

WORK ORDER No. 12 FOR PROFESSIONAL SERVICES

TO: Marlin Engineering Inc.
2191 NW 97 Avenue
Miami, Florida 33172
(305) 477-7575

DATE: April 9, 2019

The City of Doral authorizes the firm of Marlin Engineering, Inc. to provide professional engineering services to conduct Doral Legacy Park Baseball Field Repair Protocol at the subject property located at 11400 NW 82 St. Doral FL. The services that will be provided as part of this task include project management and construction documents for the re-grading of the perimeter of the Baseball Field outfield. The work should be performed as described on the attached Proposal submitted by your firm dated April 8, 2019.

SCOPE OF SERVICES AND SCHEDULE:

The scope of the project will be as described in the attached proposal from Marlin. The schedule requires the work to be performed within one (1) week from the date of execution. The performance of services associated with this Work Order will be executed on a lump sum basis with a not to exceed amount of \$6,616.00. If you fail to begin work subsequent to the execution of this Work Order, the City of Doral will be entitled to disqualify the Proposal and revoke the award.

Work Order is not binding until the City of Doral agrees and approves this Work Order.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

CONSULTANT: Marlin Engineering, Inc.

BY: [Signature]
NAME: JOSE SANTIA GO
TITLE: VICE PRESIDENT

WITNESSES:

1. [Signature]
2. [Signature]

SEAL:



OWNER: City of Doral

BY: [Signature]
NAME: Albert P. Childress
TITLE: City Manager

AUTHENTICATION:

BY: [Signature]
NAME: Connie Diaz
TITLE: City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE SOLE USE OF THE CITY OF DORAL:

BY: [Signature]
NAME: Luis Figueredo, ESQ.
TITLE: City Attorney



April 8, 2019

Jorge Hernandez
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166
Jorge.hernandez@cityofdoral.com

Re: Doral Legacy Park Baseball Field Repair Protocol

Dear Mr. Hernandez:

Per your request, we respectfully submit this proposal letter in accordance with our field review, preliminary investigation and analysis of data provided by the City of Doral. Marlin Engineering, Inc. proposes to provide the services identified below pursuant to the Continuing Services Final Agreement provided by the City of Doral (The City) for Engineering and Architectural services, dated February 3, 2018.

I. General

The project will consist of the preparation of construction documents for the re-grading of the perimeter of the baseball field outfield and adjacent planting bed on the east side of Doral Legacy Park.

II. Scope of Work

Task 1 – Survey

- a) Provided by the City

Task 2 – Grading Plans and Miscellaneous Details

MARLIN will prepare a grading plan to establish positive stormwater flow from the last 30 feet of the baseball field to the existing catch basins adjacent to the outfield perimeter. Within the existing planting bed, MARLIN will also prepare details to clear and grub, remove all landscaping and mulch, cut and cap all existing irrigation, and replant sod with a positive slope towards the existing catch basins.

Deliverables will include the following:

Grading Plans

- a. Miscellaneous Details
 - b. Grading Sheets
-

Task 3 – Construction Engineering Oversight

Provide oversight to the assigned contractor’s regrading work and provide engineering support on-site.

Exclusion: Permitting not included.

a) Subconsultants

The below listed subconsultants will assist in the performance of the Work.

Subconsultant Name	Specialty or Expertise
N/A	N/A

-Deliverable: N/A

b) Schedule of Work – Time of Performance

The anticipated length of service shall be one (1) week commencing after the Notice to Proceed. Consultant shall submit the Deliverables and perform the Work as depicted in the table below. Construction engineering oversight will be ongoing during construction up to 24 hours in duration.

SCHEDULE OF DELIVERABLES			
Task or Activity ID#	Major Task, Sub-Task, Activity, or Deliverables	Duration	Delivery Date
2	Miscellaneous Details and Grading Sheets	1 weeks	+1
3	Construction Engineering Oversight	24 hours	Ongoing

c) Compensation

Consultant shall perform the work detailed in this Proposal for a Total fee of \$ 6,616 and 00 cents. The City shall not be liable for any fee, cost, expense or reimbursable expense or other compensation beyond this amount unless approved in a supplemental work order.

SUMMARY OF COMPENSATION			
Task or Activity ID #	Task Name and/or Activity Description	Fee Amount	Fee Basis
2	Miscellaneous Details and Grading Sheets	\$5,216.00	Lump Sum
3	Construction Engineering Oversight	\$1,400.00	Hourly, Not to Exceed



d) Additional Services

Additional services and unforeseen circumstances beyond established scope shall be negotiated in good faith and at the sole discretion of the City.

