

**INVITATION TO BID (“ITB”) NO.: 17-18-008**  
**MIAMI WOMAN’S CLUB BAYWALK PROJECT, D2**

**OFFICE OF CAPITAL IMPROVEMENTS**

**PROJECT NO.: B-30731**

**Issue Date: March 7, 2018**

**Bid Due Date: April 10, 2018**

**Bid Due Time: 2:00 P.M. (Local Time)**



**Mayor Francis Suarez**  
**Commissioner Wilfredo “Willy” Gort, District 1**  
**Commissioner Ken Russell, District 2**  
**Commissioner Joe Carollo, District 3**  
**Commissioner Manolo Reyes, District 4**  
**Commissioner Keon Hardemon, District 5**  
**City Manager Emilio T. González, Ph.D.**

**Issued By:**  
**City of Miami**  
**Department of Procurement**  
**444 SW 2nd Avenue, 6th Floor**  
**Miami, FL 33130**

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## INVITATION TO BID NO.: 17-18-008

### NOTICE TO CONTRACTORS

Sealed Bids will be received by the **City of Miami, Office of the City Clerk, City Hall, 1<sup>st</sup> Floor, 3500 Pan American Drive, Miami, Florida 33133-5504** for:

#### MIAMI WOMAN'S CLUB BAYWALK PROJECT, D2

**Issue Date: March 7, 2018**

**Bid Due Date: April 10, 2018 @ 2:00 P.M. (Local Time)**

**Scope of Work:** The Work consists of furnishing all materials, labor, and equipment necessary for the construction of the baywalk, lighting, landscaping, and hardscape (trash receptacles and benches). The full Scope of Work is detailed in the construction drawings.

**Minimum Requirements:** Prospective Bidders shall, as of the Bid Due Date:

- A.** have a current **Certified General Contractor** license from the State of Florida; **and**
- B.** must demonstrate that it has full-time key personnel with the necessary experience to perform the Project's Scope of Work. This experience shall include work in successfully completed Projects performed by the identified key personnel whose bulk of work (at minimum fifty-one percent (51%) of the work) is performed in marine and coastal Projects similar to the Project's Scope of Work described in these Solicitation Documents. Bidder shall demonstrate the required experience by providing a detailed description of at least three (3) Projects whose scope included the construction of seawalls, baywalks, and docks which are similar to the Project's Scope of Work described in this Solicitation Document and in which the Bidder's identified key personnel is currently actively engaged or has completed the work, which has been accepted by the Owner, within the past five (5) years. List and describe the aforementioned Projects and state whether the Work was performed for the City, other government agencies as clients, or private entities. The description must identify and describe for each Project:
  - a) The identified key personnel and their assigned roles and responsibilities for the listed Project;
  - b) The client's name and address including a contact person, email address, and phone number for reference verification;
  - c) Description of Work;
  - d) Total dollar value of the Contract;
  - e) Contract duration;
  - f) Statement or notation of whether Bidder's identified key personnel is/was employed by the Prime Contractor or Subcontractor; and
  - g) For completed Projects, provide letters of certification of final acceptance or similar Project closure documentation issued by the client and include available Contractor's performance evaluations.

Submitted reference Projects must demonstrate that the Bidder: i) was the Prime Contractor for the Project; and ii) self-performed at least thirty percent (30%) of the physical labor construction work for the Project. The Selected Bidder, hereinafter referred to as "Contractor," must self-perform at least thirty percent (30%) of the physical labor construction work for the Miami Woman's Club Baywalk Project (the "Project").

**The City reserves the right to request additional / supplemental information and/or contact listed persons pertaining to Bidder's experience / minimum requirements.**

The Department of Procurement (Procurement) has scheduled a **Voluntary Pre-Bid Conference** to be held on the following date, time, and location:

**Location:** Miami Riverside Center  
444 SW 2<sup>nd</sup> Avenue, 6<sup>th</sup> Floor – South Conference Room  
Miami, Florida 33130

**Date/Time:** March 14, 2018 at 10:00 AM (Local Time)

The bid documents, including plans, may be obtained by visiting the Office of Capital Improvements (OCI) webpage: <http://www.miamigov.com/MiamiCapital/NewBidsandProposals.html>.

**It is recommended that firms periodically check OCI's webpage for updates and the issuance of addenda. It is the sole responsibility of each Bidder to ensure the receipt and understanding of all addenda.**

All bids shall be submitted in accordance with the Instructions to Bidders identified in Section 2, Instructions for Submission. **Bids must be submitted in duplicate originals and on CD or USB Drive in searchable PDF format** at the time, date and location stated, where bids will be publicly opened. **Any bids received after the time and date specified will be rejected and will not be considered.** The responsibility for submitting a bid before the stated time and date is solely and strictly the responsibility of the Bidder. The City is not responsible for any delay no matter what the cause. Bidder assumes all risk for any delay or mistake. **BIDDER IS HEREBY ADVISED THAT THIS INVITATION TO BID IS SUBJECT TO THE "CONE OF SILENCE," IN ACCORDANCE WITH ORDINANCE NO. 12271, Section 18-74, CITY OF MIAMI CITY CODE, as amended.**

## **Section 1 – Definitions**

**Architect of Record (AOR)** means a designation reserved, usually by law, for a person or organization professionally qualified and licensed in the State of Florida to perform architectural services.

**Basis of Design** means a specific manufacturer's product that is named; including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

**Bid** means the response submitted by a Bidder to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Contract Documents at the time of submittal.

**Bidder** means any individual, firm, incorporated or unincorporated business entity, limited liability company, or corporation tendering a Submittal, acting directly or through a duly authorized representative.

**Change Order** means a written document ordering a change in the Contract Price or Contract Time or a material change in the Work. A change order must comply with the Contract Documents.

**City** means the City of Miami, Florida, a Florida municipal corporation. In all respects hereunder, City's performance is pursuant to the City's capacity as Owner. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to the City as a party to this Contract. For the purposes of this Contract, "City" without modification shall mean the City Manager or Director, as applicable.

**City Commission** means the legislative body of the City of Miami.

**City Manager** means the duly appointed chief administrative officer of the City of Miami.

**Small Business Enterprise (SBE)** means a construction related enterprise, including a design-build firm, and any firm providing trades and/or services for the completion of a construction Project, as defined in Section 10-33.02 of the Code of Miami-Dade County. SBE is additionally referenced in Section 18-89 of the City Code and in these Contract Documents.

**Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Director that may affect the ITB Contract price or time.

**Construction Engineering Inspection (CEI)** means an individual or an organization (assigned by the Director of OCI) responsible in assisting the City's Project and Construction Managers in Contract administration, site inspections, material sampling and Project close-out.

**Construction Manager (CM)** means the individual or organization assigned by the Director of OCI whose duties include reviewing Project documents during the design phase and managing the construction phase that include, but not limited to, directing and coordinating construction activities associated with the Project.

**Construction Schedule** means a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

**Consultant** means a firm that has entered into a separate agreement with the City for the provision of design/engineering services for the Project; and if applicable, means the Architect or Engineer of Record contracted by the City to prepare the plans and specifications for the Project. Consultant may also be referred to as Architect or Engineer of Record.

**Contract** means the Invitation to Bid (ITB) solicitation and the bid documents that have been executed by the Bidder and the City subsequent to approval of award by the City.

**Contract Documents** mean the Contract as may be amended from time to time, the plans and drawing, all addenda, clarifications, directives, change orders, payments and other such documents issued under or relating to the Project.



**Contractor** means the person, firm, or corporation with whom the City has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to any Work issued under this Contract through the award of an ITB.

**Cure** means the action taken by the Contractor promptly after receipt of written notice from the City of a breach of the Contract Documents which shall be performed at no cost to the City, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site(s) disturbed in performing such cure.

**Cure Period** means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of written Notice to Cure from the City identifying the deficiencies and the time to Cure.

**Department** means or refers to the City of Miami's Office of Capital Improvements ("OCI") formerly known as Capital Improvements and Transportation Program ("CITP").

**Design Documents** means the construction plans and specifications included as part of a bid prepared by the Consultant for this Project under a separate Agreement with the City.

**Director** means the Director of the Office of Capital Improvements or designee, who has the authority and responsibility for managing the Project under this Agreement.

**Drawings** means the graphic and pictorial portions of the Work, which serve to show the design, location and dimensions of the Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings.

**Engineer of Record (EOR)** also referred to as Consultant, a designation reserved, by law, for a person or qualified engineering firm or organization qualified and licensed in the State of Florida to conduct professional engineering services.

**Field Directive** means a written approval for the Contractor to proceed with Work requested by the City or the Consultant, which is minor in nature and should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all the Work in accordance with the Agreement as certified by the Architect or Engineer of Record or the City and submitted all documentation required by the Contract Documents.

**Guaranteed Maximum Cost** means the sum established by these Contract Documents as the maximum cost to the City of performing the specified Work on the basis of the cost of labor and materials plus overhead expenses and profit.

**Inspector** means an authorized representative of the City assigned to make necessary inspections of materials furnished, and of the Work performed, by Contractor.

**Local Workforce Participation Requirements** mean the requirements set forth in § 18-89 of the City Code that (unless determined inapplicable or exempted by the City Manager pursuant to this Code Section) which Contractor must employ on-site labor from persons who reside within the City of Miami municipal boundaries (e.g., city limits).

**Materials** mean goods or equipment incorporated in a Project, or used or consumed in the performance of the Work.

**Notice of Award** means the letter written to the Contractor by the City, notifying the Contractor that they have been awarded the Contract.

**Notice to Proceed** means a written letter or directive issued by the Director acknowledging that all conditions precedent have been met and directing that the Contractor may begin Work on the Project.

**Physical Construction Labor Work** means the completed construction services required by the Contract Documents, completed through the use of the Contractor's own employees and excluding all materials, supplies, and equipment incorporated or to be incorporated in such construction.

**Plans and/or Drawings** means the official graphic representations of a Project.

**Project or Work** as used herein refers to all reasonably necessary and inferable construction and services required by the Contract Documents whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the(its) obligations, including completion of the construction in accordance with the Drawings and Specifications. The Work may constitute the whole or a part of the Project.

**Project Manager (PM)** means the City employee (assigned by the Director) to manage the Project that may include, but is not limited to coordination of design, procurement and construction activities; assigning management tasks to EOR, CM or CEI (hereby known as designee), establish lines of communication and responsibilities to ensure that the Project is completed in a timely manner.

**Qualifier** means a person whose license is attached to the Contractor's company so that the Contractor is currently able to legally do Work in the State of Florida. The Qualifier is fully responsible for the quality of the Work that is performed by the Contractor.

**Request for Information (RFI)** means a request from the Bidder seeking an interpretation or clarification relative to the ITB. The RFI, which shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is needed. The RFI must set forth the Bidder interpretation or understanding of the document(s) in question, along with the reason for such understanding.

**Risk Administrator** means the City's Risk Management Administrator also known as the Director of the Department of Risk Management, or designee, or the individual named by the City Manager to administer matters relating to insurance and risk of loss for the City.

**Subcontractor** means a person, firm or corporation having a direct Contract with Contractor including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes Materials not so worked.

**Submittal** means documents prepared and submitted by the Bidder.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Agreement such that the City can use, occupy, and/or operate the facility in all respects to its intended purpose. Substantial Completion shall not be deemed to have occurred until any and all governmental entities, which regulate or have jurisdiction over the Work, have inspected, and approved the Work. Beneficial use or occupancy shall not be the sole determining factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of occupancy has been issued.

## **Section 2 – Instructions for Submission**

### **1. Intention of City**

It is the intention of the City to describe in this ITB the Project to be completed in accordance with all codes and regulations governing all the Work to be performed under this Project. Any Work, materials or equipment that may reasonably be inferred from the Contract as being required to produce the intended result, shall be supplied by Contractor whether or not specifically called for. Where words have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids and Contractor shall comply therewith. City shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

### **2. Scope of Work**

The Work consists of furnishing all materials, labor, and equipment necessary for the construction of the baywalk, lighting, landscaping, and hardscape (trash receptacles and benches). Additional information concerning the Scope of Work is located in the Construction Drawings.

### **3. Location of the Project**

**Back (rear) of the Miami Woman's Club, 1737 North Bayshore Drive, Miami, FL 33132**

### **4. Performance of the Work**

Contractor shall self-perform (complete) at least thirty percent (30%) of all Physical Construction Labor Work for the negotiated construction cost of the entire Project utilizing its own employees. If the Work is phased, the thirty percent (30%) requirement shall apply jointly and severally to each and every phase of the Work. The City reserves its right to require documentary confirmation of this requirement. By submitting a bid, the Bidder certifies that it shall utilize its own employees to meet this requirement. As part of the bid, the Bidder must include the form titled "Questionnaire." Failure to complete and submit this form, or to meet this requirement, shall result in the bid being deemed non-responsive. Where the City determines that Contractor is deemed as not meeting this requirement during the performance of the Work, then the Contractor shall be in default of the Contract.

### **5. Examination of Contract Documents and Site**

It is the responsibility of each Bidder, before submitting a bid to this Invitation to Bid (ITB), to:

- a. Carefully review the ITB, including any addenda and notify the City of all conflicts, errors or discrepancies,
- b. Visit the site(s) or structure(s) to become familiar with conditions that may affect costs, progress, performance and furnishing of the Work,
- c. Take into account federal, state and local (City and Miami-Dade County including, without limitation the City Procurement Ordinance and Florida Building Code) laws, regulations, ordinances that may affect a Bidder's ability to perform the Work,
- d. Study and carefully correlate Bidder's observations with the requirements of the ITB, and
- e. Sign and return all required ITB forms as applicable.

The submission of a bid to this solicitation shall constitute an incontrovertible representation by Bidder that it shall comply with the requirements of the Contract Documents and that without exception, the response is premised upon performing and furnishing Work required under the Contract Documents and

that the Contract Documents are sufficient in detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**6. Addenda**

Only questions answered via written addenda issued by the City will be binding. Oral and other interpretations or clarifications will be without legal binding effect and should not be relied upon in preparation of a bid response. All questions about the meaning or intent of the Contract Documents are to be directed to the City's Department of Procurement (Procurement) in writing, to the attention of Anthony Hansen, Sr. Procurement Contracting Officer at [amhansen@miamigov.com](mailto:amhansen@miamigov.com), with a copy to the Office of the City Clerk at [clerks@miamigov.com](mailto:clerks@miamigov.com). Interpretations or clarifications considered necessary by Procurement in response to such questions will be issued by the City by means of an Addendum. All Addenda will be posted on the OCI webpage. **Written questions must be received by the City, no later than March 23, 2018 at 5:00 PM.**

**7. Bid Submission**

All bids must be received by the City of Miami, Office of the City Clerk, located at City Hall, First Floor, 3500 Pan American Drive, Miami, FL. 33133, before the time and date specified for bid opening, enclosed in a sealed envelope and legibly marked on the outside:

**BID NO.: 17-18-008**

**PROJECT NAME: MIAMI WOMAN'S CLUB BAYWALK PROJECT, D2 –B-30731**

Bidders must submit **two (2) original bid packages and one (1) electronic bid package on a CD or USB Drive in PDF format**. Failure to submit two (2) originals may result in the bid being deemed non-responsive.

**8. Bid Guaranty**

All bids shall be accompanied by either an original Bid Bond executed by a surety transacting business in Florida meeting the requirements of the City, or by cash, money order, certified check, cashier's check, Unconditional/Irrevocable Letter of Credit by a bank transacting banking business in Florida, Bid Bond Voucher (for Projects totaling less than two hundred thousand dollars (\$200,000.00 inclusive of all fees, costs, and expenses) issued to City of Miami by certified check, treasurer's check or bank draft of any national or state bank (United States), in the amount of five percent (5%) of the total bid amount (payable to City), and conditioned upon Contractor executing the Contract and providing the required Performance and Payment Bond and evidence of required insurance within fifteen (15) calendar days after notification of award of the Contract. The time for execution of the Contract and provision of the Performance Bond, Payment Bond and Certificate(s) of Insurance may be extended by OCI at its sole and absolute discretion. Bid Securities of the unsuccessful Bidders will be returned after award of Contract. Security of the Contractor shall be forfeited to the City as liquidated damages and not as a penalty, for the cost and expense incurred should said Contractor fail to execute the Contract and provide the required Performance Bond and Payment Bond. Any form of Bid Guaranty shall be in a form acceptable to the City's Risk Management Administrator and the City Attorney, as to legal form.

**9. Preparation of Bid**

All bids shall be made upon the blank City forms provided herein and herewith. The bid must be signed and acknowledged by the Bidder, in accordance with the directions on the ITB. Failure to utilize the City's forms, or fully complete said forms, may result in the bid being deemed non-responsive.

The Bidder shall be considered non-responsive if its bid is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The bid is to include the furnishing of all labor, materials, overhead expense and profit, equipment including, but not limited to, tools, services, permit fees, applicable taxes, overhead, and profit for the completion of the Work except as may be otherwise expressly provided in the Contract Documents.

Joint venture firms must complete and submit with the bid, the form titled "Information for Determining Joint Venture Eligibility" (Form A) and submit a copy of the formal agreement between all joint-venture parties. This joint venture agreement must indicate their respective roles, responsibilities, and levels of participation for the Project. Failure to submit Form A, along with an attached written copy of the joint venture agreement may result in disqualification of the bid. All joint venture firms must meet the requirements stipulated in the Florida Statutes.

#### **10. Pre-Bid Conference**

**A Voluntary Pre-Bid Conference will be held on March 14, 2018 at 10:00 a.m. (Local Time) at the Miami Riverside Center, 6<sup>th</sup> Floor South Conference Room, 444 SW 2<sup>nd</sup> Avenue, Miami, FL 33130**, to discuss this ITB. Since space is limited, it is recommended that one representative of each firm attend in order to become familiar with the ITB. Attendees are requested to bring this ITB Package to the conference.

#### **11. Postponement of Bid Opening Date**

The City reserves the right to postpone the date for receipt and opening of bid submissions and will make a reasonable effort to give at least three (3) calendar days' notice of any such postponement to prospective Bidders.

#### **12. Acceptance or Rejection of Bids**

The City reserves the right to reject any or all bids prior to award, to re-advertise for bids, and to not award any Contract, in the reasonable discretion of the City.

The City reserves the right to waive any minor or non-material technicality, informality, variance, deviation, mistake, omission or the like up to or prior to award of the Contract.

Reasonable efforts will be made to either award the Contract or reject all bids within ninety (90) calendar days after bid opening date. A Bidder may not withdraw its bid unilaterally nor change the price before the expiration of one hundred eighty (180) calendar days from the date of bid opening. A Bidder may withdraw its bid after the expiration of one hundred eighty (180) calendar days from the date of bid opening by delivering written notice of withdrawal to the Department of Procurement prior to award of the Contract by the City Commission.

#### **13. Environmental Regulations**

The City reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations (Regulations) in determining a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of the City. Bidder shall submit with its bid, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidders shall notify the City immediately of notice of any citation or violation, which Bidder may receive after the submittal opening date and during performance of the Work under this Contract.

#### **14. Bid Award**

The City will issue the award of the Contract to the lowest responsive and responsible Bidder. The City may require demonstration of competency and, at its sole and absolute discretion, may conduct site visits, and require the Bidder to furnish documentation and/or require the Bidder to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The City shall consider, but not be limited to, such factors as financial capability, labor force, equipment, knowledge, and experience of the trade Work to be performed, the quantity of Work being performed, and past performance on City Projects by the Bidder.

The Bidder must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that it can satisfactorily provide the goods and/or services required herein.

The City, at its sole discretion, may determine a Bidder to be non-responsible where the Bidder has failed to perform in accordance with other Contracts with the City.

Any Bidder who, at the time of submission is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency, may be declared non-responsive.

Any Bidder who may have filed a lawsuit against the City, or where the City has filed a lawsuit related to the Bidder and any City contract or won a court judgment against the Bidder, or if the Bidder is indebted to the City may be declared non-responsive. City for these purposes shall include any City agency or instrumentality.

**15. Bid Protest**

Any actual or prospective contractual party who feels aggrieved in connection with the solicitation or award of a Contract may protest in writing to the Chief Procurement Officer, in accordance with the procedures contained in Section 18-104, Resolution of Protested Solicitations and Awards, as amended, of the City Code, Ordinance No. 12271 (the City of Miami Procurement Code) describing the protest procedures. Protests failing to meet the requirements for filing shall **NOT** be accepted. Failure of a party to timely file shall constitute a forfeiture of such party's right to file a protest. **NO EXCEPTIONS WILL BE MADE TO THIS REQUIREMENT.**

**16. Small Business Enterprise (SBE) Participation**

The Contractor must comply with the following SBE participation requirements. All instructions, required forms and other information necessary for complying with the SBE participation requirements are available on the OCI webpage.

- a) The Contractor must assign a minimum of fifteen percent (15%) of the Contract value to a respondent or to a construction related enterprise currently certified by Miami-Dade County as a Small Business Enterprise (SBE) as set forth in Section 10-33.01 and Section 10-33.02 of the Miami-Dade County Code;
- b) Five percent (5%) of the bid amount shall be retained by the City for the SBE requirements until said requirements are fulfilled and verified within six (6) months of Contract completion pursuant to Section 18-89 of the City Code. Failure to comply with the SBE requirements within six (6) months of Contract completion shall result in the forfeiture of the retained amount to the City. This five percent (5%) retainage is included within the ten percent (10%) retainage normally withheld by the City;
- c) The Contractor shall retain the services of an independent third party to verify and certify compliance with these requirements on a quarterly basis in accordance with Section 18-89 of the City Code. Said third party shall be unaffiliated with the respondent and be properly licensed under the provisions of Sections 454, 471, 473, or 481 of the Florida Statutes. The person performing the verification shall have a minimum of two (2) years of prior professional experience in Contracts compliance, auditing, personnel administration, or field experience in payroll, enforcement, or investigative environment. The cost for this verification shall be included in the related Contract costs.

