder.

**7.4.4.** Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

## **8. DEFAULT, TERMINATION, AND SUSPENSION; REMEDIES**

**8.1. Termination for Cause.** If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of the Work within the Contract Time or Final Completion Time as specified in Section 2, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Village may, upon seven (7) days after sending Contractor a written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site, provide for alternate prosecution of the Work, appropriate or use any or all materials and equipment on the Project site as may be suitable and acceptable, and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Village, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Village shall exceed monies due Contractor from Village, Contractor shall be liable and shall pay to Village the amount of said excess promptly upon demand therefore by Village. In the event it is adjudicated that Village was not entitled to terminate the Contract as described hereunder for default, the Contract shall automatically be deemed terminated by Village for convenience as described below.

**8.2. Termination for Convenience.** This Contract may be terminated by the Village for convenience upon seven (7) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subcontractor obligations. The Contractor shall be compensated for all services performed to the

satisfaction of the Village. In such event, the Contractor shall promptly submit to the Village its Application for Payment for final payment which shall comply with the provisions of the Contract Documents.

**8.3. Suspension of Contract.** This Contract may be suspended for convenience by the Village upon seven (7) calendar days' written notice to the Contractor or immediately if suspended in connection with a local or state declaration of emergency. Suspension of the Work will entitle the Contractor to additional Contract Time as a non-compensable, excusable delay.

**8.4. Termination Due to Lack of Funding.** This Contract is subject to the conditions precedent that: (i) Village funds are available, appropriated, and budgeted for the Work, the Project, and/or Contract Price; (ii) the Village secures and obtains any necessary proceeds, grants, and/or loans for the accomplishment of the Work and/or the Project pursuant to any borrowing legislation adopted by the Village Council relative to the Project; and (iii) Village Council enacts legislation which awards and authorizes the execution of this Contract if such is required.

**8.5. No Damages for Delay.** No claim for damages or any claim, other than for an extension of time shall be made or asserted against Village by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price 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 or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable or whether or not caused by Village. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay.

**8.6. Waiver of Consequential Damages.** Contractor assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be compensated for except as they may have been included in the Contractor's Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

**8.7. Litigation of Claims.** Mediation shall not be required before either party may proceed to litigation.

**8.8. Rights and Remedies.** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder and in accordance with this Contract shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **9. CHANGES IN THE WORK**

## **9.1. Change Orders.**

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

**9.1.2.** For Contractor initiated change orders, the Contractor is required to provide the Project Consultant with a detailed Request for Change Order (“RCO”) in a form approved by the Village, which must include the requested revisions to the Contract, including, but not limited to, adjustments in the Contract Price and/or Contract Time. The Contractor must provide sufficient supporting documentation to demonstrate the reasonableness of the RCO. The Village may require Contractor to provide additional data including, but not limited to, a cost breakdown of material costs, labor costs, labor rates by trade, work classifications, and overhead rates to support the RCO. If applicable, the RCO must include any schedule revisions accompanied by an explanation of the cost impact of the proposed change. Failure to include schedule revisions in an RCO will be deemed as the Contractor’s acknowledgement that the changes included in an RCO will not affect the project schedule.

**9.1.3.** Any modifications to the Contract Work, Contract Time, or Contract Price, must be effectuated through a written CO executed by both parties and, if required by the Village Code of Ordinances, approved by the Village Council.

**9.1.4.** In the event a satisfactory adjustment cannot be reached, and a CO has not been issued, given that time is of the essence, the Village reserves the right, at its sole option, to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work at the unit prices provided in the Contract Documents. Where the Village directs the Contractor to proceed on a time and materials basis, the Village shall impose a maximum not-to-exceed amount and the Contractor must maintain detailed records of all labor and material costs including but not limited to payroll records and material receipts. Contractor must demonstrate its costs with sufficient evidence to be entitled to compensation from the Village.

**9.2. Continuing the Work.** Contractor must continue to perform all Work under the Contract Documents during all disputes or disagreements with Village, including disputes or disagreements concerning an RCO. Contractor shall not delay any Work pending resolution of any disputes or disagreements.

## **10. MISCELLANEOUS**

**10.1. No Assignment.** Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies

due or to become due to it hereunder, without the previous written consent of the Village Manager.

**10.2. Contractor's Responsibility for Damages and Accidents.**

**10.2.1.** Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Village and shall promptly repair any damage done from any cause.

**10.2.2.** Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Village, Contractor shall replace same without cost to Village.