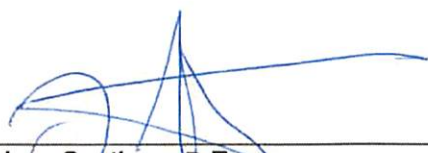
e) Data Provided by the City

The following information or documents are to be provided by the City, if available: As-built information including survey and geotechnical information.

f) Project Manager

Consultant's Project Manager for this Project will be Rafael Lagos, P.E.

Submitted by:



Jose Santiago, P.E.
Marlin Engineering

Reviewed and approval in concept recommended by:

Department Director

Procurement Manager

City Manager

Consultant Fee Proposal Worksheet

Consultant Name: Marlin Engineering, Inc.
 Contract No.:
 Date: 4/8/2019
 Work Order No:

Project: City of Doral - Doral Legacy Park Baseball Field Repair Protocol
 Project No.: Description:

STAFF CLASSIFICATION

Job Classification Assigned Staff Approved Rate	Project Manager Rafael Lagos		Senior Engineer Roxana Matamoros		Project Engineer Lakshmi Durvusula		CADD Technician John Blankenship		Clerical Audrey Edralin		Rate:		Title Name		Staff Hours	Salary	Average
	Rate: \$175.00	Rate: \$160.00	Rate: \$125.00	Rate: \$92.00	Rate: \$50.00	Rate:	Rate:	Rate:	Rate:	Rate:	Rate:	Rate:	Rate:	Rate:	By Task	Cost By Task	Rate Per Task
Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Man hours	Cost/ Task	Task	Task	Task
1																	
2																	
3																	
4																	
5 Miscellaneous Details	2	\$350	4	\$640	8	\$1,000	2	\$184							16	\$2,174	\$135.88
6 Grading Sheets (2 sheets)	2	\$350	4	\$640	12	\$1,500	6	\$552							24	\$3,042	\$126.75
7																	
9																	
10																	
11 Const. Eng. Oversight (1 person x 4 hrs x 2 visits)	8	\$1,400													8	\$1,400	\$175.00
12																	
13																	
14																	
15																	
16																	
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22																	
23																	
24																	
25																	
26																	
27																	
Total Staff Hours	12		8		20		8								48		
Total Staff Cost		\$2,100.00		\$1,280.00		\$2,500.00		\$736.00								\$6,616.00	\$137.83
Total % of Work by Position	25.0%		16.7%		41.7%		16.7%										

Note: Fee for the Principal(s) of the firm are not to be included above as the multiplier is not applicable to their hours. The fee is to be shown below and entered as a separate

<p>Estimate of Principal's Fee</p> <p>Total hours <u>90.00</u> / hour = \$ <u>-</u></p>

1 - SUBTOTAL ESTIMATED FEE:	multiplier 1.00	\$6,616.00
Subconsultant:		
Subconsultant: Sub 3		
Subconsultant: Sub 4		
Principal's Fee Ramon Soria		\$ -
2 - SUBTOTAL ESTIMATED FEE:		\$6,616.00
Geotechnical Field/Lab Testing:		
Survey Fee (or Survey Crew Fee):		
Other Misc. Fee: Enter Fee Description		
3 - SUBTOTAL ESTIMATED FEE:		\$6,616.00
Additional Services (Allowance)		
Reimbursables (Allowance)		
GRAND TOTAL ESTIMATED FEE:		\$6,616.00

- Notes:
- This sheet is to be used by Prime Consultant to calculate the Grand Total Fee and one is to be used for each Subconsultant
 - Manually enter fee from each subconsultant. Unused subconsultant rows may be hidden
 - Where applicable the basis for work activity descriptions shall be the FICE/FDOT Standard Scope and Staff Hour Estimation Handbook.
 - Enter the multiplier value in the field after the word "multiplier" Maximum of 2 decimal points.

RESOLUTION No. 17-91

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, INCREASING RESOLUTION No. 15-119 BY \$400,000.00; AUTHORIZING THE CITY MANAGER TO NEGOTIATE WITH BILTMORE CONSTRUCTION CO., THE COMPLETION OF LEGACY PARK; AUTHORIZING THE TRANSFER OF FUNDS FROM THE VETERANS PARK RESTROOM PROJECT; AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS ON BEHALF OF THE CITY; PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Resolution No. 15-119 approved the construction of Phase II of Legacy Park with a guaranteed maximum price of \$19,707,629 which was approved on June 9th 2015; and

WHEREAS, during construction of Legacy Park the presence of arsenic was discovered that required removal by the City; and

WHEREAS, the State of Florida Department of Environmental Protection (FDEP) approved the City's application in the amount of \$500,000 for tax credits for the clean-up

WHEREAS, the City sold the Tax credits and obtained \$450,000; and

WHEREAS, the City of Doral originally budgeted \$434,728 for fiscal year 2016-17 for Veterans Park Bathroom Project that was not built:

WHEREAS, the City wishes to use \$400,000 of these funds and increase Resolution 15-119 in that amount to complete Legacy Park.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. This Resolution authorizing the City Manager to negotiate with Biltmore Construction the completion of the Legacy Park Project and to utilize funds not to exceed \$400,000 and increasing Resolution No. 15-119 is hereby approved. The City Manager is authorized to execute the agreement and expend budgeted funds on behalf of the City.