**The following link is to the Miami-Dade County website where Bidders can view the current listing of certified SBE Contractors by trade.**

<http://www.miamidade.gov/smallbusiness/certification-lists.asp>

## **17. Local Workforce Participation**

- I. Contractor must employ the following minimum percentage requirements for on-site labor from persons residing within Miami-Dade County (an individual whose primary place of residence is within Miami-Dade County), for the duration of the Project:
  1. Construction Contracts with a construction cost of up to two hundred fifty thousand dollars (\$250,000.00) shall have no Local Workforce Participation requirement.
  2. Construction Contracts with a construction cost of two hundred fifty thousand dollars (\$250,000.00) or more, but less than five hundred thousand dollars (\$500,000.00) shall have a minimum Local Workforce Participation requirement of ten percent (10%).
  3. Construction Contracts with a construction cost of five hundred thousand dollars (\$500,000.00) or more, but less than seven hundred fifty thousand dollars (\$750,000.00) shall have a minimum Local Workforce Participation requirement of fifteen percent (15%).
  4. Construction Contracts with a construction cost of seven hundred fifty thousand dollars (\$750,000.00) or more, but less than four million dollars (\$4,000,000.00) shall have a minimum Local Workforce Participation requirement of twenty percent (20%).
  5. Construction Contracts with a construction cost of four million dollars (\$4,000,000.00) or more shall have a minimum Local Workforce Participation requirement of forty percent (40%).

All Local Workforce Participation percentage requirements listed above shall be applied on the construction Project's on-site labor force. The County residency of the onsite labor component shall be subject to verification by the OCI.
- II. The Contractor shall strive to employ a minimum of fifty percent (50%) of the aforementioned minimum Local Workforce Participation percentage requirements from within the City commission district where the Project is located.
- III. Five percent (5%) of the bid amount shall be retained by the City for the local requirements until said requirements are fulfilled and verified by the City Manager, or authorized designee as being fulfilled within three (3) months of Contract completion. Failure to satisfactorily meet the requirements shall result in the forfeiture of the retained amount to the City, this five percent (5%) retainage is included within the ten percent (10%) retainage normally withheld by the City and will comply with percentages specified in F.S. § 218.735.
- IV. The Contractor shall coordinate job fairs and hiring initiatives with the South Florida Workforce or a similar state chartered regional workforce development board acceptable to the City Manager.
  1. For Contracts with a bid amount between one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00), the Contractor shall be required to hold one job fair within the local community.
  2. For Contracts with a bid amount greater than two million dollars (\$2,000,000.00), the Contractor shall be required to hold two job fairs within the local community.
- V. Bid and response documents to which a Local Workforce Participation requirement goal has been applied shall require the Contractor to develop and submit to the City, within thirty (30) calendar days of notification of award of the construction Contract, a workforce plan (plan) outlining how the goal will be met, and containing the following information and elements required by this section. The

Contractor shall provide to the City, proof of adherence to the City's Local Workforce Participation requirements within the past three (3) years, and the Contractor's past compliance with these requirements. The Contractor's response must include:

1. Contract number, name, and a brief description of Work;
2. Total dollar value of the Contract;
3. Dates covering the term of the Contract;
4. Percentage of Local Workforce Participation requirements met by the Contractor;
5. Breakdown of local workforce used to meet requirements (number of persons broken down by trade and category);
6. If the Contractor was unable to meet the Local Workforce Participation requirements, explain the reason why, and what efforts, if any, were utilized by the Contractor to attempt to meet these requirements;
7. If the Project was over one million dollars (\$1,000,000.00) did the Contractor hold a job fair, if yes, provide the date and location of the job fair(s), number of attendees;
8. Was a third party hired to verify and certify compliance with the Local Workforce Participation requirements, if yes, were all requirements met, what was the third party's name and provide their current contact information;
9. Was the five percent (5%) retainage fee released to the Contractor by the City upon Project completion; and
10. If the Contractor did not meet the goal, did Contractor seek a waiver of the program requirements from any City official, and provide a detailed explanation.

The plan shall identify by name, address, and trade category of all persons proposed to perform Work under the Contract currently on the Contractor's payroll, or positions to be hired by the Contractor, who reside within Miami-Dade County. **An updated plan shall be submitted to the City's Project Manager on a monthly basis (no exceptions)**, and in the event that during the Contract period a new hire or a person identified in the plan as meeting the Local Workforce Participation requirement goal is replaced, the City may require the Contractor to immediately identify the replacement.

- VI. The Contractor shall have a third party independently verify and certify compliance with these requirements on a quarterly basis. Said third party shall be unaffiliated with the Contractor, and be properly licensed under the provisions of Florida Statute Sections 454, 471, 473, or 481. The firm performing the verification shall have a minimum of two (2) years of prior professional experience in Contracts compliance, auditing, personnel administration, or field experience in payroll, enforcement, or investigative environment. The cost for this verification and certification shall be included in the related Contract costs.

These Local Workforce Participation requirements shall apply to any competitively procured Contract under this section unless:

1. The City Manager or designee deems the requirements unfeasible prior to issuance of the ITB document;



2. It is disallowed by federal or state law or grant requirements;
3. Funding sources require alternate, contradictory or specifically exclude or disallow Local Workforce Participation requirements;
4. These requirements are waived by the City Commission by resolution, prior to issuance of the ITB document, upon written recommendation of the City Manager or designee.

Bidders should refer to Section 18-89(f) of the City of Miami Procurement Code for further clarification. This language is only a summary of the key provisions of the Local Workforce Participation requirements. Please review City of Miami Ordinance No. 12271, § 2, 8-22-02; Ord. No. 12654, § 2, 2-10-05; Ord. No. 12780, § 2, 3-9-06; Ord. No. 13275, § 2, 7-14-11; Ord. No. 13331, § 2, 7-26-12; Ord. No. 13332, § 2, 7-26-12; Ord. No. 13493, § 2, 1-22-15 for a complete and thorough description of the Local Workforce Participation requirements. Bidder may contact the Office of the City Clerk at (305) 250-5360, to obtain a copy of the same.

**18. Responsible Wages and Benefits**

Pursuant to Section 18-120 of the City of Miami Procurement Code, entitled “Responsible Wage Construction Contracts,” the Contract to be executed for completion of this Project shall require the **Prime Contractor and all of the Subcontractors** to pay Miami-Dade County Responsible Wages and Benefits to all laborers and mechanics assigned to the Project. Bidders shall incorporate into their bid the required Responsible Wages and Benefits for **2018 Highway Construction**, which will be made public via addendum issued by the City.

**19. Cone of Silence**

Pursuant to Section 18-74 of the City of Miami Procurement Code, a codification of Miami Ordinance No. 12271, a “Cone of Silence” is imposed upon this ITB after advertisement and terminates at the time the City Manager issues a written recommendation to the Miami City Commission. The Cone of Silence prohibits any verbal communications regarding this ITB.

Any communication concerning this ITB must be submitted in writing to Procurement at [amhansen@miamigov.com](mailto:amhansen@miamigov.com). Written communications may be in the form of e-mail, with a copy to the Office of the City Clerk at [clerks@miamigov.com](mailto:clerks@miamigov.com).

This language is only an overview of the requirements of the Cone of Silence. Please review Section 18-74 of the City’s Procurement Code for a complete and thorough description of the Cone of Silence. Bidders may also contact the Office of the City Clerk at (305) 250-5360, to obtain a copy.

**20. Public Entity Crime**

A person or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a bid on a Contract to provide any goods or services to a public entity, may not submit a Response on a Contract with a public entity for the construction or repair of a public building or Public Works project, may not submit a Response on a lease of real property to a public entity, may not be awarded or perform Work as a Contractor, supplier, Subcontractor, or Consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of Florida Statutes for Category Two for a period of thirty six (36) months from the date of being placed on the convicted Bidder List.

**21. Fraud and Misrepresentation**

Any individual, corporation or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement, or omission of any material fact, may be debarred for up to five (5) years in accordance with the applicable provisions of the City Code. The City

as a further sanction may terminate or cancel any other Contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation.

**22. Collusion**

Where two (2) or more related parties, as defined herein, each submit a bid to an ITB, such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control, and management of such related parties in preparation and submission under such ITB. Related parties shall mean employees, officers or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Bidder have a direct or indirect ownership interest in another Bidder, for the same Project. Bids found to be collusive shall be rejected.

**23. Contractor in Arrears or Default**

The Bidder represents and warrants that the Bidder is not in arrears to the City and is not a defaulter as a surety or otherwise upon any obligation to the City. In addition, the Bidder warrants that the Bidder has not been declared “not responsible” or “disqualified” by, suspended, or debarred from doing business with any state or local government entity in the State of Florida, the Federal Government or any other State/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Bidder’s responsibility or qualification to receive public agreements. The Bidder considers this warrant as stated in this Article to be a continual obligation and shall inform the City of any change during the term of the Contract.

The City shall not consider and shall deem as non-responsible, bids submitted by Bidders where the City has determined that the Bidder is in monetary arrears, or otherwise in debt or in default to the City, at the time and date bids are due.

**24. Cancellation of ITB**

The City reserves the right to cancel, in whole or in part, any ITB when it is in the best interest of the City. This determination will be at the discretion of the City and there will be no recourse from such cancellation.

## **Section 3 – General Terms and Conditions**

### **1. Time is of the Essence**

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents. Time is of the essence in performance of the Work.

All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the City.

Contractor acknowledges and recognizes that the City is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time.

In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Article 70, Excusable Delay, Non-Compensable, the Contractor understands that, except and only to the extent provided otherwise in the Contract Documents, the occurrence of events of delay within the Contractor's control, the Work shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Documents Time, and shall not entitle the Contractor to an adjustment. All parties under the control or Contract with the Contractor shall include but are not limited to material persons and laborers.

The Contractor acknowledges that the City is purchasing the right to have the Contractor continuously working at the Project site(s) for the full duration of the Project to ensure the timely completion of the Work.

### **2. Contract Term**

The Contract shall commence upon issuance of the Notice of Proceed ("NTP"), which shall be issued subsequent to the execution of the Contract by the City. The Contract shall terminate upon notice by the City that the Contract has been closed-out after final completion or otherwise terminated by the City pursuant to the terms and conditions herein set forth. The total bid amount shall be the Guaranteed Maximum Cost ("GMC") of the Project, which means the maximum cost of the Work including labor, materials, equipment, overhead expenses, and profit. The City will not be liable for payment of any amount in excess of the GMC unless, the City Commission has approved a Project contingency or has approved a prior amendment to the Contract) setting forth an additional amount due to Owner requested changes or its equivalent. If the term Guaranteed Maximum Price ("GMP") is used in this Agreement, it shall have the same definition as GMC, defined above.

### **3. Contract Price & Guaranteed Maximum Cost**

Contractor represents, warrants and guarantees to the City that Contractor shall completely, timely and properly perform the Work and all of its obligations under the Contract, in accordance therewith, for the Contract Price to be agreed upon by the parties. This Contract Price shall constitute Guaranteed Maximum Cost to the Owner for performing the Work inclusive of labor, materials, equipment, supplies, and any allowable overhead and profit. The Owner shall (absent a prior Amendment with compelling cause approved as an Amendment to this Agreement) have no liability or obligation to pay any amount in excess of the stated Contract Price and Contractor shall have no recourse in that respect except to seek an Amendment to the Agreement. All costs

in excess of the Contract Price shall be paid solely by Contractor without reimbursement or additional compensation from Owner.

#### **4. Notices**

Whenever either party desires to give written notice unto the other relating to the Contract, such must be addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on the date received or within three (3) calendar days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

##### **For City of Miami:**

**Emilio T. González, Ph.D.**

**City Manager**

City of Miami

444 SW 2<sup>nd</sup> Avenue - 10<sup>th</sup> Floor

Miami, Florida 33130

**Annie Perez, CPPO**

**Director**

**Department of Procurement**

City of Miami

444 S.W. 2<sup>nd</sup> Avenue - 6<sup>th</sup> Floor

Miami, Florida 33130

**Steven C. Williamson**

**Director**

**Office of Capital Improvements**

City of Miami

444 S.W. 2<sup>nd</sup> Avenue - 8<sup>th</sup> Floor

Miami, Florida 33130

##### **For Contractor:**

**TBD**

During the Work, the Contractor shall maintain continuing communications with Consultant and the Project Manager. The Contractor shall keep the City fully informed as to the progress of the Project at all times through ongoing communications with the Project Manager.

The Contractor shall notify the Miami Police Department and Fire Department about the construction schedule(s). The Contractor is required to obtain a current list of contact persons and phone numbers from Orlando Misas at (305) 416-1038, or via email at [omisas@miamigov.com](mailto:omisas@miamigov.com), the City of Miami's Project Manager for this Project.

The Contractor must notify residents living within five hundred feet (500') of the Project in writing as least one (1) week in advance prior to commencing Work in the general area.

## **5. Priority of Provisions**

All Work shall be constructed in accordance with the latest edition of the City of Miami's Contract Documents and Specifications. The City of Miami's Standards for design and construction as well as the Miami Dade County's Standards Details, and the 2016 Edition of the Florida Department of Transportation Specifications Road and Bridge Construction.

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract Documents by reference and a term, statement, requirement, the specifications and plans prepared by the Consultant, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents, the priorities stated below shall govern:

- Revisions to the Contract shall govern over the Contract;
- The Contract Documents shall govern over the Contract; and
- Addenda to an ITB shall govern over the ITB.

In the event of conflicts within the Contract Documents, the priorities stated below shall govern:

- Scope of Work and Specifications shall govern over plans and drawings;
- Schedules, when identified as such shall govern over all other portions of the plans;
- Specific notes shall govern over all other notes, and all other portions of the plans, unless specifically stated otherwise;
- Larger scale drawings shall govern over smaller scale drawings;
- Figured or numerical dimensions shall govern over dimensions obtained by scaling; and
- Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

## **6. Indemnification**

Contractor shall indemnify, hold and save harmless, and defend (at its own cost and expense), the City, its officers, agents, directors, and/or employees, from all liabilities, damages, losses, judgements, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, negligent act or omission, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. Contractor shall further, hold the City, its officials and employees, indemnify, save and hold harmless for, and defend (at its own cost), the City its officials and/or employees against any civil actions, statutory or similar claims, injuries or damages arising or resulting from the permitted Work, even if it is alleged that the City, its officials, and/or employees were negligent. In the event that any action or proceeding is brought against the City by reason of any such claim or demand, the Contractor shall, upon written notice from the City, resist and defend such action or proceeding by counsel satisfactory to the City. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The indemnification provided above shall obligate the Contractor to defend, at its own expense, to and through trial, administrative, appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description which may be brought against the City, whether performed by the Contractor, or persons employed or utilized by Contractor.

These duties will survive the cancellation or expiration of the Contract. This Section will be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of Sections 725.06 and/or 725.08, Florida Statutes, as applicable and as amended.

Contractor shall require all sub-contractor agreements to include a provision that each sub-contractor will indemnify the City in substantially the same language as this Section. The Contractor agrees and recognizes that the City shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the City participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the City, in no way, assumes or shares any responsibility or liability of the Contractor or sub-contractor under this Contract.

Ten dollars (\$10.00) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this Indemnification, the receipt and sufficiency of which is voluntarily and knowingly acknowledged by the Contractor.

## 7. Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of its Work to be performed under this Contract has been completed and accepted by City (or for such duration as is otherwise specified hereinafter), the insurance coverage's set forth herein.

**7.1 Workers' Compensation** insurance to apply for all employees in compliance with the Statutory "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

- Waiver of Subrogation
- Statutory State of Florida
- Limits of Liability
- USL&H, if applicable

**7.2 Employers' Liability**

- **One Million Dollars (\$1,000,000.00)** each bodily injury caused by an accident, each accident.
- **One Million Dollars (\$1,000,000.00)** each bodily injury caused by disease, each employee.
- **One Million Dollars (\$1,000,000.00)** each bodily injury caused by disease, policy limit.

**7.3 Commercial General Liability (CGL) - Primary and Non-Contributory** with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence. Combined single limit for Bodily Injury Liability and Property Damage Liability, with a general aggregate limit of **Two Million Dollars (\$2,000,000)**. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Products and/or Completed Operations for Contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per Project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
- Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- CGL Required Endorsements
  - ❖ Contingent Liability/Independent Contractors Coverage

- ❖ Contractual Liability
- ❖ Premises and/or Operations Liability
- ❖ Explosion, Collapse and Underground Hazard
- ❖ Primary Insurance Clause
- ❖ Loading and Unloading

City shall be listed as an additional insured.

- 7.4 Business Automobile Liability** with minimum limits of **One Million Dollars (\$1,000,000)** per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. 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 any Auto, including Owned, Hired, Borrowed or Non-Owned Autos, and Scheduled.

City shall be listed as an additional insured.

- 7.5 Umbrella Policy (Excess Following Form/True Excess Following Form/True Umbrella)**

- Bodily injury and property damage liability with limits of **Two Million Dollars (\$2,000,000)** per occurrence.
- **Two Million Dollars (\$2,000,000)** Aggregate.
- Excess follow form over all applicable liability policies contained herein.

City shall be listed as an additional insured.

- 7.6 Installation Floater**

- Causes of Loss: All Risk of Direct Physical Damage or Loss
- Valuation: Replacement Cost
- Coverage Extensions included
- City shall be listed as loss payee

- 7.7 Owners and Contractor's Protective**

- **One Million Dollars (\$1,000,000)** each occurrence.
- **One Million Dollars (\$1,000,000)** general Aggregate.

City shall be listed as an additional insured.

- 7.8 Contractor's Professional Liability (if applicable)**

- **One Million Dollars (\$1,000,000)** each claim.
- **One Million Dollars (\$1,000,000)** general Aggregate.
- Retro Date included.

The above policies shall provide the City with written notice of cancellation or material change from the insurer not less than thirty (30) calendar days prior to any such cancellation or material change. If the initial insurance expires prior to the completion of the Work, renewal copies of policies shall be furnished at least thirty (30) calendar days prior to the date of their expiration.

Contractor shall furnish to Procurement the Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.

The official title of the Owner is the City of Miami, Florida. This official title shall be used in all insurance documentation. The City shall be listed as an additional insured where applicable.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above to the Contractor:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

The Risk Administrator or their authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) calendar day written notice to the Contractor in accordance with Section 3, General Terms and Conditions, Article 3, Notices. Contractor shall comply with such requests unless the insurance coverage is not then readily available in the national market. An additive or deductive change order will be issued to adjust the Contract value as necessary. For insurance bonding issues and decisions, the City shall act through its Risk Administrator (unless otherwise stated).

## **8. Performance and Payment Bond**

Where required by the Contract Documents or by Florida Statutes, the Contractor shall within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment Bond ("Bond") containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to City the completion and performance of the Work covered in the Contract Documents, as well as full payment of all suppliers, laborers, or Subcontractors employed pursuant to this Project. Each Bond shall be with a surety, which is qualified pursuant to Article 8, Qualification of Surety.

Each Bond shall continue in effect for one year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract value, or an additional bond shall be conditioned that Contractor will, upon notification by the City, correct any defective or faulty Work or materials which appear within one year after Final Completion of the Project.

The City must be listed as an Obligee.

Pursuant to the requirements of Section 255.05(1), Florida Statutes, as amended from time to time, Contractor shall ensure that the Bond(s) referenced above shall be recorded in the public records and provide the City with evidence of such recording. Each bond shall substantially conform to the requirements of Section 255.05, Florida Statutes, and will be in a form acceptable to the Risk Management Administrator.

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, which may be in the form of cash, money order, certified check, cashier's check or unconditional letter of credit in the form attached. Such alternate forms of security shall be subject to the prior approval of the City and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by the City for one year after completion and acceptance of the Work.

## **9. Qualification of Surety**

Bid Bonds, Performance/Payment Bonds over Two Hundred Thousand Dollars (\$200,000.00):

Each Bond must be executed by a surety company with a rating of (A-) and based on the Financial Size Category of (VII). The surety company must be of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

The Surety shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount



of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner.

## **10. General Requirements**

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments.

The Contractor shall, at all times, employ, maintain and assign to the performance of a Project a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor shall adjust staffing levels or to replace any staff if so requested by the Project Manager, should the Project Manager make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff has the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character, and licenses as necessary to perform the Work, in a competent and professional manner.

The Contractor shall provide temporary facilities and controls necessary to perform the Work and to ensure safe and proper access and use of the site by the City. Any such specific requirements will be included in the Technical Specification portion of the ITB.

The Contractor shall, at all times, cooperate with the City and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The City shall have full access to the Project site(s) at all times.

The Contractor shall be responsible for the good condition of the Work or materials until formal release from his obligations under the terms of the Contract Documents.

Contractor shall bear all losses resulting to it on account of the amount or character of the Work, or the character of the ground, being different from what he anticipated.

