RESOLUTION NO. 2012-16

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING E & M EQUIPMENT CORP. FOR THE RESURFACING IMPROVEMENTS NORTH OF WEST HEATHER DRIVE; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN AGREEMENT RELATED TO THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS,the Village of Key Biscayne, Florida (the "Village") recently sought proposals for the resurfacing improvements project North of West Heather Drive (the "Improvements") through a competitive bidding process; and

WHEREAS, after careful review of the competitive bids submitted, the Village wishes to engage E & M Equipment Corp. (the "E&M") for the Improvements; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

Section 2. **E&M Selected.** The Village Council hereby selects E&M for the Improvements.

Section 3. **Village Manager Authorized.** The Village Manager is hereby authorized to execute an agreement with E&M, in substantially the form attached hereto as Exhibit "A."

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 24th day of April, 2012

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

VILLAGE ATTORNEY

CONTRACT FOR CONSTRUCTION

THIS CONTRACT FOR CONSTRUCTION (this "Contract") is made by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation (hereinafter referred to as "Village"), and **E & M Equipment Corp.**, a Florida corporation, whose mailing address is 3450 West 84 Street, Suite 202 A/B Florida 33018 (hereinafter referred to as "Contractor").

WITNESSETH

That Contractor and Village, for the considerations hereinafter named, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1

SCOPE OF WORK

1.1 Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform the totality of the obligations imposed upon the Contractor and all of the work for the **FY 2011/2012 RESURFACING NORTH OF HEATHER DRIVE** (the "Work" or "Project") in accordance with and as described in the Contract Documents attached as Exhibit "A."

ARTICLE 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. The Notice to Proceed will not be issued until Contractor's submission to Village of all required documents, including permits(s), and after execution of this Contract.

2.2 The Contractor shall prosecute the Work with faithfulness and diligence and the Work shall be substantially completed within Seventy-Five (75) calendar days from the date specified in the Notice to Proceed ("Substantial Completion") so that the Village may occupy and use all or a portion of the Project for its intended purpose. Achievement of Substantial Completion requires acceptance by the Village that the Work is complete and in accordance with the Contract Documents so that the Village may occupy and use the Project for the purpose and use for which it was intended, and the permitting governmental authorities shall have issued final inspection and approval. The Work shall be fully completed in accordance with the Contract Documents within One-hundred and five (105) calendar days from the date specified in the Notice to Proceed ("Final Completion"), and on the date agreed to by Village when all Work has been completed in accordance with the Contract Documents, including the satisfaction of all requirements in Section 3.3 of this Contract for final payment.

2.3 Time is of the essence throughout this Contract and there will be monetary damage to the Village in the event that the Work is not completed within the time fixed for completion in this Contract. In as much as the actual damages for such delay of performance is impossible to exactly determine, Contractor agrees that it shall be liable for and shall pay Village liquidated damages for all delay damages as set forth herein. Upon failure of Contractor to achieve Substantial Completion of the Contract within Seventy-Five (75) calendar days from the date specified in the Notice to Proceed, Contractor shall pay to Village the sum of Five Hundred Dollars ($500) for each calendar day that the Contractor failed to achieve Substantial Completion. After Substantial Completion, should Contractor fail to complete the remaining Work and achieve Final Completion within One-hundred and five (105) calendar days from the date specified in the Notice to Proceed, Contractor shall pay to Village the sum of Five Hundred Dollars ($500) for each calendar day after Substantial Completion that the Project has not achieved Final Completion and readiness for final payment. 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.

2.4 Village shall inspect the Work and prepare and deliver to the Contractor a punchlist for the Work or portion thereof ("Punchlist'), which was inspected. This Punchlist shall list all items that Village has identified for correction or completion. When all items listed on the Punchlist have been corrected or completed to the satisfaction of Village, Village may certify Final Completion. Contractor understands and agrees that Final Completion cannot occur until such time as the Punchlist Work has been completed so that the Project can be occupied and used by Village for its intended purpose without disruption to Village.

2.5 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.

ARTICLE 3

CONTRACT PRICE

3.1 Village shall pay to Contractor for the performance of the Contract, the total lump sum of Three Hundred Twenty-Seven Thousand Three Hundred Twenty-Nine dollars ($327,329.00) (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.

3.2 Village shall pay the Contract Price above pursuant to the following schedule:

The Contract Price shall be paid to Contractor upon Final Completion of the Work in accordance with the Contract Documents and acceptance by the Village and upon certification by the Village's Project Consultant that the Work is complete and in accordance with the Contract Documents ("Certification of Final Completion").