Section 3. Implementation. The City Manager is hereby authorized to take action as is necessary to implement the provisions of this Resolution.

Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Rodriguez who moved its adoption. The motion was seconded by Councilmember Mariaca and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Absent/Excused
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 10 day of May, 2017.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



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

RESOLUTION No. 15-119

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE SECOND AMENDMENT, IN SUBSTANTIALLY THE FORM PROVIDED, TO THE AGREEMENT FOR CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR NW 114TH AVENUE PARK WITH BILTMORE CONSTRUCTION, WHICH PROVIDES FOR THE CONSTRUCTION OF PHASE II FOR NW 114TH AVENUE PARK WITH A GUARANTEED MAXIMUM PRICE OF \$19,707,629.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT, SUBJECT TO APPROVAL AS TO FORM AND LEGAL SUFFICIENCY BY THE CITY ATTORNEY, AND EXPEND BUDGETED FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council for the City of Doral (the "City") awarded RFP# 2014-36 (the "RFP") and the Agreement For Construction Management At-Risk Services for NW 114th Avenue Park with Guaranteed Maximum Price ("GMP Agreement") to Biltmore Construction, pursuant to Resolution #14-195, for the provision of preconstruction services including value engineering, constructability reviews, and obtaining bids for construction services to deliver a Guaranteed Maximum Price, for NW 114th Avenue Park (the "Park"); and

WHEREAS, on February 25th, 2015, the City Council, pursuant to Resolution No. 15-42, approved GMP Agreement Amendment No. 1, which provided for Phase 1 construction of the Park, specifically the clearing, de-mucking, and site fill work, and preparation of the building pad; and

WHEREAS, City Council approved Change Order #01, pursuant to Resolution No. 15-89, during the May 7th, 2015 Special Council Meeting, which addressed and funded the disposal of soil contaminated with arsenic at the Park; and

WHEREAS, during the Phase I construction of the facility, the City worked closely with Biltmore Construction and Wannemacher Jensen Architects to finalize the construction plans and GMP for Phase II of this project; and

WHEREAS, Biltmore Construction has provided a final GMP not to exceed \$19,707,629.00 for Phase II of the Park development, which will consist of the construction of a new 2-story, 36,000 sq. ft. recreation building which will house two full court basketball courts, an elevated running track and workout area, aerobics and dance floor, multipurpose room and related support spaces. Other features of the project include a pedestrian bridge with storage building, extensive hardscapes, sidewalks, pavers, concrete seat walls, planters, fencing, baseball field with Bermuda turf, soccer and football field with synthetic turf, four (5) tennis courts, three (3) basketball courts, two (2) sand volleyballs courts, splash pad, playground equipment, five (5) park shelters, concession building, and event lawn; and

WHEREAS, the overhead/profit margin provided by Biltmore Construction is consistent with the proposal Biltmore submitted in the response to the RFP, which was incorporated into the GMP Agreement and approved by the City Council; and

WHEREAS, Staff has recommended that the City Council authorize the City Manager to amend the GMP Agreement with Biltmore Construction by adding GMP Amendment No.2 for the Phase II construction of NW 114th Avenue Park in an amount not to exceed \$19,707,629.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Amendment Approved. GMP Amendment No. 2, in substantially the form provided in Exhibit "A", based on the Guaranteed Maximum Price Proposal by Biltmore Construction, attached hereto as Exhibit "B", both incorporated herein and made a part hereof by this reference, which provides for the addition of the GMP for the construction of Phase II in an amount not to exceed \$19,707,629.00 into the GMP Agreement, is hereby approved.