The Contractor shall at all times conduct the Work in such manner and in such sequence as will ensure the least practicable local interference. Contractor shall not open up Work to the prejudice of Work already started, and the City may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section.

Contractor is to take necessary precautions and use caution when working in or around overhead transmission lines and underground utilities.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail, and only materials and workmanship of the best quality are to be used in the performance of the Work.

## **11. Method of Performing the Work**

If the City reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the City, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the City, the City shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the City. The

City at its sole option may also have Work performed by a third-party Contractor and deduct such cost from any monies due the Contractor.

Where materials are transported in the performance of the Work, vehicles shall not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Contractor and any damaged curbing, grass areas, sidewalks or other areas shall be repaired at the expense of the Contractor to the satisfaction of the City.

Contractor is responsible for controlling dust and preventing it from becoming a public nuisance or causing off-site damage. Contractor shall take all necessary and prudent measures to control dust.

The Contractor shall furnish to the City a complete listing of twenty-four (24) hour telephone numbers at which responsible representatives of the Contractor and all of the Contractor's Subcontractors can be reached should the need arise at any time.

## **12. Work Staging and Phasing**

The Work to be performed shall be done in such a manner so as not to interfere with the normal City operations of the Project site or facility. The manner in which the Work is performed shall be subject to the approval of the City, who, if necessary, shall have the authority to require changes in the manner in which the Work is performed. There shall be no obstruction of City services without the prior written approval of the City. All requests for such interruption or obstruction must be given in writing to the City at least twenty-four (24) hours in advance of the interruption of City operations.

The Contractor shall familiarize itself with normal City operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the City.

A staging plan must be submitted to and approved by the City prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

As noted above self-performance, local workforce participation, and all other similar requirements will apply jointly and severally to each phase, stage, or incremental portion of the work.

## **13. Site Investigation and Representation**

The Contractor acknowledges that it has satisfied itself as to the nature and location(s) of the Work under the Contract Documents, the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on City provided reports, the type of equipment and facilities needed preliminary to and during the performance of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

The Contractor further acknowledges that it has satisfied itself based on any geotechnical reports the City may provide and inspection of the Project site(s) as to the character, quality, and quantity of surface and subsurface materials to be encountered from inspecting the site and from evaluating information derived from exploratory Work that may have been done by the City or included in this Contract Documents.

Contractor should examine the soil conditions at the Project site to determine if any special shoring, sheeting, or other procedures are necessary to protect adjacent property during excavation of subsoil materials or during filling of any area(s), or for any operation during the performance of the Work.

Any failure by the Contractor to acquaint itself with all the provided information and information obtained by visiting the Project site(s) will not relieve Contractor from responsibility for properly estimating the difficulty or cost thereof under the Contract Documents. In the event that the actual subsurface conditions vary from the actual City provided reports the Contractor shall notify the City and this Contract Documents amount may be adjusted up or down depending on the conditions.

**14. Contractor to Check Plans, Specifications and Data**

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications, or other data received from the City as part of the Contract Documents, and shall notify the City of all errors, omissions, and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by the City. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omissions, or discrepancy and knowingly failed to report it to the City.

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

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by City, and shall promptly repair or replace, at no additional cost to the City, and to the satisfaction of the Project Manager, any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Lawn Areas - All lawn areas disturbed by construction shall be replaced with like kind to a condition similar or equal to that existing before construction. Where sod is to be removed, it shall be carefully removed, and the same re-sodded, or the area where sod has been removed shall be restored with new sod in the manner described in the applicable section. Any fence, or part thereof, that is damaged or removed during the course of the Work shall be replaced or repaired by the Contractor, and shall be left in as good of a condition as before the starting of the Work.

Where fencing, walls, shrubbery, grass strips, or area must be removed or destroyed incident to the construction operation, the Contractor shall, after completion of the Work, replace or restore to the original condition all such destroyed or damaged landscaping and improvements.

**16. Accidents**

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project duration. The Contractor shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50.

In addition, the Contractor must report immediately to the City every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

**17. Safety Precautions**

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- All employees on the Project site(s) and other persons who may be affected thereby;
- All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site(s); and
- Other property at the Project site(s) or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall designate a responsible member of its organization at the Project site(s) whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the City.

Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor

shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the City has issued the Contractor a notice of Final Acceptance.

Contractor must adhere to the applicable environmental protection guidelines for the duration of a Project. If hazardous waste materials are used, detected, or generated at any time, the Project Manager must be immediately notified of each and every occurrence. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the City, Miami-Dade County, State of Florida, and Florida Building Code), which bear on the performance of the Work.

The Contractor shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and City employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or secured to ensure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal state and local regulations.

All open trenches or holes shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager.

If an emergency condition should develop during a Project, the Contractor must immediately notify the Project Manager of each and every occurrence. The Contractor should also recommend any appropriate course(s) of action to the Project Manager.

## **18. Occupational Health and Safety**

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of a Project must be accompanied by a Material Safety Data Sheet (MSDS), which may be obtained from the manufacturer. The MSDS must include the following information:

- The chemical name and the common name of the substance.
- The hazards or other risks in the use of the substance, including:
  - ❖ The potential for fire, explosion, corrosion, and reaction;
  - ❖ The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance; and
  - ❖ The primary routes of entry and symptoms of overexposure.
- The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure.
- The emergency procedure for spills, fire, disposal, and first aid.
- A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information.
- The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

**19. Labor and Materials**

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

**20. Rules, Regulations, Laws, and Licenses**

The Contractor shall comply with all laws, rules, regulations, permits, codes, public agency or similar required consents and approvals relative to the provision of services, equipment, supplies and/or materials specified in the Contract Documents, including without limitation those imposed by the federal, state, county or city agencies having jurisdiction over the matter. The Contractor, its agents, Subcontractors, and representatives shall be familiar with and comply with all federal, state, and local laws, rules, regulations, and approvals that may affect the Work, goods, and/or services offered.

**21. Consultant Services**

The City, at its sole discretion, may hire a Consultant who shall serve as the City's Representative for the Project to be performed under the Contract Documents. The Contract Documents will state that a City's representative has been contracted with, for the management of the Work under the Contract Documents and who will be the lead point of contact, the Consultant or the Project Manager. Where a Consultant has been identified, the Consultant and the Project Manager will have authority to act on behalf of the City to the extent provided in the Contract Documents and as outlined in Article 23, Authority of the Project Manager.

On the basis of the on-site observations, the Consultant will keep the Project Manager informed of the progress of the Work. In the capacity of interpreter, the Consultant will exercise the best efforts to ensure faithful performance by both the Project Manager and the Contractor and will not show partiality to either.

The Project Manager will assist the Consultant in conducting inspections to determine the date or dates of Substantial Completion and Final Acceptance and will receive and review written warranties and related documents required by the Contract and the Contract Documents. The Consultant will be responsible for receiving all documentation for review and acceptance. Upon acceptance, such documentation will be forwarded to the Project Manager. The Project Manager in conjunction with the Consultant will approve Schedules of Values, Project Schedules, Subcontractors, and invoices.

The City may contract for additional Consultant services, including but not limited to construction examination and observation services. Such services are intended to be additional services and shall not be construed to supplant or alter the role and responsibilities of the Consultant.

In case of the termination of employment of the Consultant, the City may, at its sole discretion, appoint another Consultant, whose status under the Contract shall be as that of the terminated Consultant.

**22. Project Management**

Where a Contractor is awarded Work, the Contractor shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, but is not limited to: obtaining bids from Subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that Subcontractors comply with all City requirements; performing the Work in accordance with the Contract Documents to the satisfaction of the Project Manager; paying all Subcontractors; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion.

### **23. Superintendence and Supervision**

The orders of the City are given through the Consultant or the Project Manager, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time, competent, English speaking superintendent, and any necessary assistants, all satisfactory to the Project Manager. The superintendent shall not be replaced except with the written consent of the Project Manager, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in Contractor's employ. The superintendent shall represent Contractor, and all directions given to the superintendent shall be as binding as if given to Contractor, and will be confirmed in writing by the Project Manager upon the written request of Contractor. Contractor shall give efficient supervision to the Work, using Contractor's best skills and attention. The Project Manager shall be provided telephone number(s) for the superintendent, where the superintendent can be contacted during normal working hours as well as after hours for emergencies.

On Projects in excess of thirty (30) calendar days, the Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather conditions affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors at the Project site(s); visitors to the Project site, including regulatory representatives the City; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in indelible ink. The daily log shall be kept on the Project site(s) and shall be available at all times for inspection and copying by Project Manager and Consultant.

The Project Manager, Contractor, Construction Manager, CEI, and Consultant shall meet at least every two (2) weeks or as otherwise determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

If Contractor, in the course of performing the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Plans, it shall be the Contractor's duty to immediately inform the City, in writing, and the City will promptly review the same. Any Work done after such discovery, until authorized, will be done at Contractor's sole risk.

Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

All Work, including trade Work shall be performed and supervised by persons properly licensed for the Work being performed.

### **24. Authority of the Project Manager**

The Director hereby authorizes the Project Manager designated in the Contract Documents to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under this Contract Documents.

The Contractor shall be bound by all determinations or orders of the Project Manager and shall promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager shall have authority to act on behalf of the City to the extent provided by the Contract, unless otherwise modified in writing by the City. All instructions to the Contractor shall be

issued in writing, and shall be issued. All instructions to the Contractor shall be issued through the Director or Project Manager.

The Project Manager shall have access to the Project site(s) at all times. The Contractor shall provide safe facilities for such access, so the Project Manager and Consultant may perform their functions under the Contract. The Project Manager will make periodic visits to the Work site to become generally familiar with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents.

The Project Manager will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

The Project Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever, in his or her opinion, it is considered necessary or advisable to ensure the proper completion of the Contract Documents the Project Manager and Consultant will have authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed, or completed. Neither the Project Manager's nor Consultant's authority to act under this paragraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager or Consultant to the Contractor, any Subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

All interpretations and recommendations of the Project Manager and Consultant shall be consistent with the intent of the Contract Documents.

The Project Manager and Consultant will not be responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

## **25. Inspection of Work**

The Project Manager, Consultant, Construction Engineering Inspector (CEI), and other City representatives shall at all times have access to the Work during normal work hours, and Contractor shall provide proper facilities for such access and for inspecting, measuring, and testing.

Should the Contract Documents, Consultant, CEI, Project Manager's instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, Contractor shall give the Project Manager timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than City, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply. If any of the Work should be covered up without approval or consent of the Project Manager, it must, if required by the Project Manager, be uncovered for examination and properly restored at Contractor's expense.

Unless otherwise provided, the Contractor shall arrange for such tests, inspections, and approvals with the City's testing laboratory or entity. The Contractor shall give the City and the Project Manager timely notice of when and where tests and inspections are to be made so that the City or Project Manager may be present for such procedures.

Re-examination of any of the Work may be ordered by the City, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, City shall pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such cost.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents, or to delay the Work by failure to inspect the materials and Work with reasonable promptness, without the written permission or instruction of the Project Manager.

The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Contractor to any Inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the Contractor will constitute a breach of this Contract.

**26. Taxes**

Contractor shall pay all applicable sales, consumer, use and any other taxes required by law, rule, or regulation. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

**27. Separate Contracts**

Prior to the commencement of the Work, the City will notify the Contractor of all ongoing Projects or Projects scheduled to commence during the Work that may require coordination. The Contractor shall be responsible for coordinating the Work with any other Project to minimize any potential adverse impact. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Project Manager will assist the Contractor in coordinating the Work; however, the sole responsibility for coordination rests with the Contractor.

If any part of Contractor's Work depends for proper execution or results upon the Work of any other persons, Contractor shall inspect and promptly report to the City any defects in such Work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's Work as fit and proper for the reception of Contractor's Work, except as to defects that may develop in other Contractor's Work after the execution of Contractor's Work. Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other Contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected Contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent Work, Contractor shall inspect the Work already in place and shall at once report to the Project Manager any discrepancy between the executed Work and the requirements of the Contract Documents.

**28. Lands of Work**

City shall provide, as may be indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way, and easements for access thereto and such other lands as are designated by City for the use of Contractor.

Contractor shall provide, at Contractor's own expense and without liability to City, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor shall furnish to City copies of written permission obtained by Contractor from the owners of such facilities.

**29. Coordination of Work**

The Project site(s) may be occupied and may operate as specified in Section 4, Supplemental Terms and Conditions, Article 1, Contract Time and Hours. Contractor shall ensure that the performance of the Work does not impact any ongoing operations at Project site(s), which also includes the delivery of any materials and equipment. Access to and egress from the Project site(s) shall be coordinated with the Project Manager and the Consultant to minimize interference to regular and emergency operations of the facility.

Contractor may be required to coordinate the Work with other Contractors performing Work at the Project site.



### **30. Differing Site Conditions**

In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project site(s) which differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in Work of the character called for in the Contract Documents; or unknown physical conditions of the Project site(s), of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in Work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any Work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify the City in writing of the existence of the aforesaid conditions. The City shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of the City, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, the City shall recommend an equitable adjustment to the Contract Documents Price or Contract Documents Time, or both. If the City and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to the Director for determination. Should the Director determine that the conditions of the Project site(s) are not so materially different to justify a change in the terms of the Contract Documents, the Director shall so notify the Project Manager, Consultant, and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

No request by Contractor for an equitable adjustment to the Contract Documents under this provision shall be allowed unless Contractor has given written notice and otherwise fully documented altering site conditions in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract price or Contract time for differing site conditions shall be allowed if made after the date certified by the City as the date of substantial completion.

### **31. Existing Utilities**

Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the City for their accuracy or completeness. No request for additional compensation or Contract time resulting from encountering utilities not shown will be considered. The Contractor shall explore sufficiently ahead of the Work to allow time for any necessary adjustments. The Contractor must coordinate all underground utility locations through "Sunshine State One Call of Florida, Inc.," who shall be contacted a minimum of forty-eight (48) hours before the Contractor commences any digging. The Contractor is responsible for removing all utility markings once the Work is completed. Final payment to the Contractor may be withheld until the utility marks are removed.

### **32. Contractor's Responsibility for Utility Properties and Service**

Where the Contractor's operations could cause damage or inconvenience to railway, telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Contractor shall make all arrangements necessary for the protection of these utilities and services or any other known utilities.

Notify all utility companies that are affected by the construction operation at least forty-eight (48) hours in advance. Under no circumstance expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

The Contractor and their Subcontractors shall be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions,

or claims of any character brought because of any injuries or damage that may result from the construction operations under the Contract Documents.

Neither the City nor its officers or agents shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the Work.

In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility.

In the event water service lines that interfere with trenching are encountered, the Contractor may, by obtaining prior approval of the water utility, cut the service, dig through, and restore the service with similar and equal materials at the Contractor's expense and as approved by the City.

Replace, with material approved by the City, at Contractor's expense, any and all other laterals, existing utilities or structures removed or damaged during construction, unless otherwise provided for in the Contract Documents and as approved by the City.

Replace, with material approved by the City, at Contractor's expense, any existing utilities damaged during the Work.

### **33. Interfering Structures**

An attempt has been made to show major structures on the furnished Drawings. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and is presented as a guide. The Contractor shall field verify all locations. Contractor shall coordinate with any affected companies, including utility companies and take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground, including have the owner of the interfering structures place temporary supports.

### **34. Field Relocation**

During the process of the Work, it is expected that minor relocations of the Work may be necessary. Such relocations shall be made only by the direction of the Project Manager at the Contractor's expense. If existing structures are encountered that will prevent construction as shown, the Contractor shall notify the Project Manager before continuing with the Work in order that the City may make such field revisions as necessary to avoid conflict with the existing structures. Where the Contractor fails to notify the Project Manager when an existing structure is encountered, and proceeds with the Work despite this interference, the Contractor does so at their own risk.

### **35. Contractor's Use of Project Site(s)**

Limitations may be placed on the Contractor's use of the Project site(s) and such limitations will be identified by the Project Manager. In addition to such limitations, the Project Manager may make storage available to the Contractor, at his sole discretion, based on availability of space. The Contractor shall also coordinate and schedule deliveries so as to minimize disruptions to City day-to-day operations.

The Contractor shall limit its use of the Project site(s), so as to allow for the City's continuous operation. This is necessary, as the Project site(s) may remain in operation during the Work.

- The Contractor shall:
  - ❖ Confine operations at the Project site(s) to the areas permitted by the Project Manager; not disturb portions of the Project site(s) beyond the specified areas; conform to Project site(s) rules and regulations affecting the Work.
  - ❖ Keep existing driveways and entrances serving surrounding facilities clear and available to the City, its employees and the public at all times; not use areas for parking and/or storage of materials except as authorized by the Project Manager.

- ❖ Assume all responsibility for its tools, equipment and materials, including any materials purchased for the Work and not accepted by the City, and its vehicles while performing Work for the City and/or while parked or stored at a City facility. The City assumes no liability for damage or loss to the items specified in this paragraph.

Access to parking and egress from the Project site(s) shall be subject to the approval of the Project Manager.

### **36. Warranty of Materials and Equipment**

Contractor warrants to City that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents and Contract/Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract Documents.

### **37. Material and Equipment Shipment, Handling, Storage and Protection**

#### Preparation for Shipment

When practical, equipment shall be factory assembled. The equipment parts and assemblies that are shipped unassembled shall be furnished with assembly plan and instructions. The separate parts and assemblies shall be factory match-marked or tagged in a manner to facilitate assembly. All assemblies are to be made by the Contractor at no additional cost to the City.

Generally, machined and unpainted parts subject to damage by the elements shall be protected with an application of a strippable protective coating, or other approved protective method.

Equipment shall be packaged or crated in a manner that will provide protection from damage during shipping, handling, and storage.

The outside of the package or crate shall be adequately marked or tagged to indicate its contents by name and equipment number, if applicable; approximate weight; state any special precautions for handling; and indicate the recommended requirements for storage prior to installation.

#### Packaging and Delivery of Spare Parts and Special Tools

Properly mark to identify the associated equipment by name, equipment, and part number. Parts shall be packaged in a manner for protection against damage from the elements during shipping, handling, and storage. Ship in boxes that are marked to indicate the contents. Delivery of spare parts and special tools shall be made prior to the time associated equipment is scheduled for the initial test run.

#### Shipment

All equipment and material shall be shipped with freight and shipping paid freight on board (FOB) job site. The Contractor shall request a seven (7) calendar day advance notice of shipment from manufacturers, and, upon receipt of such notice, provide the Engineer of Record with a copy of the current delivery information concerning equipment items and material items of critical importance to the Project schedule.

#### Receiving

The Contractor shall unload and record the receipt of all equipment and materials at the jobsite.

All costs for receiving, inspection, handling, storage, insurance, inventory control, and equipment maintenance for the Contractor-Supplied and City-Supplied materials and equipment shall be included in the prices bid and no extra compensation will be allowed.

#### Inspection

Immediately upon receipt of equipment and materials at the jobsite, the Contractor shall inspect for completeness and any evidence of damage during shipment. City supplied equipment and material shall be inspected and inventoried together with City's Inspector. Should there appear to be any shortage or damage, the City shall be immediately notified; and the Contractor shall be fully responsible for informing the manufacturers and the transportation company of the extent of the shortage or damage. If the item or items require replacing or supplying missing parts, the Contractor shall take the necessary measures to expedite the replacement or supply the missing parts.

#### Handling

Equipment and materials received for installation on the Project shall be handled in accordance with the manufacturer's recommendations, and in a manner that will prevent damage.

#### Storage

Equipment and materials shall be stored prior to installation as recommended by the manufacturer. Generally, materials such as pipe shall be stored off the ground in approved storage yards. Items subject to damage by the elements, vandalism, or theft shall be stored in secure buildings. Items requiring environmental control for protection shall be provided with the necessary environmentally controlled storage facilities at no cost to the City.

#### Insurance

The Contractor's insurance shall adequately cover the value of materials delivered but not yet incorporated into the Work.

#### Inventory Control

Equipment and materials shall be stored in a manner to provide easy access for inspection and inventory control. The Contractor shall keep a running account of all materials in storage to facilitate inspection and to estimate progress payments for materials delivered but not installed in the Work.

#### Equipment's Maintenance Prior to Acceptance by the City

Provide the required or manufacturer's recommended maintenance during storage, during the installation, and until such time as the City accepts the equipment for full-time operation.

#### Salvage Equipment

Any salvageable pipe, fittings, or other miscellaneous material or equipment removed during construction and not reused in the Work shall be cleaned, hauled, and stored by the Contractor at his own expense, where directed by the City, and shall remain the property of the City. All other material shall be disposed of by the Contractor at his own expense.

### **38. Manufacturer's Instructions**

The Contractor shall:

Comply with manufacturer's requirements for the handling, delivery, and storage of all materials. Where required by the Contract Documents, Contractor shall submit manufacturer's printed instructions for delivery, storage, assembly, and installation.

Comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents including the Contract Documents.

Inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.

Provide attachment and connection devices and methods for securing the Work; secure Work true to line plumb and level, and within recognized industry standards; allow for expansion and building movement; provide uniform joint width in exposed Work; arrange joints in exposed Work to obtain the best visual

effect and refer questionable visual effect choices to the Consultant for final decision when applicable to the Work.

Recheck measurements and dimensions of the Work, as an integral step in starting each portion of the Work.