**10.3. Governing Law.** This Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Contract shall be proper exclusively in Miami-Dade County, Florida.

**10.4. Waiver of Jury Trial.** 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 FOR CONSTRUCTION, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OR INACTIONS OF ANY PARTY.

**10.5. Prevailing Party; Attorneys' Fees.** In the event of any controversy, claim, dispute or litigation between the parties arising from or relating to this Contract (including, but not limited to, the enforcement of any indemnity provisions), the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs, expenses, paralegals' fees, experts' fees and attorneys' fees including, but not limited to, court costs and other expenses through all trial and appellate levels. In addition, the prevailing party shall be entitled to recover from the non-prevailing party all litigation costs associated with discovery, processing, management, hosting, and production of electronically stored information (ESI).

**10.6. Compliance with Laws.** The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.

**10.7. Examination and Retention of Contractor's Records.**

**10.7.1.** The Village or any of its duly authorized representatives shall, for five (5) years after final payment under this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes.

**10.7.2.** The Contractor agrees to include in any subcontractor contracts for this Project corresponding provisions for the benefit of Village providing for retention and audit of records.

**10.7.3.** The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Contract and continue until disposition of any mediation, claims, litigation or appeals related to this Project.

**10.7.4.** The Village may cancel and terminate this Contract immediately for refusal by the Contractor to allow access by the Village Manager or designees to any Records pertaining to work performed under this Contract that are subject to the provisions of Chapter 119, Florida Statutes.

**10.8. Authorized Representative.**

**10.8.1.** Before commencing the Work, Contractor shall designate a skilled and competent authorized supervisor and representative (“Authorized Representative”) acceptable to Village to represent and act for Contractor and shall inform Village, in writing, of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for Contractor. Contractor shall keep Village informed of any subsequent changes in the foregoing. Such representative shall be present or duly represented at the Project site at all times when Work is actually in progress. All notices, determinations, instructions and other communications given to the authorized representatives of Contractor shall be binding upon the Contractor.

**10.8.2.** The Authorized Representative, project managers, superintendents and supervisors for the Project are all subject to prior and continuous approval of the Village. If, at any time during the term of this Contract, any of the personnel either functionally or nominally performing any of the positions named above, are, for any reasonable cause whatsoever, unacceptable to the Village, Contractor shall replace the unacceptable personnel with personnel acceptable to the Village.

**10.9. Taxes.** Contractor shall pay all taxes, levies, duties and assessments of every nature which may be applicable to any Work under this Contract. The Contract Price and any agreed variations thereof shall include all taxes imposed by law at the time of this Contract. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds the Village harmless from any liability on account of any and all such taxes, levies, duties and assessments.

**10.10. Utilities.** Contractor shall, at its expense, arrange for, develop and maintain all utilities at the Project to perform the Work and meet the requirements of this Contract. Such utilities shall be furnished by Contractor at no additional cost to Village. Prior to final acceptance of the Work, Contractor shall, at its expense, satisfactorily remove and dispose of all temporary utilities developed to meet the requirements of this Contract.

**10.11. Safety.** Contractor shall be fully and solely responsible for safety and conducting all operations under this Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property and in full compliance with Occupational Safety and Health Act requirements and all other similar applicable safety laws or codes. Contractor shall continually and diligently inspect all Work, materials and equipment to



discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Contractor shall have sole responsibility for implementing its safety program. Village shall not be responsible for supervising the implementation of Contractor's safety program, and shall not have responsibility for the safety of Contractor's or its subcontractor's employees. Contractor shall maintain all portions of the Project site and Work in a neat, clean and sanitary condition at all times. Contractor shall assure that subcontractors performing Work comply with the foregoing safety requirements.

**10.12. Cleaning Up.** Contractor shall, at all times, at its expense, keep its Work areas in a neat, clean and safe condition. Upon completion of any portion of the Work, Contractor shall promptly remove all of its equipment, construction materials, temporary structures and surplus materials not to be used at or near the same location during later stages of Work. Upon completion of the Work and before final payment is made, Contractor shall, at its expense, satisfactorily dispose of all rubbish, unused materials and other equipment and materials belonging to it or used in the performance of the Work and Contractor shall leave the Project in a neat, clean and safe condition. In the event of Contractor's failure to comply with the foregoing, the same may be accomplished by Village at Contractor's expense.