Section 3. Authorization to Procure Services. The City Manager is hereby authorized to execute the GMP Amendment No. 2, subject to approval as to form and legal sufficiency by the City Attorney, and to expend budgeted funds in furtherance thereof. This Authorization does not create or confer any rights to Biltmore Construction Co.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the purpose and provisions of this Resolution.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Fraga and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Sandra Ruiz	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 9 day of June, 2015.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE USE
OF THE CITY OF DORAL



WEISS, SEROTA, HELFMAN, COLE, & BIERMAN, PL
CITY ATTORNEY

**CONTRACT FINAL CLOSEOUT AGREEMENT FOR CONSTRUCTION
MANAGEMENT AT RISK SERVICES CONTRACT
FOR DORAL LEGACY PARK**

This Contract Final Closeout Agreement ("Closeout Agreement") is made and entered into this 3rd day of January 2019 ~~December 2018~~ by and between the City of Doral, a municipality in the State of Florida ("City") whose address is 8401 NW 53rd Terrace, Doral, FL 33166, Biltmore Construction Co., Inc. ("Construction Manager" or "Biltmore") whose address is 1055 Ponce de Leon Boulevard, Belleair, FL 33756, and Federal Insurance Company ("Surety"), whose address is Chubb Surety Claims, 436 Walnut Street, WA10A, Philadelphia, Pennsylvania 19106. The City, the Construction Manager or Surety may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the City and Construction Manager entered into an Agreement dated January 20, 2015, (the "Contract") for Construction Management At-Risk Services (the "Services") for the construction of the City of Doral's Legacy Park Project located at 11400 NW 82nd Street, Doral, Florida, 33178 (the "Project"); and,

WHEREAS, Construction Manager and Surety issued Payment and Performance Bonds as Principal and Surety, respectively, for the Project for the benefit of the City; and

WHEREAS, the Contract contained deadlines for the Project to reach Substantial Completion and Final Completion; and

WHEREAS, the City asserts that Substantial Completion and Final Completion of the Project were delayed and seeks to assert liquidated damages against Construction Manager for the delays; and

WHEREAS, Construction Manager disputes the Project delays and asserts that it is entitled to change orders, extended general conditions and an equitable adjustment of the Contract time and Contract price (all of the Construction Manager's claims are hereinafter collectively referred to as "Construction Manager Claims"); and

WHEREAS, the City disputes the basis for and amount of the Construction Manager Claims; and

WHEREAS, the City asserts that there are defects at the Project which defects include but are not limited to the following: the Splash Pad, Resysta Cladding, improper grading and


City

Final Closeout Agreement

 Biltmore Surety

drainage at east and west retention areas, improper grading and drainage of the baseball fields, improper grading and drainage of the event lawn, punch list items, bridge repairs, and other items as more specifically set forth on **Exhibit "A"**; and

WHEREAS, the City has asserted back charges against Construction Manager for additional architectural and engineering costs associated with the Project delays and designing repairs; and

WHEREAS, the City has asserted back charges against Construction Manager associated with correcting the alleged defects (all of the City's back charges, liquidated damages, defect claims and other claims are hereinafter collectively referred to as "City's Claims"); and

WHEREAS, Construction Manager disputes the City's Claims; and

WHEREAS, the City and Construction Manager exchanged multiple communications on the City's Claims and Construction Manager's Claims (both claims hereinafter collectively referred to the Parties' "Dispute") and had multiple meetings trying to resolve their Dispute which communications and meetings resulted in an impasse followed by the City issuing a May 15, 2018, Notice of Intent to Declare Construction Manager in Default of the Contract followed by an August 20, 2018, Notice of Termination and corresponding demand on the Surety; and

WHEREAS, subsequent to the Termination, the City and the Construction Manager continued their meetings and discussions and now both desire to amicably, fully, and finally resolve the Dispute, as well as all claims or disputes that could or should have been asserted by and between the Parties, and to provide for completion and or repair of the Project by Construction Manager and for a negotiated Final Payment to Construction Manager regarding the Project under the terms and conditions set forth in this Closeout Agreement and the Contract Documents;


NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged and agreed upon, the Parties agree as follows:

1. **Recitals**: The above recitals are true and correct and are incorporated into this Closeout Agreement by this reference.

2. **Rescission of Termination**: The City herein rescinds its August 20, 2018, Notice of Termination, expressly conditional upon Construction Manager fully and completely complying with the terms and conditions of the Closeout Agreement. Failure to comply with the


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Millmore Surety

terms and conditions of the Closeout Agreement shall result in the Notice of Termination being automatically reinstated.