Install each unit or section of Work during favorable weather conditions, which shall ensure the best possible results in coordination with the entire Project and isolate each unit of Work from incompatible Work as necessary to prevent potential interference among each section and/or deterioration of equipment.

Coordinate enclosure of the Work, which requires inspections and tests so as to minimize the necessity of uncovering Work for that purpose.

When required by the Contract Documents or the manufacturer, a qualified representative shall be present to observe field conditions, conditions of surface and installation, quality of workmanship, and applications. Manufacturer's representative shall provide the Contractor and the City a written report of field observations.

**39. Manufacturer's Warranty**

Contractor shall provide all manufacturers' warranties. All warranties, expressed and/or implied, shall be made available to the City for material and equipment covered by this Contract Documents. All material and equipment furnished shall be fully guaranteed by the Contractor against factory defects and workmanship. At no expense to the City, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Contract Documents may supersede the manufacturer's standard warranty. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

**40. Reference Standards**

Reference to the standards of any technical society, organization, or body shall be construed to mean the latest standard adopted and published at the date of request for qualifications, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract Documents the same as if herein repeated in full and in the event of any conflict between any of these standards and those specified, the most stringent shall govern unless otherwise stated.

**41. Submittals**

Contractor shall check and approve all shop drawing, samples, product data, schedule of values, and any and all other submittals to make sure they comply with the Contract Documents prior to submission to the City.

Contractor by approving and submitting any submittals, represents that they have verified the accuracy of the submittals, and they have verified all of the submittal information and documentation with the requirements of the Contract Documents. At time of submission the Contractor shall advise the City in writing of any deviations from the Contract Documents. Failure of the Contractor to advise the City of any deviations shall make the Contractor solely responsible for any costs incurred to correct, add or modify any portion of the Work to comply with the Contract Documents.

Each shop drawing submittal shall contain a title block containing the following information:

- Number and title of drawing, including Contract title and Number
- Date of drawing and revisions
- Name of Contractor and Subcontractor (if any) submitting drawings
- Name of Project, Building or Facility
- Specification Section title and number
- Contractor's Stamp of approval, signed by the Contractor or his checker
- Space above the title block for Project Manager's or Consultant's action stamp

- Submittal or re-submittal number (whether first, second, third, etc.)
- Date of submittal

Contractor shall sign, in the proper block, each sheet of shop drawing and data and each sample label to certify compliance with the requirements of the Contract Documents. Shop drawings submitted without the stamp, signature shall be rejected, and it will be considered that the Contractor has not complied with the requirements of the Contract Documents. Contractor shall bear the risk of any delays that may occur as a result of such rejection.

City shall not be liable for any materials, fabrication of products or Work commenced that requires submittals until the City has returned approved submittals to the Contractor.

The City shall make every effort to review submittals within fourteen (14) calendar days from the date of receipt by the City. The City's review shall only be for conformance with design concepts and the information provided in the Contract Documents. The approval of a separate item shall not constitute approval of an assembly in which the item functions. The City shall return the shop drawings to the Contractor for their use and distribution.

Acceptance of any submittal shall not relieve the Contractor of any responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has given written notice to the City of the specific deviations and the Consultant have issued written approval of such deviations.

By approving and submitting shop drawings, Product Data and Samples, the Contractor represents that all materials, field measurements and field construction criteria related thereto have been verified, checked and coordinated with the requirements of the Work and have been verified, checked and coordinated with this Contract Documents.

Contractor shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the EOR's stamp of approval. Distribution shall include, but not be limited to; job site file, record documents file, Subcontractor, suppliers, and other affected parties or entities that require the information.

The Contractor shall also provide copies of all plans approved and permitted by the required governing authorities.

The Contractor shall not be relieved of responsibility for errors or omissions in any and all submittals by the City's acceptance thereof. The Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a shop drawing that alters, modifies, or adds to the requirements of the Contract Documents.

Nothing in the City's review of shop drawings, Submittals and Samples shall be construed as authorizing additional Work or increased cost to the City.

Where a conflict exists between the submittal requirements of the General Terms and Conditions and the Technical Specifications, the Technical Specifications shall prevail.

## **42. Shop Drawings**

Contractor shall submit shop drawings as required by the Contract Documents. The purpose of the shop drawings is to show, in detail, the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with this Contract Documents.

Within five (5) calendar days after City's award of the Contract, Contractor shall submit to the City a complete list and submittal log of items for which shop drawings are to be submitted and shall identify the critical items and all submittal dates. Approval of this list by the City shall in no way relieve the Contractor from submitting complete shop drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of shop drawings.

After the approval of the list of items required in above, Contractor shall promptly request shop drawings from the various manufacturers, fabricators, and suppliers.

Contractor shall thoroughly review and check the shop drawings and each and every copy shall show its approval thereon.

Some shop drawings, as denoted either in the Contract Documents or by the Florida Building Code (Code) or Florida Statute such as structural drawings, require that they be prepared by a licensed engineer. It is the sole responsibility of the Contractor to ensure that the shop drawings meet all Code requirements.

In addition to all shop drawings required by the Contract Documents the Contractor must provide shop drawings for; all drainage structures including catch basins, drainage pipe, ballast rock, and exfiltration trench filter fabric.

If the shop drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.

The City shall review and accept or reject with comments, shop drawings within fourteen (14) calendar days from the date received. The City's approval of shop drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such shop drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents and not indicated on the shop drawings. No Work called for by shop drawings shall be performed until said shop drawings have been approved by EOR. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the shop drawings.

No approval will be given to partial submittals of shop drawings for items, which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the shop drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to the City along with its comments as to compliance, noncompliance, or features requiring special attention.

If catalog sheets or prints of manufacturers' standard drawings are submitted as shop drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Documents references, drawing number(s), specification section number(s) and the shop drawing numbers of related Work. Shop drawings must be complete in every detail, including location of the Work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other Work, cutting, fitting, drilling, and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown.

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, EOR is entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Contractor. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

Contractor shall keep one (1) set of shop drawings marked with EOR's approval at the job site at all times.

#### **43. Product Data**

Contractor shall submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor shall supplement manufacturer's standard data to provide information unique to the Work.

Contractor shall only submit pages that are pertinent. Submittals shall be marked to identify pertinent products, with references to the specifications and the Contract Documents. Identify reference

standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

Contractor shall submit a draft of all product data, warranty information, and operating and maintenance manuals at fifty percent (50%) completion of construction.

**44. Samples**

Contractor shall submit samples to illustrate the functional characteristics of the product(s). Submittals shall be coordinated for different categories of interfacing Work. Contractor shall include identification on each sample and provide full information.

**45. Record Set**

Contractor shall maintain in a safe place at the Project site(s) one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, shop drawings, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the City, in good order and annotated to show all changes made during construction. The record documents shall 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 Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. As a condition precedent to City's obligation to pay Contractor, the Contractor shall provide evidence, satisfactory to the City, that Contractor is fulfilling its obligation to continuously update the record documents. All buried items, outside the Project site(s), shall be accurately located on the record documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record documents shall be clean, and all changes, corrections, and dimensions shall be given in a neat and legible manner in red. The record documents shall be available to the City and the Consultant for reference. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, the record documents shall be delivered to the City by the Contractor. The Record Set of drawing shall be submitted in both hard copy and as electronic plot files.

**46. Supplemental Drawings and Instructions**

The City shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such Supplemental Instructions involve no change in the Contract Documents Price or this Contract Documents Time.

The City shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings, or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

**47. Contractor Furnished Drawings**

A Contract Documents may require the Contractor to furnish design, shop, and/or as-built drawings depending on the nature and scope of the Work to be performed. The following applies to the different types of drawings.

The City shall, after review of the drawings, initial and mark the drawings in one of the following manners:

1. ACCEPTED - No correction required.
2. PROCEED AS CORRECTED - Minor changes or corrections identified. Work can proceed subject to re-submittal and acceptance of the drawings.
3. REVISE AND RESUBMIT- Significant changes or corrections are recommended. Submittal must be revised and resubmitted for acceptance prior to Work proceeding.



4. REJECTED - Not in accordance with the Contract and/or Contract Documents due to excessive changes or corrections or other justifiable reason. Drawings must be corrected and resubmitted prior to any Work being performed.

Revisions required by the permitting jurisdiction must also be reviewed and accepted by the City prior to resubmission to the permitting agency.

Acceptance by the City shall not relieve the Contractor from responsibility for errors and omissions in the drawings.

#### **48. Substitutions**

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Consultant sufficient information is submitted by Contractor to allow City and Consultant to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by the City from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the City for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by the Consultant in evaluating the proposed substitute. The City may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Consultant, if the Contractor submits sufficient information to allow the EOR to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Consultant shall be the same as those provided herein for substitute materials and equipment.

The Consultant shall be allowed a reasonable time within which to evaluate each proposed substitute. The City shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the City's and the Consultant's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. The City may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Consultant rejects the proposed substitute, at their discretion, the City may require the Contractor to reimburse the City for the charges of the Consultant for evaluating the proposed substitute.

Contractor shall maintain sole liability and responsibility for ensuring that all substitutions and any required design of such are in full compliance with and meet all the requirements of the Contract Documents.

**49. City Furnished Drawings**

The City, at its sole discretion, may furnish design drawings. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the City any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the City prior to commencement. This shall also apply to any revisions or omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI). The City shall respond to all RFI's in writing.

The Contractor shall have no basis for any claim for additional costs resulting from their failure to identify any required revisions, omissions, and/or errors, not identified in writing to the City prior to commencing the Work.

The drawings are to be addressed as a complete set and should not be used in parts. Contractor is responsible to coordinate the set of drawings with all trades to ensure that the Work will be performed correctly and coordinated among the trades. Contractor shall not scale the drawings.

**50. Interpretation of Drawings and Documents**

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project, should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the City will clarify in writing the intent of the drawings and/or specifications and the Contractor agrees to abide by the City's interpretation and perform the Work in accordance with the decision of the City. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

**51. Product and Material Testing**

All tests shall be performed by the Contractor, except where otherwise specifically stated in the Contract Documents. All costs for testing performed by the Contractor shall be at the Contractor's expense. The City may, in its sole and absolute discretion, test materials, and products at its own cost. However, should such materials or products fail to pass the test and/or meet the requirements of the Contract Documents, the Contractor shall reimburse the City for the cost of such tests and repair or replace said materials or products. In such instances, the City may deduct such cost from any payments pending to the Contractor.

**52. Field Directives**

The City may at times issue field directives to the Contractor based on visits to the Project site(s). Such Field Directives shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within forty-eight (48) hours, notify the City that the Work is outside the scope of the Work. At that time, the Field Directive may be rescinded, or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the City's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the City that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive. At no time shall the Contractor refuse to comply with the directive. Failure to comply with the directive may result in a determination that the Contractor is in default of the Contract.

**53. Changes in the Work or Contract Documents**

Without invalidating the Contract Documents and without notice to any Surety, City reserves and shall have the right, from time to time to make such 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 fully and acceptably the proposed construction of a Project in a satisfactory manner. Any extra

or additional Work within the scope of the Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto. This section shall not prohibit the issuance of Change Orders executed only by City.

**54. Continuing the Work**

Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with City, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract price or Contract time for completion. The Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

**55. Change Orders**

Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the City.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, City reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed Work; or submit the matter in dispute to the Director as set forth in Article 89, Resolution of Disputes. During the pendency of the dispute, and upon receipt of a Change Order approved by City, Contractor shall promptly proceed with the change in the Work involved and advise the City and Director in writing within seven (7) calendar days of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond (if applicable) are increased so that each reflects the total Contract Price as increased.

Under circumstances determined necessary by City, Change Orders may be issued unilaterally by City.

The City 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. Any such changes will be known as "Extra Work."

No Extra Work shall be performed except pursuant to written orders of the City expressly and unmistakably indicating his/her intention to treat the Work described therein as Extra Work. In the absence of such an order, the City may direct, order or require the Contractor to perform any Work including that which the Contractor deems to be Extra Work. The Contractor shall nevertheless comply and shall promptly and in no event after, begin the performance thereof or incur cost attributable thereto and give written notice to the City stating why the Contractor deems such Work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (1) affording an opportunity to the Project Manager to cancel such order, direction or requirements promptly; (2) affording an opportunity to the City to keep an accurate record of materials, labor and other items involved; and (3) affording an opportunity to the City to take such action as it may deem advisable in light of such disputed Work.

**56. Change Order Procedure**

Extra Work shall result in an equitable adjustment (increase or decrease) to the Contract representing the reasonable cost or the reasonable financial savings related to the change in Work. Extra Work may also result in an equitable adjustment in the Contract schedule, for performance of both the Extra Work and any other Work affected by the Extra Work.

The City shall initiate the Extra Work procedure by a notice to Contractor outlining the proposed Extra Work. Upon receipt of the notice to proceed with the Extra Work, the Contractor is required to start the Extra Work immediately. The Contractor is required to obtain permission for an extension to start the Extra Work if it is beyond the Contractor's ability to start within the allotted timeframe.

The Contractor is required to provide the Project Manager with a detailed Change Proposal Request, which shall include requested revisions to the Contract, including but not limited to adjustments in this Contract Price and Contract Time. The Contractor is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the City may require that the Contractor submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Contractor's Change Proposal Request. The Contractor's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the Extra Work on the Project. If the Contractor fails to notify the City of the schedule changes associated with the Extra Work, it will be deemed an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences. The Contractor agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of ten percent (10%) of the direct labor and material costs, unless the City determines that the complexity and risk of the Extra Work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Contractor and the City. If an agreement on the Extra Work is reached, both parties shall execute the Extra Work order in writing via a Change Order. The execution by the Contractor of the Change Order shall serve as a release of the City from all claims and liability to the Contractor relating to, or in connection with, the Extra Work, including any impact, and any prior acts, neglect or default of the City relating to the Extra Work.

Upon execution of a change order that affects the Contract Time, the Contractor shall, within five (5) business days, submit a revised Project schedule reflecting the changes against the baseline schedule.

**57. No Oral Changes**

Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of the Contract or, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the parties charged, therewith or their duly authorized representative.

**58. Value of Change Order Work**

The value of any Work covered by a Change Proposal Request or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- Where the Work involved is covered by unit prices contained in the Contract, by application of unit prices to the quantities of items involved.
- By mutual acceptance of a Contract unit price, which Contractor and Project Manager acknowledge, contains a component for overhead and profit.
- On the basis of the "Cost of Work," determined as provided in this, plus a Contractor's fee for overhead and profit, which is determined as provided in this Article.
- The term "Cost of Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in herein.

Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Proposal Request under schedules of job classifications agreed upon by the City. Payroll costs for employees not employed full time on the Work covered by the Change Proposal Request shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement

benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by City.

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to City and Contractor shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

If required by the City, Contractor shall obtain competitive bids for the Change Order Work. Contractor and shall deliver such competitive bids to the City who will determine which bids will be accepted. If the Subcontractor is to be paid on the basis of cost of the Work plus a fee, the Subcontractor's cost of the Work shall be determined in the same manner as Contractor's cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

The term "Cost of the Work" shall include any of the following:

- Cost of special Consultants, including, but not limited to, Consultants, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.
- Supplemental costs including the following:
  - The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.
  - Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and less market value of such items used but not consumed which remains the property of Contractor.
  - Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.
  - Deposits lost for causes other than Contractor's negligence, royalty payments, and fees for permits and licenses.
  - The cost of utilities, fuel, and sanitary facilities at the site.
  - Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.
  - Cost of premiums for additional bonds and insurance required because of changes in the Work.

The term "Cost of Work" shall **not** include any of the following:

- Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, consultants, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor whether at the site or in its principal or a branch office, for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications, all of which are to be considered administrative costs covered by Contractor's fee.
- Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

- Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
- Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property, or soft costs such as consultant costs, or any costs not directly attributable to the work.
- Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Article.

Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

- A mutually acceptable fixed fee or if none can be agreed upon;
- A fee based on the following percentages of the various portions of the cost of the Work;
- Where the Contractor self-performs the Work, Contractor's fee shall not exceed ten percent (10%);
- Where a Subcontractor performs the Work, Contractor's fee shall not exceed seven and one-half percent (7.5%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and
- No fee shall be payable for special Consultants or supplemental costs.

The amount of credit to be allowed by Contractor to City for any such change, which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any Work not performed.

Whenever the cost of any Work is to be determined pursuant to this Article, Contractor will submit in a form acceptable to the City an itemized cost breakdown together with the supporting data.

Whenever a change in the Work is based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to the City.

- Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
- Whenever a change involves Contractor and one (1) or more Subcontractors, and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.
- Each Change Order must state within the body of the Change Proposal Request whether it is based upon unit price, negotiated lump sum, or "Cost of Work."

## **59. Extra Work Directive**

If the parties fail to reach agreement with respect to the proposed Extra Work, or in case or extenuating circumstances, the City may nevertheless issue a directive to the Contractor to do the proposed Extra Work. Immediately upon receipt of the Extra Work Directive, the Contractor shall be obligated to proceed with the Work set forth in that directive.

Except as provided below, the Contractor shall be entitled to initiate a dispute pursuant to the Article 89, Resolution of Disputes, by furnishing a written statement to the Construction Manager within five (5) calendar days of the Extra Work Directive, based upon any aspect, of such Extra Work which the Contractor disputes. Such dispute must relate to specific matters raised or specific matters reserved by the Contractor in its bid and have not been resolved prior to the issuance of the Extra Work Directive.

The written statement must set forth all details of the Contractor's claim including the manner that the disputed item was specified in the Contractor's bid. During the pendency of any dispute hereunder, the Contractor must proceed with Work as set forth in the Extra Work Directive unless otherwise advised by the Project Manager's written instructions. In the event there is a dispute as to price, the Contractor will be paid in accordance with the following paragraph. This payment(s) will be in full satisfaction of the Contractor's claim for an adjustment to the value of the Contract.

Compensation for Extra Work in the event of the parties' inability to agree upon a mutually satisfactory price shall be as follows:

- No payment will be made to the Contractor for Extra Work in excess of "Actual and Necessary Cost" which is to say time and materials plus a mark-up not to exceed ten percent (10%). This will not vary, whether the Extra Work is performed by the Contractor or his Subcontractor. The Project Manager must approve any exceptions.

"Actual and Necessary Net Cost" shall be deemed to include the actual and necessary cost of the Extra Work for (i) labor, which includes wages, payroll deductions, if any, made by the Contractor as employer pursuant to bona fide collective bargaining labor agreements applicable to the Work; (ii) contributions to the State Unemployment Insurance Law, (iii) excise taxes pursuant to Federal Social Security Act; (iv) any increases in public liability and property damage insurance or performance and payment bonds occasioned solely by the Extra Work, (v) the actual and necessary operating expenses (except the expense of supplies and small tools not operated by mechanical or electrical power), power for such plant and a reasonable rental for the same (including small power tools), as determined by the Construction Manager; and (vi) any additional materials necessary for the performance of the Extra Work.

In case any Work or materials shall be required to be done or furnished under the provisions of this Article, the Contractor shall at the end of each day furnish to the City such documentation as the City may require supporting all the costs of the Extra Work. If payments on account are desired as the Extra Work progresses, the Contractor shall render an itemized statement showing the total amount expended for each class of labor and for each kind of material on account of each item of Work as a condition precedent to the inclusion of such payment in a partial estimate. Upon the request of the City, the Contractor shall produce for audit by the City, books, vouchers, collective bargaining labor agreements, records or other documents showing the actual cost for labor and materials. Such documents shall not be binding on the City. The Project Manager shall determine any questions or dispute as to the correct cost of such labor, materials, or plant.

In case the Contractor is ordered to perform Work under this Article, which in the opinion of the Project Manager, it is impracticable to have performed by the Contractor's own employees, the Contractor will, subject to the approval of the Project Manager, be paid the actual cost to Contractor of such Work, and in addition thereto five percent (5%) to cover the Contractor's superintendence, administration and other overhead expenses.

Payment of any amount under this Article shall be subject to subsequent audit and approval, disapproval, modification or revision by representatives of the City.

## **60. As-Built Drawings**

During the Work, Contractor shall maintain records of all deviations from the Drawings and Specifications as approved by the Project Manager 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 City and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth, and voltage in each conduit.

Legibly mark to record actual construction: On-site structures and site Work as follows:

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

- 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.
- 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.
- Field changes in dimensions and details.
- Changes made by Project Manager's or Consultant's written instructions or by Change Order.
- Details not on original Contract Drawings.
- Equipment, conduit, and/or electrical panel locations.
- Project Manager's or Consultant's schedule changes according to Contractor's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

- Manufacturer, trade name, catalog number, and Supplier of each product and item of equipment actually installed.
- Changes made by Project Manager's or Consultant's written instructions or by Change Order.

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

As-built documents shall be updated monthly as a condition precedent to payment.

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

In addition, for Projects that involve roadwork and drainage, Contractor shall provide complete as-built information relative to location, size, and depth of new pipes, manholes, inlets, etc. Identify grading; include locations of fittings, valves, fire hydrants, changing in pipe materials, water sampling points, thrust blocks, benchmarks, etc. The information shall be accurately recorded by the Contractor and submitted (signed and sealed by a Florida Certified P.L.S.) to the City of Miami prior final acceptance of the Work. All recorded information on existing utility crossing encountered during construction, included but not limited to pipes, inlets, manholes, etc., shall be recorded by a Florida Registered Surveyor and shown on the record drawings.