**10.13. Liens.** Contractor shall not permit any mechanic's, laborer's or materialmen's lien to be filed against the Project site or any part thereof by reason of any Work, labor, services or materials supplied or claimed to have been supplied to the Project. In the event such a lien is found or claimed against the Project, Contractor shall within ten (10) days after notice of the lien discharge the lien or liens and cause a satisfaction of such lien to be recorded in the public records of Miami-Dade County, Florida, or cause such lien to be transferred to a bond, or post a bond sufficient to cause the Clerk of the Circuit Court of Miami-Dade County, Florida, to discharge such lien pursuant to Chapter 713.24, F.S. In the event Contractor fails to so discharge or bond the lien or liens within such period as required above, Village shall thereafter have the right, but not the obligation, to discharge or bond the lien or liens. Additionally, Village shall thereafter have the right, but not the obligation, to retain out of any payment then due or to become due Contractor, one hundred fifty percent (150%) of the amount of the lien and to pay Village's reasonable attorneys' fees and costs incurred in connection therewith.

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

**10.15. Independent Contractor.** The Contractor is an independent contractor under the Contract. This Contract does not create any partnership nor joint venture. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Village. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

**10.16. Notices/Authorized Representatives.** Any notices required by this Contract shall be in writing and shall be deemed to have been properly given if transmitted by

hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Contract or such other address as the party may have designated by proper notice.

**10.17. Ownership and Access to Records and Audits.**

**10.17.1.** Contractor 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 Contractor during the term of this Contract (“Work Product”) belong to the Village. Contractor 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 Contract) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

**10.17.2.** Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Contract. The Village Manager or her designee shall, during the term of this Contract and for a period of five (5) years from the date of termination of this Contract, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Contract. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor 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 Contract, and following completion of the Contract until the records are transferred to the Village.

**10.17.3.** Upon request from the Village’s custodian of public records, Contractor 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.

**10.17.4.** 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 Contract are and shall remain the property of the Village.

**10.17.5.** Upon completion of this Contract or in the event of termination by either party, any and all public records relating to the Contract in the possession of the Contractor shall be delivered by the Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor 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 Contract, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

**10.17.6.** Any compensation due to Contractor shall be withheld until all records are received as provided herein.

**10.17.7.** Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Contract by the Village.

**10.17.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ALBA L. CHANG, CMC, 1666 KENNEDY CAUSEWAY, SUITE 300, NORTH BAY VILLAGE, FL 33141, 305-756-7171, VILLAGECLERK@NBVILLAGE.COM.**

**10.18. 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 Contractor 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.

## **11. SPECIAL CONDITIONS**

The following provisions in this Section 10 supersede any other provisions contained in this Contract only to the extent of any conflict with same. These provisions are particular to a given transaction and are transaction specific:

### **11.1. Unsatisfactory Personnel.**

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

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

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

**11.2. Hours of Work.** Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, without the written consent of the Village or governing jurisdiction. Work is anticipated to be performed Monday through Friday in accordance with the requirements and limitations of applicable law including, without limitation, the Village Code of Ordinances. The Contractor shall not perform Work beyond the time and days provided above without the prior written approval of the Village.

**11.3. Maintenance of Traffic.** Whenever required by the scope of Work, by federal, state, or local law, or requested by the Village to protect the public health, safety, and welfare, a Maintenance of Traffic ("MOT") must be performed in accordance with the applicable FDOT Index Numbers (600 Series) and as further stated herein. The manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, FHWA), must be followed in the design, application, installation, maintenance and removal of all traffic control devices, warning devices and barriers necessary to protect the public and workmen from hazards with the Project limits. Pedestrian and vehicular traffic must be maintained and protected at all times. Prior to commencement of the Work, Contractor must provide the Village with a proposed MOT plan for review. The Village may require revisions to the proposed MOT plan. The MOT plan must be updated by the Contractor every two weeks. Failure to provide an MOT plan may result in the issuance of a stop work order. The Contractor will not be entitled to additional Contract Time for delays resulting from its failure to provide the required MOT plan.

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

**11.5. Substitutions.** Substitution of any specified material or equipment requires the prior written acceptance of the Project Consultant. It is the sole responsibility of the Contractor to provide sufficient information and documentation to the Project Consultant to allow for a thorough review and determination on the acceptability of the substitution. Approval of a substitution does not waive or mitigate the Contractor's responsibility to meet the requirements of the Contract Documents. The Village may require an adjustment in price based on any proposed substitution.