3. **Completion and/or Correction of Work:** The Construction Manager agrees to perform the following Work at no additional price or cost to the City and to complete this Work to the reasonable satisfaction of the City and the Project Architect as follows:

- a. Within ten (10) calendar days of execution of this Closeout Agreement the following items shall be fully and finally completed:
 - i. Deliver to City a final set of as built drawings with respect to the South Florida Water Management District for the Project (this is not meant to require approval by the South Florida Water Management District, only delivery) ;
- b. Within sixty (60) calendar days of execution of this Closeout Agreement the following items shall be fully and finally completed:
 - i. Completion of the Splash Pad so that it is fully operational. Completion of the Splash Pad is contingent upon City's acceptance and approval of documents related to the Splash Pad without further modification and receipt of the permit by the Department of Health. Given that the Splash Pad becoming fully and finally operational is contingent on the foregoing conditions precedent, the time allocated to requesting and obtaining City approval and the Department of Health permit shall not be counted as part of the aforementioned sixty (60) calendar days for completion of the Splash Pad;¹

¹ City agrees to pay the permit fee needed to get the Splash Pad operational. This permit fee is in addition to the Final Payment set forth in Paragraph 4. The Parties' understanding is that under the Contract City is responsible for all permits except those that may be required for re-inspection due to the failure of Construction Manager to properly have areas ready for initial inspection.


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- ii. Completion / correction of the Resysta Cladding by properly installing new and reinstalling acceptable (as determined by the Architect) existing Resysta Cladding. However, given that the final determination of completion concerning the Resysta Cladding is contingent on the building inspector's final inspection and determination that the Resysta Cladding is in compliance with code, the time after which the inspection is requested and until a determination from that inspection is rendered shall not count toward the sixty (60) calendar days for completion;²
- iii. Completion / correction of all Punch List and Warranty Items identified on **Exhibit "A"** (with the exception of the grading and drainage work identified below, which shall have a different time requirement) provided, however, that the Punch List Items contained in Exhibit A shall only include items that were on the original Punch List that have yet to be completed. **Exhibit "A"** contains a list of pending items required to be completed by Biltmore or its subcontractors and Biltmore and the City will work together to resolve these items. If it is determined by Biltmore and the City that items listed on **Exhibit "A"** are the responsibility of the City and/or its Vendor who provided or installed the items, the City will resolve those items outside of this Closeout Agreement;
- iv. Completion / correction of all items identified on the pedestrian bridge inspection report dated July 17, 2018

² The Resysta Cladding originally ordered by the City in its direct purchase was stained "FVG C09 Dark Burma." The new material required will also be stained "FVG C09 Dark Burma," however, Construction Manager makes no guarantees that the color will match the existing material.


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Biltmore

Surety

prepared by Marlin Engineering Inc. attached hereto as
Exhibit "B";

- v. Completion / correction of all roof leaks; and
 - vi. Completion / correction of all HVAC and mechanical issues.
- c. With the start time and duration time to be mutually agreed upon:
- i. Correct allegedly improper grading and drainage of baseball fields based upon repair protocol to be prepared by Marlin Engineering, Inc.;³
 - ii. Correct allegedly improper grading and drainage of east and west retention areas of the Project based upon repair protocol to be prepared by Marlin Engineering, Inc.;³
 - iii. Correct allegedly improper grading and drainage of civic event lawn area of the Project based upon repair protocol to be prepared by Marlin Engineering, Inc.;³
- d. Should Construction Manager fail to fully and properly complete the above tasks within the time set forth above, then City shall be entitled to deduct as liquidated damages from the Final Payment set forth below, an aggregate amount no greater than Three Hundred Dollars (\$300.00) per day, for each day Contractor is late in completing any task of the above described Work until the task is completed. For example, if two tasks are concurrently not completed by the scheduled timeframe, the maximum total liquidated damages for each day those

³ City, Construction Manager and the Project Architect shall all work collaboratively and collectively with Marlin Engineering to come up with the most cost efficient means to complete and/or correct the grading and drainage for the baseball fields, the east and west retention areas and the civic event lawn. Notwithstanding any other provision in this Closeout Agreement, if the completion of the grading and drainage work requires Construction Manager to purchase materials that were not a part of the original design, as opposed to actual corrective work, City shall reimburse Construction Manager for such additional Materials. Construction Manager agreed to provide all labor required for the completion of the grading and drainage work (repair protocol) at no additional charge to the City, even if the repair protocol requires the installation of additional materials, which materials are to be paid for by the City under this Provision. If the to be agreed upon repair protocol does not resolve the ponding and drainage issues, then Construction Manager may be entitled to additional compensation to perform additional work subject to prior City written approval and a Change Order as per the Construction Contract.


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two tasks remain incomplete shall not exceed the aggregate amount of Three Hundred Dollars (\$300.00) per day. Once Contractor completes the task(s) for which the liquidated damages are assessed, the assessment of liquidated damages shall cease. The parties agree that this liquidated damages sum capped at Three Hundred Dollars (\$300.00) per day is fair and reasonable and does not constitute a penalty. The right to liquidated damages is in addition to any other remedy available to the City under Florida law.