The Project's as-built set of drawings shall include GPS coordinates (X, Y, and Z) for all new and/or existing vacuum cleaned drainage system openings (i.e., catch basins, inlets, manholes, etc.)

**61. Worker's Identification**

The Contractor's employees, who include any Subcontractor, shall wear an identification card provided by the Contractor. The identification card shall bear the employee's picture, name, title, and name of the employer. Failure by a Contractor's employee to wear such identification may result in his removal from the Work until such time as the identification card is obtained and worn. Such removal shall not act as a basis for the Contractor to submit a claim for an extension of time.

**62. Removal of Unsatisfactory Personnel**

The City 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 shall respond to the City within seven (7) 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 City shall make the final determination as to the removal of unsatisfactory personnel from Work assigned by City. The Contractor agrees that the removal of any of its employees does not require the termination or demotion of employee(s).



### **63. Substantial Completion, Punch List, and Final Completion**

The Work shall be substantially complete when the City, in the reasonable exercise of their discretion determines that the Work is complete, there are no material and/or substantial variations from the Contract Documents, and the Work is fit for its intended purpose. Upon Substantial Completion, the City and the Contractor shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the City inspect the Work to determine if Substantial Completion has been achieved. No request for Substantial Completion inspection is to be submitted until the Contractor has obtained a Certificate(s) of Occupancy, Certificate of Completion or Completion or a Temporary Certificate of Occupancy or any other approvals from agencies having jurisdiction over the Work. The City shall schedule the date, time for any inspection, and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the City and the Contractor, confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the City.

Where the Punch List is limited to minor omissions and defects, the City shall indicate that the Work is substantially complete subject to completion of the Punch List. Where the City determines, on the appropriate form that the Work is not substantially complete, the City shall provide a list of all open items necessary to achieve Substantial Completion. Upon completion of such Work, the Contractor shall request another Substantial Completion inspection.

The City and the Contractor shall agree on the time reasonably required to complete all remaining Work included in the Punch List.

Upon the receipt of all documentation, resolution of any outstanding issues and issuance of final payment, the City shall notify the Contractor in writing of the closeout of the Project.

The City will prepare a Certificate of Substantial Completion in the form that shall establish the Date of Substantial Completion. Once substantial completion is achieved, the City shall be responsible for security, maintenance, heat, utilities, damage to the Project site, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Final Acceptance completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents.

### **64. Acceptance and Final Payment**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, the City shall, within ten (10) calendar days, make an inspection thereof. If the City finds the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment **shall** be issued by the City. Said Certificate shall state that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor shall deliver to the City a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings;

operations and maintenance data, and the final bill of materials, if required, and payment application. Contractor shall deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the Final Certificate for Payment.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and the Project Manager so certifies, City shall, upon such certification of Consultant, and without terminating the Contract Documents, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

#### **65. NPDES Requirements**

Contractor shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the bid prices. For further information on compliance requirements for NPDES and SWPPP contact the City of Miami Public Works Department at (305) 416-1200 or visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for obtaining, completing, and paying for any required NPDES application or permits that may be required.

#### **66. Force Majeure**

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, then the City may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the City within two (2) business days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Does Not Include** inclement weather, except as permitted by Florida law, and may not include the acts or omissions of Subcontractors.

#### **67. Extension of Time**

Any reference in this section to the Contractor shall be deemed to include suppliers, and permitted Subcontractors, whether or not in privity of Contract with the Contractor for the purpose of this Article.

If the Contractor is delayed at any time during the progress of the Work beyond the Contract Time and/or Notice to Proceed (NTP) by the neglect or failure of the City or by a Force Majeure, then the Contract Time set forth in the Contract shall be extended by the City subject to the following conditions:

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;
- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed; and
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

**Note:** A delay meeting all the conditions of the above, shall be deemed an Excusable Delay.

The City reserves the right to rescind or shorten any extension previously granted if subsequently, the City determines that any information provided by the Contractor in support of a request for an extension

of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the City will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay shall be made within ten (10) calendar days, except for Force Majeure which must be requested within two (2) business days, after the time when the Contractor knows or should have known of any cause for which it may claim an extension of time and shall provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The City may require the Contractor to furnish such additional information or documentation, as the Project Manager shall reasonably deem necessary or helpful in considering the requested extension.

The Contractor shall not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall be obligated to continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike, or interference of public origin, which may delay the Project, the Contractor shall promptly give the City a copy of the injunction or other orders and copies of the papers upon which the same shall have been granted. The City shall be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction shall be obtained and move to dissolve the same or otherwise, as the City may deem proper.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, shall not waive the City's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

**68. Notification of Claim**

Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the City within ten (10) calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the City allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Contractor's written notarized statement that the adjustment claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims for changes in the Contract Time or Contract Price shall be determined by the City in accordance with Article 69, No Damages for Delay, if City and Contractor cannot otherwise agree. It is expressly and specifically agreed that any and all claims for changes to the Contract time or Contract price shall be waived if not submitted in strict accordance with the requirements of this Article.

The Contract time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made therefore as provided in this Article. Such delays shall include, but not be limited to, acts or neglect by any separate Contractor employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

**69. Extension of Time not Cumulative**

In case the Contractor shall be delayed for any period of time by two or more of the causes mentioned in Article 70, Excusable Delay, Non-Compensable, the Contractor shall not be entitled to a separate extension for each one of the causes; only one (1) period of extension shall be granted for the delay.

**70. No Damages for Delay**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against City by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract price or payment or compensation of any kind from City 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; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of City. Otherwise, Contractor shall be entitled only to extensions of the Contract Time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above. **NO EXCEPTIONS.**

Except as may be otherwise specifically provided for in the Contract Documents, the Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the City or any of its representatives (whether it is an Excusable Delay or otherwise) and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work. In this regard, the Contractor alone hereby specifically assumes the risk of such delays, including without limitation: delays in processing or approving shop drawings, samples or other submittals or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner. Contractor shall not receive monetary compensation for City delay. Time extensions may be authorized, in writing, by the City in certain situations.

**71. Excusable Delay, Non-Compensable**

Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the City or Consultant, or (ii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers or vendors and by the City or Consultant. Then Contractor shall be entitled only to a time extension and no compensation for the delay.

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 67, Notification of Claim, hereof.

Failure of Contractor to comply with Article 67, Notification of Claim hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment, or relinquishment of any and all claims resulting from that particular event of delay.

**72. Lines and Grades**

The Contractor shall, at its own expense, establish all working and construction lines and grades as required from the Project control points set by the City, and shall be solely responsible for the accuracy thereof.

All Work along the entire Project shall be located and constructed using the roadway base/center line as reference. All elevations shown therein are in feet.

**73. Defective Work**

Project Manager shall have the authority to reject or disapprove Work that Project Manager finds to be defective. If required by the City, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with Work in conformity with the Contract Documents. Contractor shall bear all direct, indirect, and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

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 City, City 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 City in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond. In the event of failure of Contractor to make all necessary repairs promptly and fully, City may declare Contractor in default.

If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from City, shall promptly correct such defective or nonconforming Work within the time specified by City without cost to City, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate City to final acceptance.

**74. Acceptance of Defective or Non-Conforming Work**

The City, in its sole discretion, may elect in writing to accept defective or non-conforming Work instead of requiring its removal and correction. In such instances, a Change Order will be issued to reflect an appropriate reduction in the Contract sum, or, if the amount is determined after final payment, any difference in the amount shall be paid to the City by the Contractor.

**75. Uncovering Finished Work**

The Project Manager's, Inspector's, and/or Consultant's right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The City shall notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract Documents, the uncovering, taking down, replacement, and/or restoration of the parts removed will be treated as Extra Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor. Such expenses shall also include repayment to the City for any and all expenses or costs incurred by it, including employee salaries or related cost, in connection with such uncovering, taking down, replacing, and restoration at the Project site.

**76. Correction of Work**

The Contractor shall promptly correct all Work rejected by the Project Manager as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the City's additional services thereby made necessary.

The Contractor further agrees that after being notified in writing by the Project Manager of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Contractor will commence and prosecute with due diligence all Work necessary to fulfill the terms of the

Contract and to complete the Work within a reasonable period of time, as determined by the City, and in the event of failure to so comply, the Contractor does hereby authorize the City to proceed to have such Work done at the Contractor's expense and that the Contractor will pay the cost thereof upon demand. The City shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel, property, or licensees, the City may undertake, at the Contractor's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Contractor not being in accordance with the requirements of the Contract.

If, within one (1) year after the date of final completion of the Project or within such longer period(s) of time as may be prescribed by law, by the Contract Documents, or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City to do so. The City shall give such notice promptly after discovery of the condition.

All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Contract Documents without cost to the City.

## **77. Maintenance of Traffic and Public Streets**

### Scope of Work

The Contractor shall be responsible for the maintenance of public streets and traffic control necessary to perform the Work under the Contract Documents. The cost of traffic control shall be included in the Contractor's bid.

### Regulations

As used herein, any reference to Miami-Dade County, its departments, or its published regulations, permits and data, shall be synonymous and interchangeable with other recognized governing bodies over particular areas or streets, or their departments, published regulations (i.e., Manual of Uniform Traffic Control Devices (MUTCD), Federal Department of Transportation (FDOT), Roadway and Bridge Standard Index Drawing Book, permits or data. The Contractor shall abide by all applicable laws, regulations, and codes thereof pertaining to Maintenance of Traffic (MOT) on public streets, detour of traffic, traffic control and other provisions as may be required for this Project.

### Maintenance of Traffic (MOT)

The Contractor shall be fully responsible for the MOT on public streets, detour of traffic (including furnishing and maintaining regulatory and informative signs along the detour route), traffic control, and other provisions, throughout the Project, as required by the Manual of Uniform Traffic Control Devices (MUTCD), and FDOT Roadway and Bridge Standard Index drawing Book. Traffic shall be maintained according to corresponding typical traffic control details as outlined in the previous noted standards. No street shall be completely blocked, nor blocked more than one-half at any time, keeping the other one-half open for traffic, without specific approval.

If required by the Project Manager, Traffic Division, or FDOT or as otherwise authorized by the City, the Contractor shall make arrangements for the employment of uniformed off-duty police officers to maintain and regulate the flow of traffic through the Work area. The number of men required and the number of hours on duty necessary for the maintenance and regulation of traffic flow shall be provided by the City of Miami Police Department.

The Contractor shall provide all barricades with warning lights, necessary arrow boards, and signs, to warn motorists of the Work throughout the Project. Adequate approved devices shall be erected and maintained by the Contractor to detour traffic.

Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic safety at all times. The Contractor shall provide necessary access to all adjacent property during construction.

The Contractor shall be responsible for the provision, installation, and maintenance of all MOT and safety devices, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Roadway and Bridge Standards index-drawing book. In addition, the Contractor shall be responsible for providing the City with MOT plans for lane closures and/or detours for approval. These plans (sketches) shall be produced, signed and sealed by a professional engineer registered in the State of Florida, employed by the Contractor and certified under FDOT Procedure NPIL No. 625-010-010.

Where excavations are to be made in the vicinity of signalized intersections, attention is directed to the fact that vehicle loop detectors may have been embedded in the pavement. Verify these locations by inspecting the site of the Work and by contacting the Sunshine State One-Call Center (1-800-432-4770), forty-eight (48) hours prior to any excavation. Any loop detector which is damaged, whether shown on the Plans or not, shall be repaired or replaced to the satisfaction of the Miami Dade County Signs and Signal Division (Phone No. 305-592-3470).

Where applicable, the Contractor shall notify the Traffic Division twenty-four (24) hours in advance of the construction date or forty-eight (48) hours in advance of construction within any signalized intersection.

Temporary pavement will be required over all cuts in pavement areas, and also where traffic is to be routed over swale or median areas. When the temporary pavement for routing traffic is no longer necessary, it shall be removed, and the swale or median areas restored to their previous condition.

Pavement markings damaged during construction shall be remarked, as required by the Traffic Division.

#### Maintenance of Traffic for Bypass Pumping

The Contractor shall take appropriate steps to ensure that all temporary pumps, piping and hoses are protected from vehicular traffic and pedestrian traffic.

#### Lane Closures

Where construction of the Project shall involve lane closures public streets, the following shall apply:

Lane closures require a Lane Closure Permit, obtained two weeks prior to planned construction, with a minimum forty-eight (48) hour prior notice to local police and emergency departments (some police jurisdictions may require considerably more notice). Lane closures of a one day or less duration will generally not be approved for major collector streets or for arterial streets during the hours of 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. weekdays.

### **78. Location and Damage to Existing Facilities, Equipment, or Utilities**

As far as possible, all existing utility lines in the Project area(s) will be shown on the plans. However, City does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to field verify all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and damages suffered as a result thereof.

The Contractor shall notify each utility company involved at least fourteen (14) calendar days prior to the start of construction to arrange for positive underground location, relocation, or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by

utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

The Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. The Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Contractor for any loss of time or delay.

All overhead, surface, or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The City reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling

**79. Stop Work Order**

The City may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) calendar days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, or the Stop Work Order may commence on a later date as the parties may agree. Any such order shall be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) calendar days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed, the City shall either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 88, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time for Substantial Completion to the extent that, in the opinion of the City, the Contractor may have been delayed by such suspension. In the event the City determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

**80. Hurricane Preparedness**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the City has given notice of same.

Compliance with any specific hurricane warning or alert precautions will not constitute additional Work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the City has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

**81. Use of Completed Portions**

City shall have the right, at its sole option, to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance or beneficial use or occupancy of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as determined by the City.



In the event City takes possession of any completed or partially completed portions of the Project, the following shall occur:

- City shall give notice to Contractor in writing at least thirty (30) calendar days prior to City's intended occupancy of a designated area.
- Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from the City.
- Upon the City's issuance of a Certificate of Substantial Completion, City will assume full responsibility for maintenance, utilities, subsequent damages of City and public, adjustment of insurance coverage, and start of warranty for the occupied area.
- Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by the City on the Certificate of Substantial Completion, as specified in the Punch List and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, City shall issue a Certificate of Final Payment relative to the occupied area.
- If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by City and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

**82. Cleaning Up; City's Right to Clean Up**

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. No fill or clearing stockpiles to remain on site for more than twenty-four (24) hours. At the completion of a Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, City may do so, and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up, City may clean up and charge the cost thereof to the contractors responsible therefore as the City shall determine to be just. All combustible waste materials shall be removed from the Project at the end of each day. Cleaning operations should be controlled to limit dust and other particles adhering to existing surfaces.

**83. Removal of Equipment**

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of City. If the Contractor does not comply with City's order, the City shall have the right to remove such equipment and supplies at the expense of Contractor.

**84. Set-offs, Withholdings, and Deductions**

The City may set-off, deduct, or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

- Any amount of any claim by a third party;
- Any Liquidated Damages; and/or
- Any unpaid legally enforceable debt owed by the Contractor to the City.

The City shall notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act.

## 85. Event of Default

An event of default shall mean a breach of the Contract or by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include but not limited to, the following:

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed, except in case for which an extension of time is provided, to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services or materials they have provided;
- The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- The Contractor has failed to obtain the approval of the City where required by the Contract;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work, the City shall notify the Contractor in writing that it must, within the time frame set forth in the City's request, provide adequate assurances and a plan of action to the City, in writing, of the Contractor's ability to perform in accordance with the terms of the Contract Documents. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
  - ❖ Treat such failure as a repudiation of the Contract and/or;
  - ❖ Resort to any remedy for breach provided herein or by law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.
- In the event the City may, at its sole discretion, terminate the Contract for default, the City or its designated representatives may immediately take possession of all applicable documentation and data.
- Where the City erroneously terminates the Contract or for default, the terminations shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

## 86. Notice of Default-Opportunity to Cure

In the event that the City determines that the Contractor is in default of their obligations under the Contract, the City may at its sole discretion notify the Contractor in writing, specifying the basis for such default, and advising the Contractor that such default must be cured within a specified time frame or the Contract with the City may be terminated. **The City should issue such Notification; however, the City is under no obligation to issue such notification in the event the City lacks actual knowledge of the default.** The City may grant an extension to the cure period if the City deems it appropriate and in the best interest of the City, without waiver of any of the City's rights hereunder. The City, at its sole discretion, may have a default corrected by its own forces or another Contractor and any such costs incurred will be deducted from any sums due the Contractor under any Contract with the City.

## 87. Termination for Default

If Contractor fails to comply with any term or condition of the Contract Documents, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default if one has been granted by the City, the Director in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon any advances for which Work has not been performed, paid by the City to Contractor while Contractor was in default shall be immediately returned to the City.

The Director may also suspend any payment or part thereof or order a Work stoppage until such time as the issues concerning compliance are resolved. Contractor understands and agrees that termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination.

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

- Contractor fails to obtain the insurance or bonding herein required by the Contract.
- Contractor fails to comply with any of its duties under the Contract Documents, with any terms or conditions set forth in this Contract, beyond any specified period allowed to cure such default.
- Contractor fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by the Contract.

If this Contract is terminated for default and the City has satisfied its obligations under the Contract Documents the City is granted by the Contractor full use of the Work and any Work Product in connection with the City's completion and occupancy of the Project.

Where it has been determined that the Contractor has been erroneously terminated under this Article, such termination shall be deemed to have been under Article 88, Termination for Convenience. The City in its sole discretion may terminate the Contract without providing the Contractor a written Notice to Cure.

#### **88. Remedies in the Event of Termination for Default**

If a Termination for Default occurs, the Contractor and the bond provider, if applicable, shall be notified of the effective date of the termination and shall be liable for all damages resulting from the default, including but not limited to re-procurement costs and other direct damages

The Contractor shall stop Work as of the date of notification of the termination and immediately remove all labor, equipment, and materials (not owned or paid for by the City) from the Work site. The City assumes no liability for the Contractor's failure to remove such items from the Project site(s) as required.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

As an alternative to termination, the City may bring suit or proceedings for specific performance or for an injunction

#### **89. Termination for Convenience**

In addition to cancellation or termination as otherwise provided for in the Contract, the City may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice shall state the date upon which Contractor shall cease all Work under the Contract and vacate the Project site(s).

The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:

- Stop all Work on the Project on the date specified in the notice (the "Effective Date");
- Take such action as may be necessary for the protection and preservation of the City's materials and property;
- Cancel all cancelable orders for materials and equipment;
- Assign to the City and deliver to the site, or any other location specified by the Project Manager, any non-cancelable orders for materials and equipment that can not otherwise be used except for Work under the Contract and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;
- Take no action that shall increase the amounts payable by the City under the Contract Documents; and
- Take reasonable measures to mitigate the City's liability under the Contract Documents.

- All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the City. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the City.

In the event that the City exercises its right to terminate the Contract pursuant to the Contract Documents, the City will pay the Contractor:

- For the actual cost or the fair and reasonable value, whichever is less, of (1) the portion of the Project completed in accordance with the Contract through the completion date, and (2) non-cancelable material(s) and equipment that is not of any use to the City except in the performance of the Contract, and has been specifically fabricated for the sole purpose of the Contract but not incorporated in the Work. To the extent practical, the fair and reasonable value shall be based on the price established because of the Contract. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract.
- The amount due hereunder may be offset by all payments made to the Contractor.
- All payments pursuant to this Article shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of the termination. Further, the City may deduct or set off against any sums due and payable under this Article any claims it may have against the Contractor.
- Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.
- All payments made under the Contract are subject to audit.

Upon the City's payment in full of the amounts due the Contractor under this Article the Contractor grants the City full use of the Work and any Work Product to complete the Project and subsequently occupy the Project.

## **90. Resolution of Disputes**

Contractor understands and agrees that all disputes between the Contractor and the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner.

The initial step shall be for the Contractor to notify the Project Manager in writing of the claim or dispute and submit a copy to the City of Miami personnel identified in Section 3, Article 3, Notices.

Should the Contractor and the Project Manager fail to resolve the dispute, the Contractor shall submit their dispute in writing, with all supporting documentation, to the Assistant Director of OCI, as identified in Section 3, Article 3, Notices. Upon receipt of said notification, the Assistant Director of OCI shall review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Assistant Director of OCI fail to resolve the dispute, the Contractor shall submit their dispute in writing within five (5) calendar days to the Director of OCI. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Upon receipt of said notification, the Director of OCI shall review the issues relative to the claim or dispute and issue a written finding.

Contractor must submit any further appeal in writing within five (5) calendar days to the City Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Contractor. Appeal to the City Manager for the resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed one hundred thousand dollars (\$100,000.00), the City Manager's decision shall be approved or disapproved by the City Commission. Contractor shall not be entitled to seek judicial relief unless:

- (i) it has first received City Manager's written decision, approved by the City Commission if applicable; or

- (ii) a period of sixty (60) calendar days has expired after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of ninety (90) calendar days has expired where City Manager's decision is subject to City Commission for approval; or
- (iii) City has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the City Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. If a party fails to timely take the written objection, as provided, in fourteen (14) calendar days, then such party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

**91. Mediation-Waiver of Jury Trial**

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the construction of a Project, and/or following the completion of the Project, the parties to this Contract agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of a certified Mediator on a 50/50 basis. The Contractor agrees to include such similar Contract provisions with all Sub-Contractors retained for the Work, thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation, the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Contract.

**In any mediation or litigation between the Parties, each Party shall bear their own attorney's fees (except as to a civil action seeking enforcement / performance of obligations to indemnify).**

**92. City May Avail Itself of All Remedies**

The City may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The City's rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.