3.3 Upon Certification of Final Completion by the Village, the Contract Price shall be due and payable to Contractor within thirty (30) days after the following conditions are satisfied:

(a) Inspection and submission of evidence of approval of all the Work requiring inspection by the Village and any governmental body, inspection organization, bureau or association having jurisdiction over the Work, within Contractor's responsibilities under this Contract;

(b) Owner's approval of Contractor's final Application for Payment;

(c) Assignment of all manufacturer's warranties or assignment of subcontractor's warranties on material or equipment installed;

(d) Final disbursements which are related to the performance of the Work by Contractor or its subcontractors, sub-subcontractors, laborers or material suppliers;

(e) Final waivers of lien from the Contractor and all vendors and subcontractors which have provided labor and/or materials for performance of the Work which shall accompany Contractor's application for final payment;

(f) Contractor obtaining a certificate of completion or occupancy, as may be required;

It is mutually agreed that no payment made under this Contract shall be evidence of acceptance of defective or improper materials or workmanship.

3.4 Any payment by Village, including the final request for payment, does not constitute approval or acceptance by Village of any item of the Work nor shall it be construed as a waiver of any of the Village's rights hereunder or at law or in equity.

3.5 This Contract is subject to the condition precedents that: (i) Village funds are available and budgeted for the Contract Price; (ii) the Village secures and obtains any necessary grants or loans for the accomplishment of this 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.

ARTICLE 4

CONTRACT DOCUMENTS

4.1 The Contract Documents, which comprise the entire agreement between the Village and the Contractor concerning the Work consist of (a) this Contract for Construction (including any change orders and amendments thereto), (b) the Project Manual and all bidding documents or procurement documents for the Project, (c) the Contractor's bid or proposal for the Project, (d) Insurance Certificates, (e) Performance and Payment Bonds, (f) the Notice of Award, and (g) 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. In the event of any conflict among the foregoing, the documents shall govern in the order listed herein. Contractor is reminded and hereby recognizes that all Work under this Contract must comply with all applicable federal, state and local law. Any mandatory clauses which are required by applicable law shall be deemed to be incorporated herein.

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.

ARTICLE 5

INDEMNIFICATION

5.1 Contractor shall defend, indemnify, and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, including legal fees and costs and through appeal, arising out of or, related to, or in any way connected with Contractor's performance or non-performance of this Contract or with Contractor's obligations or the Work related to this Contract, including by reason of any damage to property or bodily injury or death incurred or sustained by any party. 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 employment related litigation or worker's compensation claims under federal or state law. The Contractor shall further defend, indemnify, and hold the Village harmless from all fines, citations, court judgments, insurance claims, restoration costs or other losses or liabilities arising out of or, related to, or in any way connected with Contractor's performance or non-performance of this Contract or with Contractor's obligations or the Work related to this Contract. The provisions of this section shall survive termination of this Contract.

ARTICLE 6

INSURANCE AND BONDS

6.1 **Insurance.** 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 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.

(a) 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.

(b) Professional Liability Errors and Omissions insurance coverage in an amount not less than $1,000,000.

(c) Workers Compensation and Employer's Liability insurance, as required by law.

(d) Business Automobile Liability with minimum limits of $1,000,000 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.

(e) 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.

(f) 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.

6.2 Payment and Performance Bonds.

The Contractor shall, simultaneously with the execution of this Agreement, provide the Village with a Performance Bond guaranteeing the performance of this Agreement. The Contractor shall provide a Payment Bond incorporating the requirements of the applicable Florida Statutes for one hundred percent (100%) of the Contract Price of this Agreement. Such Performance and Payment Bonds shall incorporate by reference all of the terms and conditions of the Contract Documents, including, but not limited to the Contractor and Surety's obligation for Liquidated Damages. Both the Performance and Payment Bond shall be in a form acceptable to the Village.

ARTICLE 7

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

7.1 Contractor represents the following:

7.1.1 Contractor has examined and carefully studied the Contract Documents and any other data identified in the bidding documents, including, without limitation, the "technical data" and plans and specifications.

7.1.2 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.

7.1.3 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.

7.1.4 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 Project 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 Project site or for existing improvements at or near the Project 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 Project 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 as specified in Article 2 of this Contract and in accordance with the other terms and conditions of the Contract Documents.

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

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

7.1.7 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.