4. **Final Payment to Construction Manager:** City and Construction Manager agree that as of the date of execution of this Closeout Agreement, the total sum of One Million, Three Hundred Thousand Dollars (\$1,300,000.00) remains unpaid under the Contract, which amount represents the full and final total owed to Construction Manager under the Contract, after the amicable resolution of the Dispute (“Final Payment”).

- a. Construction Manager agrees to accept as Final Payment and the City agrees to make Final Payment to Construction Manager in the remaining Contract balance amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00);
- b. Final Payment shall be issued as follows:
 - i. Five Hundred Fifty Thousand Dollars (\$550,000.00) shall be paid to Construction Manager within five (5) calendar days of execution of this Closeout Agreement and receipt of the “As-Builts” referenced in Paragraph 3.a.i. above;
 - ii. One Hundred Fifty Thousand Dollars (\$150,000.00) shall be paid to Construction Manager upon Construction Manager successfully correcting and/or completing the Splash Pad with the Splash Pad being fully operational, as set forth in Paragraph 3.b.i. above;
 - iii. One Hundred Fifty Thousand Dollars (\$150,000.00) shall be paid to Construction Manager upon Construction Manager successfully correcting and/or


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Baltimore Surety

completing the Resysta Cladding, as set forth in Paragraph 3.b.ii. above;

- iv. One Hundred Fifty Thousand Dollars (\$150,000.00) shall be paid to Construction Manager upon Construction Manager successfully correcting and/or completing all punch list and warranty items identified on **Exhibit "A"** (excluding correction of the grading and drainage for the baseball fields, the east and west retention areas and the civic event lawn) and all items identified on the pedestrian bridge inspection report dated July 17, 2018 prepared by Marlin Engineering Inc. attached hereto as **Exhibit "B"**. This work shall be considered complete upon final signature of City for each item identified in original Punch List as provided with Certificate of Substantial Completion that remains incomplete, and items not included on the original Punch List are excluded;
 - v. Three Hundred Thousand Dollars (\$300,000.00) shall be paid to Construction Manager upon Construction Manager successfully correcting and/or completing all of the grading and drainage repairs for the baseball fields, the east and west retention areas and the civic event lawn in accordance with Marlin Engineering Inc.'s to be agreed upon repair protocol per footnote 3.
- c. Except for the payment of the Five Hundred Fifty Thousand Dollars (\$550,000.00) set forth in Paragraph 4.b.i of this Closeout Agreement, any future payments to be made by the City to Construction Manager shall only be made upon the City's receipt of Surety's Consent of Surety as the Surety for Construction Manager in connection with the Contract.


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Billmore Surety

- d. Provided the City has received the above-required Consent of Surety from Federal as the Surety for Construction Manager, the Final Payment as set forth above shall be issued by the City within the time frames set forth above. Each portion of the Final Payment set forth above shall be subject to City's receipt of all documents that are identified herein and in the Contract and Contract Documents as conditions precedent to Payment and Construction Manager's timely completion of the Work set forth above.
- e. Except as otherwise noted in footnote 3, Construction Manager acknowledges and agrees that Final Payment includes full and final payment from the City for all sums owed by the City to Construction Manager and includes but is not limited to the following:
 - i. all compensation due to Construction Manager under the Contract and Contract Documents for all Work performed by Construction Manager, and any of its subcontractors, for the Project;
 - ii. all compensation due to Construction Manager for any additional work that was requested and authorized by the City or performed by Construction Manager in connection with the Project or on the Project site, regardless of whether the work was outside of the Scope of Work in the Contract and Contract Documents;
 - iii. all remaining retainage held by the City and due to Construction Manager upon completion of the Work and Final Completion of the Project and acceptance of the Project by the City;
 - iv. any and all pending change orders or any and all other claims of any kind whatsoever that Construction Manager or its subcontractors asserted or could have


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Final Closeout Agreement


Billmore Surety

asserted against the City arising out of or related to the Project.

- f. After the Final Payment is made, no further payments are due from the City to Construction Manager for the Project or any other Work performed by Construction Manager on the Project site or in any way related to the Project.