**93. Permits, Licenses, and Impact Fees**

All applicable permit fees, including those assessed by the City, are the responsibility of the Contractor. That includes also any other permit fees not directly related to the actual construction of the Project, including but not limited to, licenses, permits and fees, such as Permits for dumpsters, job trailers, etc., which may be required by Miami-Dade County, the State of Florida, or other governmental entities.

Except as otherwise provided within the Contract Documents, all permits, and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken

by Contractor pursuant to the Contract Documents shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

Contractor shall pay impact fees levied by the City and/or Miami-Dade County. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the public entity as evidenced by an invoice or other acceptable documentation issued by the public entity.

Fees for Permits **REQUIRED BY THE CITY AND PAYABLE TO THE CITY** (e.g., Building Department's Fees such as, Master Permit, Major Trades, Mechanical, Electrical, and Plumbing Fees; Public Works Fees, such as Line and Grade, Excavation, Dewatering and NPDES Fees, and Zoning Department's Fees) by virtue of this construction as part of the Contract shall be reimbursed to the Contractor by the City through an Allowance Account set for herein, evidenced by an invoice or other acceptable documentation issued by the public entity.

Permit Fees reimbursement to Contractor shall be for the actual amount and in no event shall include profit or overhead of Contractor.

Permit fees related the Contractor's operations (e.g., permits for dumpsters, job trailers, etc.) are not reimbursable.

**94. Compliance with Applicable Laws**

All Work shall be constructed in accordance with the latest edition of the City of Miami's Contract documents and specifications, the City of Miami's Standards for Design and Construction as well as the Miami-Dade County's Standard Details, and the 2007 Edition of the Florida Department of Transportation Specifications Road and Bridge Construction.

The Contractor shall comply with the most recent editions and requirements of all applicable laws, rules, regulations, building and construction codes of the Federal government, the State of Florida, the County, and the City.

The attention of the Contractor is directed to the requirements of the Florida Building Code and the Codes of Miami-Dade County and the City of Miami, Florida, governing the qualifications for Contractor and Subcontractor doing business anywhere in the City.

**95. Independent Contractor**

The Contractor is engaged as an independent business and agrees to perform Work as an Independent Contractor. In accordance with the status of an Independent Contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the City for any right or privilege applicable to an officer or employee of the City, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

The Contractor's staff shall not be employees of the City, and the Contractor alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract shall impose any liability or duty on the City on account of the Contractor's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Contractor as a Subcontractor, expert, consultant, Independent Contractors, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind. The Contractor hereby agrees to defend, indemnify, save and hold harmless the City against any such liabilities, even if they arise from actions directed or taken by the City.

**96. Third Party Beneficiaries**

Neither Contractor nor City intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third-party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract

**97. Successors and Assigns**

Subject to Article 110, Section 3, the performance of this Contract shall not be transferred pledged, sold, delegated, or assigned, in whole or in part, by the Contractor without the written consent of the City. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior City approval.

Any transference without City approval shall be cause for the City to terminate this Contract. Any assignment without the City's consent shall be null and void. The Contractor shall have no recourse from such cancellation. The City may require bonding, other security, certified financial statements, and tax returns from any proposed assignee and the execution of an assignment/ assumption agreement in a form satisfactory to the City Attorney as a condition precedent to considering approval of an assignment.

The Contractor and the City each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Contract and to the partners, successors, legal representatives, and assigns of such party in respect to all covenants of this Agreement.

**98. Materiality and Waiver of Breach**

City and Contractor agree that each requirement, duty, and obligation set forth in this Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof.

City's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

**99. Severability**

In the event any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

**100. Applicable Law and Venue of Litigation**

This Contract will be interpreted under the laws of the State of Florida, which will apply regardless of choice of law principles. This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions, herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. The parties waive any objections to venue. Parties shall bear their own attorney's fees.

**101. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the City Manager, Director, or designee.

**102. Entire Agreement**

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the City and the Contractor and supersede all prior negotiations, representations, or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

**103. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act**

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Contractor's decisions regarding the delivery of services under the Contract Documents shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

**104. Evaluation**

Contractor acknowledges that upon completion of the Work under the Contract Documents and/or at any other time deemed appropriate by the City, a performance evaluation report will be completed by the City. A copy of each performance evaluation shall also be forwarded to the Contractor. The performance evaluations will be kept in City files for evaluation on future solicitations.

**105. Commodities manufactured, grown or produced in the City of Miami, Miami -Dade County and the State of Florida**

Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within the City of Miami, Miami-Dade County and the State of Florida, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within the City of Miami, Miami-Dade County and the State of Florida shall be given preference.

**106. 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 construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.



**107. Continuation of the Work**

Any Work that commences prior to and will extend beyond the expiration date of the current Contract period shall, unless terminated by mutual written agreement between the City and the involved Contractor, continue until completion at the same prices, terms and conditions.

**108. Review of Records**

City shall have the right to inspect and copy, at City's expense, the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to a Project and to any claim for additional compensation made by Contractor including but not limited to all payroll records, invoices for materials, and books of accounts. Such records shall conform to Generally Accepted Accounting Principles requirements (GAAP), and shall only address those transactions related to the Contract.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise Contractor shall retain and make available to City all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of five (5) years following Final Completion of the Project.

Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) Keep and maintain public records required by the City to perform the service; (2) upon request from the City's custodian of public records, provide the public agency 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 in this chapter or as otherwise provided by law; (3) 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 term and following completion of the Contract if the Contractor does not transfer the records to the City; (4) upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

Contractors shall develop the proper forms and reports acceptable to the City for the administration and management of the Contract Documents.

**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 CONTRACT, CONTACT THE DIVISION OF PUBLIC RECORDS AT (305) 416-1800, VIA EMAIL AT [PUBLICRECORDS@MIAMIGOV.COM](mailto:PUBLICRECORDS@MIAMIGOV.COM), OR REGULAR MAIL AT CITY OF MIAMI OFFICE OF THE CITY ATTORNEY, 444 SW 2<sup>ND</sup> AVENUE, 9<sup>TH</sup> FL, MIAMI, FL 33130. THE CONTRACTOR MAY ALSO CONTACT THE RECORDS**

# **CUSTODIAN AT THE CITY OF MIAMI DEPARTMENT (OCI) WHO IS ADMINISTERING THIS CONTRACT.**

## **109. No Interest**

Any monies not paid by City when claimed to be due to Contractor under the Contract Documents, including, but not limited to, any and all claims for damages of any type, shall not be subject to interest including, but not limited to, prejudgment interest. However, the provisions of Section 218.74(4), Florida Statutes as such relates to the payment of interest, shall apply to valid and proper invoices.

## **110. Payments Related to Guaranteed Obligations**

The City may withhold from any payments to be made such sums as may reasonably be necessary to ensure completion of the Project with respect to defective Work, equipment, or materials that may be identified by the Project Manager.

The City may deduct from any payment due the Contractor an amount equal to its cost incurred on account of the Contractor's failure to fully perform its obligations under the Contract.

The Project Manager, prior to withholding or deducting any monies hereunder, shall give the Contractor notice of the defective Work, equipment or material and the basis for the withholding or deduction.

Upon the Project Manager's determination that the Contractor has fulfilled its obligations, the City will pay the Contractor any monies owed, subject to Contractor's submission of, or compliance with, any remaining documentation or obligation, as the case may be, in accordance with the Contract Documents

## **111. Consent of City Required for Subletting or Assignment**

If the Contractor assigns, transfers, sublets or otherwise disposes of the Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the City, such action shall be an Event of Default. Nothing herein shall either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

## **112. Agreement Limiting Time in Which to Bring Action Against the City**

In the event the Contractor may be deemed to have a cause of action against the City, no action shall lie or be maintained by the Contractor against the City upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the City or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract Documents, or if the Contract is terminated or declared abandoned under the provisions of the Contract unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the City. In the event this Article is found to be unenforceable, the shortest limitations period applicable to the action under Chapter 95, Florida Statutes shall apply.

## **113. Defense of Claims**

Should any claim be made, or any legal action brought in any way relating hereto or to the Work hereunder, except as is covered by the provisions of the General Terms and Conditions, Section 3, Article 5, Indemnification, the Contractor shall diligently render to the City, after additional compensation is mutually agreed upon, any and all assistance which the City may require of the Contractor. Additional compensation will only be furnished relative to the costs of any corrective Work as defined in Section 3, Article 5, Indemnification, which is not the fault of the Contractor; the Contractor will be responsible for

payment of attorney's fees and costs incurred in defense of the Contractor and of the City. This Section shall survive the cancellation or expiration of this Contract.

**114. Contingency Clause**

Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) calendar days' notice.

**115. Mutual Obligations**

This document, change order, field directive, and written clarifications issued under the Contract, and the Contractor's submittals, shall constitute the Contract Documents between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by their duly authorized representatives.

Nothing in the Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations where the Contract Documents imposes an indemnity obligation on the Contractor, the City may, at its expense, elect to participate in the defense of the claim if the City should so choose. Furthermore, the City may, at its own expense, defend or settle any such claim if the Contractor fails to diligently defend such claim, and thereafter seek indemnity for such cost from the Contractor.

**116. Contract Extension**

The City reserves the right to exercise its option to extend the Contract for up to ninety (90) calendar days beyond the original Contract period. In such event, the City will notify the Contractors in writing of such extensions.

**117. Non-Exclusivity**

It is the intent of the City to enter into a Contract with all successful Bidders that will satisfy its needs as described herein. However, the City reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to: award of other Contracts, use of any Contractor, or perform the Work with its own employees.

**118. Nature of the Agreement**

The Contractor shall provide the services set forth in the Contract Documents. The Contractor shall provide full and prompt cooperation with the City in all aspects of the Work to be performed.

The Contractor acknowledges that the Contract Documents require the performance of all things necessary for or incidental to the effective management and performance of a Project. All things not expressly mentioned in the Contract Documents, but necessary to carrying out its intent are required by the Contract Documents, and the Contractor shall perform the same as though they were specifically mentioned, described, and delineated.

The Contractor shall furnish all labor, materials, tools, supplies, and other items required for the completion of the Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

**119. Contract Documents Contain All Terms**

The Contract Documents and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the

subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**120. Survival**

The parties acknowledge that any of the obligations in the Contract Documents will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under the Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, should survive termination, cancellation or expiration thereof.

Provisions of this Contract that shall survive termination, cancellation, or expiration thereof, include without limitation: Section 3, Article 5, Indemnification, Section 3, Article 88, Termination for Convenience, Contract Price & Guaranteed Maximum Cost.

**121. Disclosure of State Funding, if applicable.**

If State funds are being used by the City to pay for this work, the City document whether payment will come from funds appropriated by the state and, if known, the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the personal property or construction services.

## **Section 4 - Supplemental Terms and Conditions**

### **1. Contract Time and Hours**

The Contractor shall furnish all labor, materials, equipment, tools, services, and incidentals to complete all Work at a rate of progress that will ensure completion of the Work within the Contract Time.

Contractor shall have one hundred eighty (180) calendar days to achieve Substantial Completion from the date that the Notice to Proceed is issued. Contractor shall have an additional forty-five (45) calendar days to achieve Final Completion of the Contract.

The Contractor shall maintain strict adherence to the mandated Contract time and schedule due to the time sensitive nature of the Project's funding sources.

Work shall be performed Monday through Friday from 8:00 a.m. to 6:00 p.m. Any Work to be performed outside of these times must be requested in writing to the Project Manager forty-eight (48) hours prior to the requested change. The Project Manager will notify the Contractor in writing of any changes in approved Work hours.

### **2. Progress Payments**

*Mobilization Partial Payments:*

When the bid includes a separate pay item for Mobilization and the Notice to Proceed has been issued, partial payments will be made in accordance with the following:

For Contracts of one hundred twenty (120) calendar days duration or less, partial payment will be made at fifty percent (50%) of the bid price per month for the first two (2) months. For Contracts in excess of one hundred-twenty (120) calendar day's duration, partial payment will be made at twenty-five percent (25%) of the bid price per month for the first four (4) months. In no event shall more than fifty percent (50%) of the bid price be paid prior to commencing construction on the Project site.

Total partial payments for Mobilization on any Project, including when more than one Project or job is included in the Contract, will be limited to ten percent (10%) of the original Contract amount for that Project. Any remaining amount will be paid upon completion of all Work on the Contract.

Retainage will be applied to all partial payments.

Partial payments made on Mobilization will in no way act to preclude or limit any of the provisions for partial payments otherwise provided for by the Contract.

Contractor may make application for payment for Work completed during the Project at intervals of not more than once a month or upon completion and Final Acceptance of the Work. Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed. All applications shall be submitted in triplicate and the Contractor shall only use the City's Contractor Payment Application Form. Where the time frame for completion of the Work is less than or equal to one month or a Schedule of Values is not required, the Contractor shall submit the appropriate documentation as defined below. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated progress schedule as required by Section 4, Article 6, Release of Liens/Subcontractor's Statement of Satisfaction and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the City. Each application for payment shall be submitted in triplicate for approval. City shall make payment to Contractor within thirty (30) calendar days after approval of Contractor's application for payment.

Ten percent (10%) of all monies earned by Contractor shall be retained by City until Final Acceptance by the City. Any interest earned on retainage shall accrue to the benefit of City. All requests for retainage reduction shall be in writing in a separate stand-alone document.

City may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- Defective Work not remedied.
- Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or City because of Contractor's performance.
- Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- Damage to another Contractor not remedied.
- Liquidated damages and costs incurred by City and/or Consultant for extended construction administration.
- Failure of Contractor to provide any and all documents required by the Contract Documents and/or Federal Requirements relating to the CDBG funding.

In instances where multiple Projects are awarded, the Contractor shall submit separate applications for Payment for each Project.

When the above grounds are removed or resolved satisfactorily to the Project Manager, payment shall be made in whole or in part.

The City will pay, and the Contractor shall accept as full compensation for the Work, the sums specified in the Contractor's submittal to the Contract Documents, as accepted by the City.

Contractor may be paid for materials or equipment purchased and stored at the Project site(s) or another location. Where a payment request is made for materials or equipment not incorporated in the Project, but delivered and suitably stored at the site or at some other location agreed upon in writing, the written documentation must be submitted at the time of request for payment. Payment shall be conditioned upon submission by the Contractor of paid invoices and an executed Material Purchased/Stored On-Premises form to establish the City's title to such materials or equipment, or otherwise protect the City's interest, including applicable insurance in the name of City and transportation to the site.

Contractor retains sole liability to replace such stored materials or equipment as a result of damage or loss for any reason.

### **3. Liquidated Damages**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract Documents or any approved extension of time the Contractor shall pay to the City liquidated damages as follows. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Substantial Completion, the Contractor shall pay to the City for each and every calendar day of unexcused delay, the sum of **one thousand two hundred forty-one dollars (\$1,241.00) per calendar day**, which is hereby agreed upon not as a penalty but as liquidated damages. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Final Completion the Contractor shall pay to the City for each and every calendar day of unexcused delay, **the additional sum of six hundred twenty dollars and fifty cents (\$620.50) per calendar day**, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the applicable Contract Documents.

The City shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any Contract the Contractor has with the City. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the City, the Contractor shall pay the difference upon demand by the City. Should the Contractor fail to compensate the City for any liquidated damages, the City shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other City Contract until such indebtedness is paid in full to the City.

The City shall notify the Contractor in writing that it is incurring liquidated damages.

#### **4. Schedule of Values**

The Contractor must submit three copies of a Schedule of Values, which must be submitted within ten (10) calendar days of the issuance of the Notice to Proceed. 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 should be as separate line items. Each line item shall be identified with the number and title of the major specification section or major components of the items. The City may require further breakdown after review of the Contractor's submittal. The City 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 Schedules of Values shall not exceed five percent (5%) of the value of the Contract.

The approved schedule of values shall be updated through the submittal of the City's Contractor Payment Application Form.

#### **5. Project Schedules**

Contractor shall submit a proposed Project schedule as follows:

- Schedule identifying all tasks within the critical path. The proposed Project schedule shall be submitted within ten (10) calendar days of the Notice of Award and such submittal shall be subject to the City's review. Subsequent to such review of said schedule, the Contractor shall establish said schedule as the baseline schedule.
- All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.
- All Project Schedules shall be prepared in Microsoft Project 2003 or later unless otherwise approved by the Project Manager. At the time of submission of schedules, Contractor shall submit a hard copy as well as an electronic version. Such electronic version shall not be submitted in a .pdf format and shall be capable of being incorporated in to the City's baseline schedules.
- Subsequent to review of the initial schedule submission, the Contractor shall establish the reviewed schedule as the "baseline schedule." Contractor shall then prepare and submit all updates to the schedules utilizing the tracking mode within Microsoft Project.

#### **6. Release of Liens/Subcontractor's Statement of Satisfaction**

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the City upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor shall, beginning with the second request for payment, attach a Partial Release of Lien/Subcontractor's Statement of Satisfaction for each application for payment. Failure to submit such documentation may delay payments. The City may, in its sole discretion withhold payments for Work performed by Subcontractor where no release of lien has been submitted. The Contractor shall submit with the final payment request, for any Project where Subcontractors have performed Work, a Final Release of Lien/Subcontractor's Statement of Satisfaction for each Subcontractor marked as a final. Failure to submit such documentation will result in delay in payment or the City withholding from the final payment such funds as necessary to satisfy any Subcontractor claims.

Where the Contractor has submitted a Performance/Payment Bond the Contractor may, in lieu of the Release of Lien/Subcontractor's Statement of Satisfaction, submit Consent of Surety to Requisition Payment.

Contractor must use City Release of Lien, Affidavit and Consent of Surety forms or the Application for Payment will be rejected.

**7. Progress Meetings**

The City shall conduct a pre-construction conference prior to the commencement of the Work. Contractor shall hold progress and coordination meetings as required by the City, to provide for the timely completion of the Work.

Contractor shall arrange and conduct regular bi-weekly job site Project status meetings with the City. Contractor shall use the job site meetings as a tool for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Contractor shall identify the party or parties responsible for following up on any problems, delay items, or questions, and Contractor shall note the action to be taken by such party or parties. Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Contractor shall attempt to obtain from all present any potential problem or delaying event known to them for appropriate attention and resolution. Contractor shall be responsible for keeping minutes of the meeting and distribution of the minutes to all parties in attendance.

The Contractor shall arrange for the participation of its Subcontractors and/or vendors when the Project Manager requires their presence.

The Contractor shall maintain minutes of the meeting and distribute copies of the minutes to all parties in attendance. The Contractor shall prepare and distribute to the City an updated two-week look-ahead schedule of construction activities and submittals.

**8. Request for Information**

The Contractor shall submit a Request for Information (RFI) where the Contractor believes that the Contract Document's specifications or drawings are unclear or conflict. All requests must be submitted in a manner that clearly identifies the drawing and/or specification section where clarification or interpretation is being requested. As part of the RFI, Contractor shall include its recommendation for resolution. The City shall respond in writing.

**9. Project Site Facilities**

The Contractor shall arrange for all Project site facilities as maybe necessary to enable the Project Manager or Consultant to perform their respective duties and to accommodate any representatives of the City which the City may choose to have present at the Project.

Contractor's, Subcontractor's, supplier's, material persons personnel shall not use the City restrooms that may be available at the Project site without the prior consent of the manager of the facility or the Project Manager, where there is no manager of a facility. The Contractor shall provide and maintain at his own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Contractor, his employees or his Subcontractors shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

The Contractor shall furnish an adequate supply of drinking water for its and its Subcontractors' employees.

There shall be adequate provisions made by the Contractor to ensure all disposable materials are properly disposed of and do not create a nuisance to the City or the public. The location of the temporary facilities shall be subject to the approval of the City.



Contractor is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The City may authorize the use of existing utilities. Such decision will be made at the sole discretion of the City.

The Contractor shall be required to obtain all necessary permits required for any Project site facilities. Contractor shall also be responsible to maintain such facilities in a safe and working condition.

All such facilities remain the property of the Contractor and the Contractor shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

**10. Inspection of Work – Intentionally Omitted**

**11. Security**

The site where the Work is to be performed may not be a secure site and the public may have access to the site. The Contractor shall have sole responsibility for the security of all Work materials, tools, equipment, and Work at the Project site. The City shall not be liable for any damage or loss to such materials, tools, equipment and Work and the Contractor shall be responsible for the repair or replacement of all Work such materials, tools, and equipment.

**12. Construction Signage**

Where required by the Contract Documents the Contractor shall provide construction signage.

The City shall provide the Contractor the wording and layout for the signs at the pre-construction conference. The Contractor shall furnish the two City signs at the Project site(s) as follows:

- The first sign shall be 4 feet wide and 8 feet high and constructed of pressure sensitive 2-mil cast vinyl over mounted with 3-mil Mylar and mounted to 1 MDO with painted back. The sign shall be mounted on 4-inch square wood or perforated “U” channel metal posts painted white, and be readable at eye level. The colors to be used on the sign are as follows: the background shall be white with blue lettering; the seal shall be white and gold with blue lettering form.
- The second sign shall reflect other funding sources for the Project and shall reflect the Project information. The sign shall be 4 feet wide by 8 feet high by 3/4-inch (thick) exterior plywood, suitably mounted and readable at eye level. The colors shall be blue and white. The background shall be white, and all lettering shall be blue Helvetica. All paint shall be rated outdoor enamel. The City will provide the City Seal in decal form.
- The Contractor shall also post appropriate construction site warning signs at the Work site. Such signs shall be posted to warn pedestrian and vehicle traffic. Signage shall also be placed waterside to alert boater to the construction zone, requiring idle speed and a minimum clearance distance. Contractor shall provide drawings for the signage, which shall be subject to approval by the Consultant.
- The Project Manager and the City shall approve the locations for all signage.