**11.6. Severe Weather Preparedness.** During such periods of time as are designated by the United States Weather Bureau or Miami-Dade County as being a severe weather event, including a hurricane watch or warning, the Contractor, at no cost to the Village, must take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor has been given notice of same, in accordance with the Miami-Dade County Code. Compliance with any specific severe weather event or alert precautions will not constitute additional work. Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Village has

directed such suspension, will entitle the Contractor to additional Contract Time as non-compensable, excusable delay.

**11.7. American Rescue Plan Act Contract Conditions.** The Contractor acknowledges that the Work may be fully or partially funded utilizing Coronavirus State and Local Fiscal Recovery Funds allocated to the Village pursuant to the American Rescue Plan Act (“ARPA”). Towards that end, the Contractor shall be required to comply with all laws, rules, regulations, policies, and guidelines (including any subsequent amendments to such laws, regulations, policies, and guidelines) required by ARPA, as further detailed in the ARPA Contract Conditions. If compliance with the ARPA Addendum is required, the Village shall select this box: .

**11.8. Grant Funding.** The Contractor acknowledges that the Work may be fully or partially funded utilizing funds from the grants listed below (each a “Grant”). Accordingly, the Contractor warrants and represents that it has reviewed the terms and conditions for each Grant and will perform the Work in accordance with the terms and conditions of the Grant. If the Work will be funded utilizing Grant funds, the Village shall select this box: .

<b>Grant Title</b>	<b>Grant Agreement Exhibit</b>
<b>FDOT Grant FM440846-1-58-01</b>	<b>Exhibit F</b>
<b>Florida Inland Navigation District Grant</b>	<b>Exhibit G</b>

**11.9. DBE Contract Assurance.**

**11.9.1.** The Village affirms it has encouraged women-owned, minority-owned, and disadvantaged businesses of the Project and be responsive to the opportunity of the award of this Contract.

**11.9.2.** Contractor, or any subcontractor performing Work under this Contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFE Part 26 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Village deems appropriate.

**11.10. Scrutinized Companies.**

**11.10.1.** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that

Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

**11.10.2.** If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, 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, F.S. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

**11.10.3.** The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

**11.10.4.** As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed the day and year as first stated above.

**NORTH BAY VILLAGE**

**CONTRACTOR**

By: \_\_\_\_\_  
Dr. Ralph Rosado, AICP  
Village Manager

Attest:

By: \_\_\_\_\_  
Alba L. Chang, CMC  
Village Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

**Addresses for Notice:**

North Bay Village  
Attn: Dr. Ralph Rosado, AICP, Village  
Manager  
1666 Kennedy Causeway, 3<sup>rd</sup> Floor  
North Bay Village, FL 33141  
305-758-7171 (telephone)  
rrosado@nbvillage.com (email)

**With a copy to:**

Weiss Serota Helfman Cole & Bierman, P.L.  
Attn: Haydee Sera, Esq.  
North Bay Village Attorney  
2800 Ponce de Leon Boulevard, 12<sup>th</sup> Floor  
Coral Gables, FL 33134  
hsera@wsh-law.com (email)

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

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

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

Entity: \_\_\_\_\_

**Addresses for Notice:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (email)

**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



**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Name:

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 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, Article 6 provides that 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)

\_\_\_\_\_  
\_\_\_\_\_

**NORTH BAY VILLAGE**

By: \_\_\_\_\_  
Ralph Rosado, CPA, CGFO  
Village Manager

**ACCEPTANCE OF NOTICE TO PROCEED**

**CONTRACTOR**

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

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

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

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

EXHIBIT "B"



Budget Amendment Form

Department <b>Capital Projects</b>	Date <b>3/8/2023</b>
---------------------------------------	-------------------------

Fund(s) to be changed: **Capital Projects Fund**

GL Account	GL Line Item	Transfer to:	Transfer from:
<a href="#">320.00.369.9000</a>	FIND Grant Revenue	\$ -	\$ 177,465.80
<a href="#">320.00.334.3340</a>	State Grant Revenue	\$ -	\$ 73,000.00
<a href="#">320.61.630.6203</a>	Island Walk North Plaza - Project #CP23-02	\$ 250,465.80	\$ -
<b>TOTAL (Columns must be equal)</b>		<b>\$ 250,465.80</b>	<b>\$ 250,465.80</b>

**Description:**

Increase the project costs from \$927,000 to \$1,177,465.80 per ITB#2022-006 using additional FIND and FDOT Grant Revenue. CP23-02