5. **Warranty:** Construction Manager provides the following warranties with regard to the Work to be performed here under:

- a. The Splash Pad warranty from the subcontractor is attached hereto as **Exhibit "C"**. Further, Construction Manager provides a one-year warranty on the entire Splash Pad. The warranties for the Splash Pad shall commence on the date the Splash Pad is fully operational and in use as certified by the Project Architect;
- b. The Resysta Cladding. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the Resysta Cladding. The one-year warranty for the Resysta Cladding shall commence on the date the Resysta Cladding is fully completed as determined by the Project Architect;
- c. Punch List and Warranty Items identified on **Exhibit "A"** with the exception of the grading and drainage work identified below. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a ninety-day (90) warranty on all Punch List Items and all Warranty Items identified on **Exhibit "A"** with the exception of the grading and drainage work identified below. The ninety-day warranty for the Punch List and Warranty Items identified on **Exhibit "A"** with the exception of the grading and drainage work identified below shall commence on the date the Punch List and Warranty Items identified on **Exhibit "A"** with the exception of the grading and drainage work identified below are fully completed as certified by the Project Architect;


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- d. The pedestrian bridge repairs. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a ninety-day (90) warranty on all pedestrian bridge repairs. The ninety-day (90) warranty for the pedestrian bridge repairs shall commence on the date the pedestrian bridge repairs are fully completed as certified by the Project Architect;
- e. Baseball fields. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the regrading and drainage work for the Baseball Fields. The one-year warranty for the Baseball Fields shall commence on the date the baseball fields regrading and drainage work is fully completed as certified by the Project Architect;
- f. The east and west retention areas. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the regrading and drainage work for the east and west retention areas. The one-year warranty for the regrading and drainage work for the east and west retention areas shall commence on the date the regrading and drainage work for the east and west retention areas is fully completed as certified by Marlin Engineering Inc.;
- g. The civic event lawn. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the regrading and drainage work for the civic event lawn. The one-year warranty for the regrading and drainage work for the civic event lawn shall commence on the date the regrading and drainage work for the civic event lawn is fully completed as certified by Marlin Engineering Inc. ;
- h. The Roof. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the roof. The one-year warranty for the roof shall commence on the date the roof corrective work is fully completed as certified by the Project Architect;


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- i. The HVAC and mechanical equipment. In addition to any manufacturer and subcontractor warranties, Construction Manager provides a one-year warranty on the HVAC and mechanical equipment. The one-year warranty for the HVAC and mechanical equipment shall commence on the date the HVAC and mechanical equipment corrective work is fully completed as certified by the Project Architect.
- j. Nothing herein shall be construed to require Construction Manager to extend any Manufacturer warranties previously provided.

6. **Defense and Indemnification:** To the fullest extent permitted by law, Construction Manager shall defend and indemnify and hold harmless the City and the City's consultants, representatives and agents and their respective employees, representatives, officers, and officials (collectively, "Indemnified Parties") from and against lawsuits, claims, damages, losses and expenses, including but not limited to attorneys' fees and court costs, arising out of or resulting from performance of the Work, including but not limited to any claim for payment asserted in law or in equity by any lower tiered subcontractor, sub-subcontractor or material suppliers who supplied labor, materials and or equipment to the Project.

7. **Waiver of Past Claims:** Except for the obligations contained herein, the City and Construction Manager hereby waive as to each other, all claims, including but not limited to claims for overbilling, underpayment, additional payments, interest, liquidated damages, delays, general conditions, reimbursements or any other claims or damages arising from, or in any way relating to, the services provided by Construction Manager under the Contract or in connection with the Project; provided, however, that the City does not waive or release Construction Manager of Construction Manager's obligations contained in this Closeout Agreement and provided further, Construction Manager's indemnification obligations, hold harmless obligations, punch list obligations, warranty obligations, and any other express obligations in the Contract and Contract Documents owed by Construction Manager and or its Surety to the City, if any, that continue after Final Payment are not affected by this waiver of past claims or damages or by this Closeout Agreement. Nothing in this paragraph shall expand, enlarge, reduce, or limit the obligations of Surety under the Payment and Performance Bonds for the Project.


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8. **Non-Novation of Agreement and Contract Document:** This Closeout Agreement is intended to resolve the Parties' Dispute and all pending and un-asserted claims related to the Project, as well as to facilitate the Parties' reaching resolution as to pending allegedly defective Work and Final Payment under the Contract and Contract Documents. This Closeout Agreement is not a novation of the Contract and Contract Documents, and all post Final Payment obligations of Construction Manager and its Surety contained within Contract and Contract Documents, if any, remain valid and enforceable. All conditions precedent to Final Payment contained in the Contract and Contract Documents remain in full force and effect. All warranties contained in the Contract and Contract Documents remain in full force and effect and shall be honored by Construction Manager and its respective subcontractors and suppliers, as applicable unless modified in this Closeout Agreement. Nothing in this Paragraph shall expand, enlarge, reduce, or limit the obligations of Surety under the Payment and Performance Bonds for the Project.