**13. Construction Photographs**

Contractor shall submit with each application for payment photographs that accurately reflect the progress of the Work. Contractor shall submit once copy of each photograph in print and digitally. The photographs shall be printed on 8” X 10” high-resolution glossy single weight color print paper. Each photograph will also reflect the date and time the picture was taken. Aerial photographs will be taken on a bi-monthly basis.

**14. City Furnished Property**

Contractor shall preserve all street signs, parking meters, benches, traffic control signs, etc., when directed to by the City and shall reinstall or provide to the City as directed.

**15. Geotechnical Testing – Intentionally Omitted**

**16. Field Layout of the Work and Record Drawings for Drainage Projects**

The Contractor, through the services of a State of Florida Registered Professional Surveyor and Mapper (P.S.M.), shall establish the line and benchmarks and other reference points for the installation of the pipeline or structure.

For pipelines, this will consist of establishing all points of bend (but not necessarily bevel pipe unless in close proximity to other facilities), valves, tees, crosses and other stations not more than one hundred feet (100') apart along the proposed centerline of the pipe, or along a stationed offset line as shown on the Plans, marked by a nail in a metal cap if in pavement, with the station painted nearby or by a nail in the top of a wooden stake driven flush with the ground with the station marked on a flag stake nearby, if not in pavement.

For structures, this will consist of base lines, stakes at corners, centers and centerlines, auxiliary lines and a benchmark from which to establish the elevations.

The Contractor shall make his equipment and men available to the Inspector for spot-checking the accuracy of the Work. The City shall require the Work to be brought within the tolerances specified elsewhere before backfilling is placed, or the construction is otherwise hidden.

The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, hand holes, fittings and other Work and shall prepare record or "as-built" drawings of the same which are signed and sealed by a State of Florida Registered Professional Surveyor and Mapper (P.S.M.). Contractor shall deliver these records in good order to the City as the Work is completed. The Contractor shall supply the Consultant with a copy of the Registered Land Surveyor's layout of the Work immediately upon its availability to his own forces. The cost of all such field layout and recording Work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to the City prior to, and as a condition of, final payment.

During the entire construction operation, the Contractor shall retain the services of a State of Florida Registered Professional Surveyor and Mapper (P.S.M.) who shall maintain records of the installation, including all deviations from the plans and specifications by obtaining "As-built" dimensions and elevations. The surveyor shall prepare record as-built drawings showing correctly and accurately all changes and deviations made during construction, including approved construction variances to reflect the Work as it was actually constructed. "As-Built" drawings shall be submitted to the City on a monthly basis.

**Recording of Project Record**

- Record all information for pipeline Projects and on-site Projects concurrently with construction progress.
- Do not conceal any Work until the Contractor and the City record as-built information.
- All locations for future connections or tie-ins shall be left unburied and uncovered until the City's surveying forces obtain and record the as-built information. This is in addition to the Contractor's recorded information.
- Restrained pipe, end line valves, thrust blocks need to be left uncovered for the last complete length. Inline valves and tees shall be left exposed for one (1) length on both sides plus the face end. Record the elevation, deviation from horizontal and vertical alignment and the inclination for these items.
- Maintain records of all pipeline Project and on-site Project deviations from Drawings and Specifications by a Florida Registered Professional Surveyor and Mapper (P.S.M.).
- For Pipe Installation in All Pipeline Projects and On-site Projects: During entire construction

operation retain the services of a State of Florida Registered Land Surveyor (FRLS) who shall maintain records of the installation, including all deviations from Drawings and Specifications.

- FRLS shall record as-built dimensions and elevations every twenty-five feet (25') or portion thereof along pipeline and at every abrupt change in direction of the new line.
- FRLS shall record locations and elevations for each valve, fitting, service line, fire hydrant, water sampling point, and also for above ground piping and other appurtenances along the pipeline. Specific locations and elevation of equipment, buildings, and miscellaneous items installed inside them shall be recorded as applicable.
- Contractor's FRLS shall prepare as-built record drawings showing correctly and accurately the installation, embracing all changes and deviations made during construction, including all approved construction variances, to reflect the Work as it was constructed.
- Record Drawings shall be prepared on 4-mil Mylar as specified hereinafter. Record Drawings and three (3) blue line copies shall be signed and sealed by the Surveyor and shall be submitted to the City for review within ten (10) calendar days following the completion date of successful pressure testing of all mains and appurtenances under the Contract Documents.
- If the Consultant determines that the Drawings are not acceptable, they will be returned to the Contractor with a cover letter noting the deficiencies and/or reasons for the disapproval. Contractor shall have ten (10) calendar days to correct all exceptions taken by the City and resubmit as-built record drawings to the Consultant for final acceptance.

Prior to, and as a condition precedent to Final Payment, Contractor shall submit to City, Contractor's record drawings or as-built drawings acceptable to Project Manager.

**17. Survey Work for Drainage Projects**

The Contractor shall retain or employ a FRLS to lay out all storm sewer construction and provide final measurements.

At the Project pre-construction meeting, to be attended by the Contractor's FRLS, the Contractor will be provided a packet of information, from the City, showing the format to be utilized. The Contractor is advised that the survey Work, including required final measurements, shall be according to City Standards and are an integral part of the Project. The Project shall not be considered complete until the final measurements are approved by the City.

**18. E-Verify - Mandatory Use**

Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any Subcontractors performing Work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Subcontractor during the Contract term.

**SECTION 5 – Bid Form**

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

City of Miami, Florida  
Office of the City Clerk  
City Hall, 1<sup>st</sup> Floor  
3500 Pan American Drive  
Miami, Florida 33133-5504

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The undersigned, as Bidder, hereby declares that the only persons interested in this bid as principal are named herein and that no person other than herein mentioned has any interest in this bid or in the Contract to be entered into; that this bid is made without connection with any other person, firm, or parties making a bid; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the bids, as acknowledged below; and that it has satisfied itself about the Work to be performed; and that it has submitted the required bid Guaranty; and all other required information with the bid; and that this bid is submitted voluntarily and willingly.

The Bidder agrees, if this bid is accepted, to Contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits, the specified Work covered by the Contract Documents for the Project entitled:

**Bid No: 17-18-008**  
**Title: Miami Woman’s Club Baywalk Project, D2 – B-30731**

The Bidder also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total bid price plus alternates, if any, and to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid Guaranty accompanying the bid shall be forfeited if Bidder fails to execute said Contract and fails to furnish the required Performance Bond and Payment Bond as well as the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

In the event of arithmetical errors, the Bidder agrees that these errors are errors that may be corrected by the City. In the event of a discrepancy between the price bid in figures and the price bid in words, the price in words shall govern. Bidder agrees that any unit price listed in the bid is to be multiplied by the stated quantity requirements in order to arrive at the total.

Note: Bidders are bidding on estimated quantities for the purpose of determining the lowest responsive and responsible Bidder. Payments will be made based on unit prices of actual quantities installed. Where a discrepancy exists between the unit price and the extended price the unit price will prevail. Where there is a discrepancy between the numerical and written bid amount, the written bid amount will prevail.

**Form SU must be submitted with Bidder's Bid.** The SU Form can be found posted on the webpage with the bid documents.

The Work consists of furnishing all materials, labor, and equipment necessary for the construction of the baywalk, lighting, landscaping, and hardscape (trash receptacles and benches).

The full Scope of Work is detailed in the construction drawings.

**Miami Woman's Club Baywalk Project, D2**

**A. TOTAL BASE BID CONSTRUCTION COST -**  
**(City of Miami Project No. B-30731)** \$ \_\_\_\_\_

**WRITTEN TOTAL BID CONSTRUCTION COST:**  
\$ \_\_\_\_\_  
**(Total Base Bid)**

**The spreadsheet with Unit Prices is required to be submitted within the Bid Submittal Forms.**

**Bidders must download the version of MS Excel Bid Form that is available for download at:**

<http://www.miamigov.com/MiamiCapital/NewBidsandProposals.html>

**Failure to submit the spreadsheet may result in the bid being determined to be non-responsive. MS Excel sheet shall round all bid price to the second decimal.**

| <b>MIAMI WOMAN'S CLUB BAYWALK PROJECT, D2<br/>B-30731 – ITB NO.: 17-18-008</b> |                     |                             |             |                 |                  |             |
|--|---------------------|-----------------------------|-------------|-----------------|------------------|-------------|
| <b>Line No.</b>  | <b>Pay Item No.</b> | <b>Pay Item Description</b> | <b>Unit</b> | <b>Quantity</b> | <b>Unit Cost</b> | <b>Cost</b> |
| 1  | 1                   |                             |             |                 |                  |             |
| 2  | 2                   |                             |             |                 |                  |             |
| 3  | 3                   |                             |             |                 |                  |             |
| 4  | 4                   |                             |             |                 |                  |             |
| 5  | 5                   |                             |             |                 |                  |             |
| 6  | 6                   |                             |             |                 |                  |             |
| 7  | 7                   |                             |             |                 |                  |             |
| 8  | 8                   |                             |             |                 |                  |             |
| 9  | 9                   |                             |             |                 |                  |             |
| 10   | 10                  |                             |             |                 |                  |             |
| <b>TOTAL</b>   |                     |                             |             |                 |                  |             |

**Intentionally Left Blank**



- (4) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered Contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction.
- (5) Notifying the City in writing within ten (10) calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee.
- (6) Within thirty (30) calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
- (7) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs (1) through (6).

4. **Lobbying**

The undersigned certifies to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) This undersigned shall require that the language of this certification be included in the award documents for "All" sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who



fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000.00) and not more than one hundred thousand dollars (\$100,000.00) for each such failure.

\* Note: In these instances, "All" in the Final Rule is expected to be clarified to show that it applies to covered Contract/grant transactions over one hundred thousand dollars (\$100,000.00) (per QMB).

5. **Debarment, Suspension and Other Responsibility Matters**

The Bidder certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three (3) year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or Contract under a public transaction; violation of Federal or State antitrust statutes or falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 1.b of this certification; and
- (d) Have not, within a three (3) year period preceding this application, had one (1) or more public transactions (Federal, State, or local) terminated for cause or default.
- (e) In addition, factors to be considered in determining responsibility of prospective contractual parties shall include but not be limited to:
  - (1) Bidder does have availability of appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, to meet all contractual requirements;
  - (2) Bidder does have a satisfactory record of performance;
  - (3) Bidder does have a satisfactory record of integrity;
  - (4) Bidder does possess qualified legal standing to Contract with the City; and
  - (5) Bidder will comply in supplying all requested information connected with the inquiry concerning responsibility.
- (f) Bidder has not had a termination, suspension, or cancellation of a City Contract, in whole or in part, for cause, due to a default by the Bidder or Offeror, within the past five (5) years, which has not been reversed on appeal by a court of competent jurisdiction; or
- (g) Bidder has not withheld a payment or nonpayment of moneys due the City from the Bidder or Offeror, within the past five (5) years, unless the full amount of such moneys due the City.
- (h) Have been deposited with a court of competent jurisdiction in Miami-Dade County, Florida, pursuant to the provisions of Fla. R. Civ. P. 1.600 titled "Deposits in Court," as amended, or other applicable Federal, State or Local Rules of Court, and are subject to distribution to the City or withdrawal by the City by order of the court.

- (i) The Bidder shall provide any information requested by the Chief Procurement Officer or Procurement Officer concerning responsibility. If such contractual party fails to provide the requested information, the determination of responsibility may be made upon available information or the prospective contractual party may be found non-responsible. The prospective contractual party may demonstrate the availability of necessary financial, equipment, facility, and personnel resources by submitting:
  - (1) Bidder will, upon request, furnish evidence that the contractual party possesses such necessary resources;
  - (2) Bidder affirms it has acceptable plans to subcontract for such necessary resources; or
  - (3) Bidder will, upon request, submit a documented commitment for, or explicit arrangement with, satisfactory sources to provide such necessary resources.

Where the prospective Bidder is unable to certify to any of the statements in this certification, such Bidder shall submit an explanation to the City of Miami in writing.

**6. Local Workforce Participation Requirements**

The Bidder certifies to the best of its knowledge and belief, that it and its principals:

- (a) have read and understood the provisions of City of Miami Ordinance 13332, codified as Section 18-89 of the City Code pertaining to the Local Workforce Participation requirements on a quarterly basis;
- (b) have identified in City Form Subcontractor Utilization ("SU") a third party independent who verifies and is properly licensed under the provisions of F.S. 454,471,473, or 481 and who is not with the Contractor; and
- (c) the selected third party, who independently verifies compliance with this section, must have a minimum of two (2) years of experience as required in Ordinance No. 13332, codified as Section 18-89 of the City Code.

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**Part IV: Certification – Trench Safety Act**

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The Bidder, by virtue of signing the Bid Form, affirms that the Bidder is aware of Section 553.60, et. seq., Florida Statutes, the Trench Safety Act, and will comply with all applicable trench safety standards. Such assurance shall be legally binding on all persons employed by the Bidder and Subcontractors.

The Bidder is also obligated to identify the anticipated method and cost of compliance with the applicable trench safety standards.

Bidder acknowledges that included in the various items of the bid and in the total bid price are costs for complying with the Florida Trench Safety Act. These items are a breakout of the respective items involving trenching and will not be paid separately. They are not to be confused with bid items in the schedule of prices, nor be considered additional Work.

**BID FORM (Page 8 of 11)**

The Bidder further identifies the costs and methods summarized below:

| Description | Unit  | Quantity<br>Price | Unit<br>Price | Extended . | Method |
|-------------|-------|-------------------|---------------|------------|--------|
| _____       | _____ | _____             | _____         | _____      | _____  |
| _____       | _____ | _____             | _____         | _____      | _____  |
| _____       | _____ | _____             | _____         | _____      | _____  |
| _____       | _____ | _____             | _____         | _____      | _____  |
| _____       | _____ | _____             | _____         | _____      | _____  |

Total \$ \_\_\_\_\_

Attached is a Bid Bond [ ], Cash [ ], Money Order [ ], Unconditional/Irrevocable Letter of Credit [ ], Treasurer's Check [ ], Bank Draft [ ], Cashier's Check [ ], Bid Bond Voucher [ ] or Certified Check [ ] No. \_\_\_\_\_ Bank of \_\_\_\_\_ for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

The Bidder hereby acknowledges and affirms to the contents of this Bid Form and its' response(s) thereto including without limitations Part I through IV have been, read, understood, and agree to by signing and completing the spaces provided below.

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

Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Social Security No. or Federal I.D. No.: \_\_\_\_\_ Dun and Bradstreet No.: \_\_\_\_\_ (if applicable)

If a partnership, names and addresses of partners:  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF AUTHORITY  
(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation. I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_.

Secretary: \_\_\_\_\_

Print: \_\_\_\_\_

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**CERTIFICATE OF AUTHORITY  
(IF PARTNERSHIP)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the to execute bids on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_.

Partner: \_\_\_\_\_

Print: \_\_\_\_\_

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**CERTIFICATE OF AUTHORITY  
(IF JOINT VENTURE)**

Joint ventures must submit a joint venture agreement indicating that the person signing this bid is authorized to sign bid documents on behalf of the joint venture. If there is no joint venture agreement, each member of the joint venture must sign the bid and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

**CERTIFICATE OF AUTHORITY  
(IF INDIVIDUAL)**

I HEREBY CERTIFY that, I (Name) \_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_ (If Applicable) have executed and am bound by the terms of the bid to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed: \_\_\_\_\_

Print: \_\_\_\_\_

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**NOTARIZATION**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did not) take an oath.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

**Section 6 - Attachments**

**BID BOND FORM** (Page 1 of 3)

State of )  
County of )  
City of )

KNOWN ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ as Principal, \_\_\_\_\_  
\_\_\_\_\_ as Surety, are held and firmly bound unto the City  
of Miami, in the penal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) lawful money of the United States,  
for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators  
and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the  
accompanying bid, dated \_\_\_\_\_, 20\_\_\_\_, for:

**MIAMI WOMAN’S CLUB BAYWALK PROJECT, D2  
PROJECT NO.: B-30731**

NOW THEREFORE:

- (a) If the Principal shall not withdraw said bid within one hundred eighty (180) calendar days after date of opening the same, and shall within ten (10) calendar days after the prescribed forms are presented to him for signature, enter into a written Contract with the City, in accordance with the bid as accepted, and give bond with good and sufficient Surety or Sureties, as may be required, for the faithful performance and proper fulfillment of such Contract; or
- (b) In the event if the withdrawal of said bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required Work and supplies, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

**BID BOND FORM** (Page 2 of 3)

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seal of each party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership, Partnership, or Joint Venture, two (2) Witnesses are required. If Corporation, Secretary only will attest and affix seal.)

PRINCIPAL:

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

\_\_\_\_\_  
(Name of Firm) Affix Seal  
\_\_\_\_\_  
(Signature of authorized officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City/State/Zip Code)

SURETY:

\_\_\_\_\_  
(Corporate Surety) Affix Seal  
\_\_\_\_\_

\_\_\_\_\_  
Surety Secretary

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City/State/Zip Code)



**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_ of said corporation; that I know his signature, and the signature hereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

\_\_\_\_\_  
(Corporate Seal)

STATE OF )  
COUNTY OF )  
CITY OF )

Before me, a Notary Public duly commissioned, and qualified, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he/she is the attorney-in-fact, for the \_\_\_\_\_ and that he/she has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of The City of Miami, Florida.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

INSTRUCTIONS: Bid Bonds must be accompanied by a Power of Attorney, in compliance with Instructions to Bidders

\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission Expires:  
\_\_\_\_\_



4. Business Entity Ownership:

a. Identify all owners of the Business Entity.

| Name  | Title | % of ownership |
|-------|-------|----------------|
| _____ |       |                |
| _____ |       |                |
| _____ |       |                |

b. Is any owner identified above an owner in another company?  Yes  No

If yes, identify the name of the owner, other company names, and % ownership

\_\_\_\_\_

\_\_\_\_\_

c. Identify all individuals authorized to sign for the Business Entity, indicating the level of their authority (check applicable boxes and for other provide specific levels of authority)

| Name  | Title | Signatory Authority      |                          |                          |                          |
|-------|-------|--------------------------|--------------------------|--------------------------|--------------------------|
|       |       | All                      | Cost                     | No-Cost                  | Other                    |
| _____ |       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ |       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ |       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ |       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Explanation for Other: \_\_\_\_\_

(Note: "All" refers to any type of document including but not limited to Contracts, amendment, change proposal requests (CPR), change orders (CO), notices, claims, disputes, etc. "Cost" refers to CPRs, COs. No-cost refers to RFIs, Notices, and other similar documents)

5. Employee Information:

Total No. of Employees: \_\_\_\_\_ Number of Managerial/Admin. Employees: \_\_\_\_\_

Number of Trades Personnel and total number per classification:

(Apprentices must be listed separately for each classification)

\_\_\_\_\_

\_\_\_\_\_

How many employees are working under H2B visas? \_\_\_\_\_

6. Has any owner or employee of the Bidder been convicted of a federal offense or moral turpitude? If yes, please explain:
- \_\_\_\_\_
7. Insurance and Bond Information:
- a. Insurance Carrier name and address: \_\_\_\_\_
- \_\_\_\_\_
- b. Insurance Contact Name, telephone, and e-mail: \_\_\_\_\_
- \_\_\_\_\_
- c. Insurance Experience Modification Rating (EMR): \_\_\_\_\_  
(if no EMR rating please explain why)
- d. Number of Insurance Claims paid out in last five (5) years and their corresponding value:
- \_\_\_\_\_
- e. Bond Carrier name and address: \_\_\_\_\_
- \_\_\_\_\_
- f. Bond Carrier Contact Name, telephone, and e-mail: \_\_\_\_\_
- \_\_\_\_\_
- g. Number of Bond Claims paid out in last five (5) years and their corresponding value:
- \_\_\_\_\_
8. Have any claims lawsuits been file against the Bidder in the past five (5) years? If yes, identify all Bidder has either settled or an adverse judgment has been issued against Bidder. Identify the year, basis for the claim or judgment, and settlement; unless the value of the settlement is covered by a written confidentiality agreement.
- \_\_\_\_\_
- \_\_\_\_\_
9. To the best of Bidder's knowledge, is Bidder or any of Bidder's officers currently under investigation by any law enforcement agency or public entity? If yes, provide details:
- \_\_\_\_\_
- \_\_\_\_\_
10. Has Bidder been assessed liquidated damages or defaulted on a Project in the past five (5) years?  
 Yes  No  If yes, provide an attachment that provides an explanation of the Project.
11. Has Bidder been cited for any OSHA violations in the past five (5) years? If yes, please provide an attachment including all details on each citation.

12. Provide an attachment listing all of the equipment, with a value of five thousand dollars (\$5,000.00) or greater, owned by the Bidder.