7.1.8 The Contractor agrees and represents that it possesses the requisite 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 Contractor warrants the following:

7.2.1 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.

7.2.2 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.

7.2.3 Licensing and Permits: 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. Contractor acknowledges that it is the obligation of Contractor to obtain all licenses and permits required for this Project. The permits are:

Village Permits, including Public Works Right-of-Way Permit.

ARTICLE 8

DEFAULT AND TERMINATION

8.1 If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work within the Contract Time as specified in Article 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 Contract Time, 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 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 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 through the date of termination 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.

ARTICLE 9

MISCELLANEOUS

9.1 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.

9.2 Contractor's Responsibility for Damages and Accidents.

9.2.1 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.

9.2.2 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.

9.3 Defective Work; Warranty and Guarantee.

9.3.1 Unless otherwise provided for in the Contract Documents, all materials and equipment incorporated into any Work covered by this Contract shall be new and of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be in accordance with construction practices acceptable to Village. Contractor warrants to Village all labor, equipment and materials furnished or performed under this Contract against defects in materials and workmanship. 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 nondefective Work.

Contractor shall bear all direct, indirect and consequential costs of such removal or corrections, including the cost of testing laboratories and personnel.

9.3.2 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 Village's Project Consultant, 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.

9.3.3 The Contractor shall unconditionally warrant and guarantee all labor, materials and equipment furnished and Work performed, regardless of whether the same were performed by the Contractor or by any of its subcontractors, for a period of one (1) year from the date of Substantial Completion as required by Florida law, unless longer warrantees or guarantees are provided for elsewhere in the Contract Documents, in which case the longer periods of time shall prevail. If, within one (1) year 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. 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.

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

9.4 **Legal Restrictions and 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 road, right-of-way or access area, 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, Chapter 17 of the Village Code. The Contractor shall not perform Work beyond the time and days provided herein without the prior written approval of the Village.

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

9.5.1 Village or any of its duly authorized representatives shall, until three (3) 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.

9.5.2 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.

9.5.3 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.

9.6 No Damages for Delay.

Contractor shall not be entitled to and hereby waives any and all damages or any claim by reason of delay against Village, and shall have no claim other than for an extension of time 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, lost profits, overhead, 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. Notwithstanding the above, Contractor may be granted an extension of time and suspension of liquidated damages for any delay beyond the reasonable control of the Contractor. Should any delay, disruption, interference or hindrance be solely and intentionally caused by the Village, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon fifteen (15) days written notice to the Village.

9.7 Authorized Representative.

9.7.1 Before commencing the Work, Contractor shall designate a competent, authorized 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.

9.7.2 The Authorized Representative, project managers, superintendents and supervisors for the Project are all subject to prior and continuous approval of 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 Village, Contractor shall replace the unacceptable personnel with personnel acceptable to Village.

9.8 **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 Owner harmless from any liability on account of any and all such taxes, levies, duties and assessments.

9.9 **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.

9.10 **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. 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.

9.11 **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.

9.12 **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.

9.13 **Public Entity Crimes Affidavit.**

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

9.14 **Capitalized Terms.**

Capitalized terms shall have their plain meaning as indicated herein.

9.15 **Independent Contractor.**

The Contractor is an independent contractor under this 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.

9.16 **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.

9.17 **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.

9.18 **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.

9.19 **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.

9.20 **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 following addresses:

For the Village: John C. Gilbert
Village Manager
88 W. McIntyre Street
Key Biscayne, Florida 33149

With a copy to: Stephen Helfman, Esq.
Village Attorney
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

For The Contractor: Edrey Rodriguez
E & M Equipment Corp.
3450 West 84th Street
Suite 202 A/B
Hialeah, FL 33018

SIGNATURE PAGES FOLLOW ON THE NEXT PAGES

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: VILLAGE OF KEY BISCAYNE, FLORIDA, signing by and through its Village Manager authorized to execute same by Council action on the 24th day of April 2012, and E & M EQUIPMENT CORP., signing by and through Edrey Rodriguez, its President, duly authorized to execute same.

VILLAGE:

Attest:

Village Clerk

Village of Key Biscayne, Florida, a Florida municipal corporation

By: _____

John C. Gilbert, ~~Village Manager~~

Approved as to Form
and Legal Sufficiency:

Village Attorney

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR:

E & M Equipment Corp., a Florida corporation

ATTEST:

_____
(Secretary)

By:_____
Name: Edrey Rodriguez
Title: President

[Corporate Seal)]