9. **Assistance to City in Defending Architect demand for Payment:** The Project Architect has issued an invoice to the City asserting additional costs for extended time on the Project. As additional consideration for Final Payment as set forth above, Construction Manager agrees to assist City, at no additional cost to the City, with respect to City's defense against the Project Architect's pending claim. Specifically, Construction Manager agrees to provide documents and produce employees under Construction Manager's control to reasonably assist the City in defeating or reducing the Project Architect claim. The assistance includes but is not limited to providing the City with evidence and testimony (if needed) of design errors and project delays for which Project Architects is responsible, if any. The City shall be required to pay reasonable costs for copies of any documents or data requested.

10. **Absence of Effect on Surety:** Nothing in this Closeout Agreement shall expand, enlarge, reduce, or limit the obligations of Surety under the Payment and Performance Bonds for the Project.

11. **Reservation of Indemnity Rights:** Notwithstanding any contrary provision in this Closeout Agreement, Surety and Construction Manager expressly acknowledge and agree that all of the terms and conditions of any and all General Agreements of Indemnity ("GAI"), including but not limited to those certain GAIs dated August 27, 2003 and June 27, 2007, which Construction Manager and its related indemnitors executed in favor of Surety and its affiliates,


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Baltimore Surety

shall remain in full force and effect, and that Construction Manager shall remain liable to Surety for all fees and costs incurred pursuant to the GAIs and all bonds issued in connection therewith. To the extent there are any inconsistencies between this Closeout Agreement and the GAIs, the terms and conditions of the GAIs shall control. Surety expressly reserves all of its rights and defenses that it may have as against Construction Manager under the GAIs, under any bonds issued by Surety on behalf of Construction Manager, at law, and in equity, and Construction Manager acknowledges and agrees that such rights and defenses shall not be prejudiced or affected by this Closeout Agreement.

12. **Settlement of Disputed Claims:** The City and Construction Manager acknowledge that this Closeout Agreement represents a settlement of disputed claims and is not an admission by either party of any wrongdoing.

13. **Attorney's Fees and Costs:** The City, Construction Manager and Surety shall each be responsible for their own respective attorneys' fees and costs incurred as a result of the dispute and Claims that are the subject of this Closeout Agreement. However, should a dispute arise out of the Contract to the extent the Contract remains enforceable, or should a dispute arise out of this Closeout Agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party, for all trial and or appellate levels.

14. **Entire Agreement; Conflicts:** This Closeout Agreement, the Contract and Contract Documents constitute the entire agreement between the parties and supersedes and cancels any other agreement, representation, or communication, whether oral or written, between the parties, relating to the Contract closeout. To the extent there is an express conflict between the provisions of the Contract and the Contract Documents and this Closeout Agreement, this Closeout Agreement shall control to the extent of the conflict.


15. **Headings:** The section and subsection headings in this Closeout Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretations of this Addendum.

16. **Governing Law:** This Closeout Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

17. **Venue:** If litigation shall be instituted between the Parties regarding the provisions of this Closeout Agreement, venue shall only be in Miami-Dade County, Florida.


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Billmore Surety

18. **Joint Preparation:** The preparation of this Closeout Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

19. **Severability:** In the event a portion of this Closeout Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective, and the parties agree to voluntarily amend any portion of this Closeout Agreement as necessary to comply with a Court order.

20. **Further Assurances:** At any time, and from time to time, after the effective date of this Closeout Agreement, each Party will execute such additional instruments and take such action as may be reasonably requested by the other Party, to confirm or otherwise to carry out the intent and purpose of this Closeout Agreement.


21. **Advice of Counsel:** Each Party acknowledges and agrees that it has had the opportunity to consult with and be represented by counsel of its choice in connection with the Dispute and the negotiation and documentation of this Closeout Agreement.

22. **Counterparts:** This Closeout Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**This space left blank intentionally
Signatures appear on next page**


City

Final Closeout Agreement


Billmore
Surety

IN WITNESS WHEREOF, the parties execute this Closeout Agreement on the respective dates under each signature: the City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same, by Contractor by and through Jeff Parker, and by Surety by and through _____, whose representatives have been duly authorized to execute same.

Attest: [Signature]

CITY OF DORAL
By: [Signature]
Date: 1.3.19

Approved as to form and legal sufficiency for use of and reliance by the City of Doral, Florida only:
[Signature]
City Attorney

WITNESSES
Debra K. Schaefer
SIGNATURE
Debra K. Schaefer
Print Name
Nicole Paul
SIGNATURE
Nicole PAUL
Print Name

BILTMORE CONSTRUCTION CO. INC.
By: [Signature]
Print Name: Jeff Parker
Title: Vice President

WITNESSES

SIGNATURE

Print Name

SIGNATURE

Print Name

FEDERAL INSURANCE COMPANY
By: _____
Print Name: _____
Title: Attorney-In-Fact
(Attach Power of Attorney)

[Signature]
City