**B. Project Management and Subcontract Details**

1. Bidder's Project Manager for this Project:

a. Name: \_\_\_\_\_

b. Years employed by Bidder: \_\_\_\_\_

c. Licenses/Certifications: \_\_\_\_\_

d. Last three (3) Projects with the company including role, Scope of Work, and value of Project:

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

2. Subcontractors:

| Name | Trade | % of Work | License No. _____ | Certification* |
|------|-------|-----------|-------------------|----------------|
|------|-------|-----------|-------------------|----------------|

|       |       |       |       |       |
|-------|-------|-------|-------|-------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

(\*active certifications of small business enterprise and name of certifying entity)

3. Scope of Physical Labor Construction Work to be performed by Bidder and the corresponding percentage of the Work: (This does not include such items as insurance \* bonds, dumpsters, trailers, and other similar non-construction Work items)

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

**C. Current and Prior Experience**

1. Current Experience including Projects currently under construction, recently awarded, or pending award (Provide an attachment to this questionnaire that lists all such Projects, including the owner's name, title and value of Project, Scope of Work, projected or actual start date, projected completion date, and number of company trades personnel assigned to the Project)

2. Prior Projects of a similar size and scope. Provide an attachment to this Questionnaire that includes Completed Projects the Bidder considers of a similar, size, scope and complexity that the City should consider in determining the Bidders responsiveness and responsibility. This attachment must include the Project that meets the minimum number of Projects identified by the bid solicitation. Information provided must include the owner's name, address and Contract person, including telephone and e-mail, title of Project, location of Project, scope, initial value and final cost of the Project, projected and final timeframes for completion in calendar days and the number of company trades personnel, by classification, that were assigned to the Project. The delivery method, including, but not limited to, design-build, Construction Manager at Risk (CMAR), Design-Bid-Build, etc., is to be identified for each Project. If there is a difference between the initial and final cost or initial and actual timeframe, provide details on why the differences exist. A reference letter is to be completed by the owner of the Project and submitted as part of the bid submission.

#### **D. Bidder's References**

Bidders are to include a minimum of three (3) references from completed Projects listed in C.2 above. The attached form is to be used and is to be included with the bid submission. The City, at its sole discretion may allow the Bidder to submit the references after the specified date for bid submission.

**SUPPLEMENT TO BID FORM**

**CUSTOMER REFERENCE LISTING (Page 1 of 1)**

Bidders may furnish the names, addresses, and telephone numbers of owners and organizations for which the Bidder has provided construction services in addition to the required minimum three (3) marine dock, boat ramp or seawall Projects specified in the **Minimum Requirements on page 6, above.**

- 1)           **Company Name**       \_\_\_\_\_
- Address**                   \_\_\_\_\_
- Contact Person/Contract Amount**\_\_\_\_\_
- Telephone No.: /Email**   \_\_\_\_\_
  
- 2)           **Company Name**       \_\_\_\_\_
- Address**                   \_\_\_\_\_
- Contact Person/Contract Amount**\_\_\_\_\_
- Telephone No.: /Email**   \_\_\_\_\_
  
- 3)           **Company Name**       \_\_\_\_\_
- Address**                   \_\_\_\_\_
- Contact Person/Contract Amount**\_\_\_\_\_
- Telephone No.: /Email**\_\_\_\_\_
  
- 4)           **Company Name**       \_\_\_\_\_
- Address**                   \_\_\_\_\_
- Contact Person/Contract Amount**\_\_\_\_\_
- Telephone No.: /Email**   \_\_\_\_\_
  
- 5)           **Company Name**       \_\_\_\_\_
- Address**                   \_\_\_\_\_
- Contact Person/Contract Amount**\_\_\_\_\_
- Telephone No.: /Email**   \_\_\_\_\_



# City of Miami



Emilio T. González, Ph.D.  
City Manager

To Whom It May Concern

**Subject:** Reference Letter

**The Following Section to be Completed by the Bidder.**

Name of Bidder: \_\_\_\_\_

The above referenced Bidder is responding to a bid that has been issued by the City of Miami. The City requires that the Bidder provide written references with their bid submission. By providing you with this document, the Bidder is requesting that you provide the following reference information. The City would appreciate you providing the information requested below, as well as any other information you feel is pertinent:

Name of Referenced Project: \_\_\_\_\_

**The Following Section to be Completed by the Project Owner.**

Scope of Referenced Work: \_\_\_\_\_

Did the Scope involve repair or construction of a marine dock, boat ramp, or seawall?  Yes  No

Value of Project: \$ \_\_\_\_\_ Date Completed: \_\_\_\_\_

Percentage of physical construction Work self-performed by Bidder: \_\_\_\_\_ %

Was Project completed on time and within budget:  Yes  No

If no, was the Bidder at fault or contribute to the delay(s) or increased cost?  Yes  No

If yes, please provide details:

Comments:

Name of Project Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Project Owner's Representative: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Sincerely,

Annie Perez, CPPO, Director  
Department of Procurement



**SUPPLEMENT TO BID FORM:  
OFFICE LOCATION AFFIDAVIT (Page 1 of 3)**

**Please type or print clearly. This Affidavit must be completed in full, signed, and notarized ONLY IF YOU MAINTAIN AN OFFICE WITHIN THE CORPORATE LIMITS OF THE CITY OF MIAMI AS DEFINED BY CITY CODE SECTION 18-73.**

Legal Name of Firm:

Entity Type: (Check One)  Partnership  Sole Proprietorship  Corporation

Corporation Document No:

Date Established

Occupational License No:

Date of Issuance

**Office Location (Establishment of the Bidder):**

PRESENT

Street Address:

City:

State:

How long at this location:

PREVIOUS

Street Address:

City:

State

How long at this location:

**According to Section 18-73 of the City of Miami Code, as amended:**

City of Miami "Local Office" means a business within the City which meets all of the following criteria:

**1)** Has had a staffed and fixed office or distribution point, operating within a permanent structure with a verifiable street address that is located within the corporate limits of the City for a minimum of twelve (12) months immediately preceding to the date bids were received for the purchase or Contract at issue. For purposes of this section, "staffed" shall mean verifiable, full-time, on-site employment at the local office for a minimum of forty (40) hours per calendar week, whether as a duly authorized employee, officer, principal, or owner of the local business. A post office box shall not be sufficient to constitute a local office within the City; **and**

**2)** If the business is located in the permanent structure pursuant to a lease, such lease must be in writing, for a term of no less than twelve (12) months, been in effect for no less than the twelve (12) months immediately preceding the date bids were received, and be available for review and approval by the Chief Procurement Officer or its designee; for recently-executed leases that have been in effect for any period less than the twelve (12) months immediately preceding the date bids were received, a prior fully-executed lease within the corporate limits of the City that documents, in writing, continuous business residence within the corporate limits of the City for a term of no less than twelve (12) months immediately preceding the date bids were received shall be acceptable to satisfy the requirements of this section, and shall be available for review and approval by the Chief Procurement Officer or its designee; further requiring that historical, cleared rent checks or other rent payment documentation in writing that documents local office tenancy shall be available for review and approval by the Chief Procurement Officer or its designee; **and**

**SUPPLEMENT TO BID FORM:  
OFFICE LOCATION AFFIDAVIT (Page 2 of 3)**

- 3) Has had for a minimum of twelve (12) months immediately preceding the date bids were received for the purchase or Contract at issue, a current Business Tax Receipt issued by both the City and Miami-Dade County, if applicable; **and**
- 4) Has had, for a minimum of twelve (12) months immediately preceding the date bids were received for the purchase or Contract at issue, any license or certificate of competency and certificate of use required by either the City or Miami-Dade County that authorizes the performance of said business operations; **and**
- 5) Has certified in writing its compliance with the foregoing at the time of submitting its bid to be eligible for consideration under this section; provided, however, that the burden of proof to provide all supporting documentation in support of this local office certification be borne by the business applicant submitting a bid.

**According to Section 18-85(a) of the City of Miami Code, as amended:**

“When a responsive, responsible non-local Bidder submits the lowest bid price, and the bid submitted by one or more responsive, responsible local Bidders who maintain a local office, as defined in City Code Section 18-73, is within fifteen percent (15%) of the price submitted by the non-local Bidder, then that non-local Bidder and each of the aforementioned responsive, responsible local Bidders shall have the opportunity to submit a best and final bid equal to or lower than the amount of the low bid previously submitted by the non-local Bidder. Contract award shall be made to the lowest responsive, responsible Bidder submitting the lowest best and final bid. In the case of a tie in the best and final bid between a local Bidder and a non-local Bidder, Contract award shall be made to the local Bidder.”

**The intention of this section is to benefit local bona fide Bidders to promote economic development within the corporate limits of the City of Miami.**

I (we) certify, under penalty of perjury, that the office location of our firm has not been established with the sole purpose of obtaining the advantage granted bona fide local Bidders by this section.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Signature

**SUPPLEMENT TO BID FORM:**  
**OFFICE LOCATION AFFIDAVIT (Page 3 of 3)**

(Must be signed by the corporate secretary of a Corporation or one general partner of a partnership or the proprietor of a sole proprietorship or all partners of a joint venture.)

**NOTARIZATION**

**STATE OF FLORIDA, COUNTY OF MIAMI-DADE**

That: \_\_\_\_\_ personally appeared before me and acknowledged the foregoing instrument as his/her act and deed.

That he/she has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Please submit with Bid Form copies of Occupational License, City of Miami and Miami-Dade County Business Licenses, professional and/or trade License to verify local office preference. The City of Miami also reserves the right to request a copy of the corporate charter, corporate income tax filing return, and any other documents(s) to verify the location of the firm's office.**

**CERTIFICATE OF COMPLIANCE CITY CODE SECTIONS 18-87, 18-89 and 18-120**

I, \_\_\_\_\_ hereby certify that:

i) I, \_\_\_\_\_ am the (President/Secretary or Principal) of \_\_\_\_\_ (**Bidder's Firm**);

ii) I have read Sections 18-87, 18-89 and 18-120 of the City of Miami Procurement Code;

a. (**Bidder**) \_\_\_\_\_ hereby acknowledges that the awarded Contract has an on-site labor component greater than or equal to twenty-five percent (25%), and therefore agrees to assign a minimum of fifteen percent (15%) of the Contract value to firms currently certified by Miami-Dade County as a Small Business Enterprise ("SBE");

**OR**

b. (**Bidder**) \_\_\_\_\_ hereby is certified by Miami-Dade County as a SBE firm and will self-perform to meet the minimum fifteen percent (15%) SBE requirement. An active copy of the Bidder's SBE certification must be included in the bid document.

iii) (**Bidder**) \_\_\_\_\_ hereby agrees to comply with the Local Workforce Participation Requirements stated in Section 18-89 of the City of Miami Procurement Code.

iv) (**Bidder**) \_\_\_\_\_ hereby agrees to comply with the Responsible Wages and Benefits Requirements stated in Section 18-120 of the City of Miami Procurement Code.

**OPTIONAL:**

v) (**Bidder**) \_\_\_\_\_ hereby agrees to make assignments **pursuant to Item iii), above**, to certified SBE firms who maintain a "Local Office", as defined in City Code Section 18-73;

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Certificate of Compliance with Sections 18-87, 18-89 and 18-120 of the City of Miami Procurement Code on behalf of Bidder named therein in favor of the City.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Florida at Large

Bonded by \_\_\_\_\_

THIS FORM MUST BE COMPLETED BY BIDDERS FOR PROJECTS WITH SBE REQUIREMENTS

## SCHEDULE OF INTENT AFFIDAVIT (SOI) SMALL BUSINESS ENTERPRISE PROGRAM ("SBE")

**This Section must be completed by the Bidder/Proposer and the SBE Subcontractor that will be utilized for scopes of work on the project**

Name of Bidder: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Contract Dollar Amount: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_  
 Project Number: \_\_\_\_\_  
 15% SBE Dollar Amount \_\_\_\_\_

The

| Name of Prime Bidder | Certification No. (if applicable) | Certification Expiration Date (if applicable) | Type of SBE Work to be performed by the Bidder (if applicable) | Bidder's self-performance percentage (%) of Contract Value | Total Dollar (\$) Amount of Bidder's self-performance |
|----------------------|-----------------------------------|---|--|--|---|
|                      |                                   |   |  |  |   |

undersigned intends to perform the following Work in connection with the above Contract:

| Name of Subcontractor | Certification No. | Certification Expiration Date | Type of SBE Work to be performed by the Subcontractor | Subcontractor percentage (%) of Contract Value | Total Dollar (\$) Amount of Subcontractor's SBE requirement |
|-----------------------|-------------------|-------------------------------|---|--|---|
|                       |                   |                               |   |  |   |

I certify that the representations contained in this form are true and accurate to the best of my knowledge. I affirm that I will enter into sub contractual agreement(s) with the above listed SBE Subcontractor(s) if awarded this Contract. Copies of the agreement(s) will be immediately made available to the City of Miami as required.

---

Bidder Signature \_\_\_\_\_ Date \_\_\_\_\_ Bidder Print Name \_\_\_\_\_ Title \_\_\_\_\_

The undersigned has reasonable and uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

---

Subcontractor Signature \_\_\_\_\_ Date \_\_\_\_\_ Subcontractor Print Name \_\_\_\_\_ Title \_\_\_\_\_

# **REQUIRED SUBMISSION WITH BIDDER'S BID**

## **LOCAL WORKFORCE PARTICIPATION BID QUESTION:**

List all Contracts Bidder has performed for the City of Miami in the past three (3) years, which included Local Workforce Participation requirements. The City will review all Contracts Bidder has performed for the City in the past three (3) years in accordance with Section 18-89 of the City Code, which requires that “the City shall consider the Bidder’s adherence to the City’s Local Workforce Participation requirements within the past three (3) years in making any future Contract awards. The solicitation documents will include the Contractor’s past compliance with these requirements of the City.” As such, the Bidder must list and describe all Work performed for the City of Miami in the past three (3) years. Please provide factually detailed responses for each Project, and address each of the important items below.

- (i) Contract number, name and brief description of Work;
- (ii) total dollar value of the Contract;
- (iii) dates covering the term of the Contract;
- (iv) percentage of Local Workforce Participation requirements met by Bidder;
- (v) breakdown of local workforce used to meet the requirements (number of persons broken down by trade and category);
- (vi) if Bidder’s company was unable to meet the Local Workforce Participation requirements, explain the reasons why, and what efforts, if any, were utilized by Bidder to attempt to meet these requirements;
- (vii) if the Project was over one million dollars (\$1,000,000.00) did Bidder hold a job fair(s), if yes, provide the date and location of the job fair(s), number of attendees;
- (viii) was a third party hired to verify and certify compliance with the Local Workforce Participation requirements, if yes were all requirements met, what was the third party’s name and provide their current contact information;
- (ix) was the five percent (5%) retainage fee released to Bidder by the City upon Project completion, and
- (x) if Bidder did not meet the goals, did you seek a waiver of the program requirements from any City officials? Please explain in detail.

**Section 7 – Contract Execution**

**Contract Execution Form**

THIS Contract # **17-18-008** made this \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ in the amount of \$[Click here to enter text.](#) by and between THE CITY OF MIAMI, FLORIDA, hereinafter called the "CITY," and [Click here to enter text.](#), hereinafter called the "Contractor."

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST

[Click here to enter text.](#), a Florida corporation

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name, Title*

\_\_\_\_\_  
*Print Name, Title of Authorized Officer or Official*

ATTEST:

(Corporate Seal)

CONTRACTOR Secretary  
(Affirm CONTRACTOR Seal, if available)

ATTEST:

**City of Miami**, a municipal corporation of the State of Florida

\_\_\_\_\_  
**Todd B. Hannon, City Clerk**

\_\_\_\_\_  
**Emilio T. González, Ph.D., City Manager**

APPROVED AS TO INSURANCE REQUIREMENTS:

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

\_\_\_\_\_  
**Ann-Marie Sharpe, Director  
Risk Management Department**

\_\_\_\_\_  
**Victoria Méndez, City Attorney**

**CORPORATE RESOLUTION**

WHEREAS, \_\_\_\_\_, Inc. desires to enter into a Contract with the City of Miami for the purpose of performing the Work described in the Contract to which this resolution is attached; and

WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the \_\_\_\_\_,  
(type title of officer)  
\_\_\_\_\_, is hereby authorized  
(type name of officer)

and instructed to enter into a Contract, in the name and on behalf of this corporation, with the City of Miami upon the terms contained in the proposed Contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)



**FORM OF PERFORMANCE BOND** (Page 1 of 2)

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, are bound to the City of Miami, Florida, as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, bid/Contract ITB No: **17-18-008 Miami Woman's Club Baywalk, D2**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the Contract between Contractor and City for construction of \_\_\_\_\_, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains as a result of default by Contractor under the Contract; and
3. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.
4. Whenever Contractor shall be, and declared by City to be, in default under the Contract, City having performed City obligations hereunder, the Surety may promptly remedy the default, or shall promptly:
  - 4.1. Complete the Project in accordance with the terms and conditions of the Contract Documents;  
or

**FORM OF PERFORMANCE BOND** (Page 2 of 2)

4.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible Bidder, arrange for a Contract between such Bidder and City, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Contract and any amendments thereto, less the amount properly paid by City to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than City named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESSES:

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

\_\_\_\_\_  
(Name of Corporation)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

IN THE PRESENCE OF:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INSURANCE COMPANY:  
By: \_\_\_\_\_  
(Agent and Attorney-in-Fact)

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_

**FORM OF PAYMENT BOND** (Page 1 of 2)

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, are bound to the City of Miami, Florida, as Obligee, hereinafter called City, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, ITB. No. **17-18-008 Miami Woman's Club Baywalk, D2**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains because of default by Contractor under the Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials, and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) calendar days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to Contractor a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) calendar days after performance of the labor or after complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

**FORM OF PAYMENT BOND** (Page 2 of 2)

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Secretary

(Corporate Seal)

IN THE PRESENCE OF:

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

CONTRACTOR:

\_\_\_\_\_  
(Name of Corporation)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

INSURANCE COMPANY:

By: \_\_\_\_\_  
(Agent and Attorney-in-Fact)

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bond (Performance Bond and Payment Bond); that \_\_\_\_\_, who signed the Bond(s) on behalf of the Principal, was then \_\_\_\_\_ of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

(SEAL)

\_\_\_\_\_  
Secretary (on behalf of)

\_\_\_\_\_  
Corporation

STATE OF )  
COUNTY OF )

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond (Performance Bond and Payment Bond) on behalf of Contractor named therein in favor of City.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida at Large

Bonded by \_\_\_\_\_

**PERFORMANCE AND PAYMENT GUARANTY FORM**

**UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT:** (Page 1 of 2)

Date of Issue \_\_\_\_\_

Issuing Bank's No. \_\_\_\_\_

Beneficiary:

City of Miami  
444 S.W. 2<sup>nd</sup> Avenue  
Miami, Florida 33130

Applicant:

Amount: \_\_\_\_\_  
in United States Funds

Expiry:  
(Date)

Bid/Contract Number \_\_\_\_\_

We hereby authorize you to draw on \_\_\_\_\_  
(Bank, Issuer name)

at \_\_\_\_\_ by order  
(branch address)

of and for the account of \_\_\_\_\_  
(Contractor, applicant, customer)

up to an aggregate amount, in United States Funds, of \_\_\_\_\_ available by your drafts at sight, accompanied by:

1. A signed statement from the City Manager or his authorized designee, that the drawing is due to default in performance of certain obligations on the part of \_\_\_\_\_ (Contractor, applicant, customer) agreed upon by and between the City of Miami, Florida and \_\_\_\_\_ (Contractor, applicant, customer), pursuant to Bid/Contract No. \_\_\_\_\_ for \_\_\_\_\_ (name of Project) and Section 255.05, Florida Statutes.

Drafts must be drawn and negotiated not later than \_\_\_\_\_.  
(expiration date)

**PERFORMANCE AND PAYMENT GUARANTY FORM**

**UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT:** (Page 2 of 2)

Drafts must bear the clause: "Drawn under Letter of Credit No. \_\_\_\_\_ (Number), of \_\_\_\_\_ (Bank name) dated \_\_\_\_\_.

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the City of Miami with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) calendar days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notification to the City that this Letter of Credit will expire prior to performance of the Contractor's obligations will be deemed a default.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, or amplified by reference to any documents, instrument, or agreement referred to herein or to which this Letter of Credit is referred, or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon presentation to the drawee.

Obligations under this Letter of Credit shall be released one (1) year after the Final Completion of the Project by the \_\_\_\_\_.  
(Contractor, applicant, customer)

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (1993 revision), Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

\_\_\_\_\_  
Authorized Signature

**FORM A**

**INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY**

If the Bidder is submitting as a joint venture, please be advised that these two (2) pages **MUST** be completed, and the REQUESTED written joint-venture agreement **MUST** be attached and submitted with this form.

1. Name of joint venture: \_\_\_\_\_

2. Address of joint venture: \_\_\_\_\_

3. Phone number of joint venture: \_\_\_\_\_

4. Identify the firms that comprise the joint venture: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Describe the role of the MBE firm (if applicable) in the joint venture:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Provide a copy of the joint venture's written contractual agreement.

7. Control of and participation in this Agreement. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision-making, including, but not limited to, those with prime responsibility for:

(a) Financial decisions: \_\_\_\_\_

(b) Management decisions, such as: \_\_\_\_\_

(1) Estimating: \_\_\_\_\_

(2) Marketing and sales: \_\_\_\_\_

\_\_\_\_\_

(3) Hiring and firing of management personnel: \_\_\_\_\_

\_\_\_\_\_

(4) Purchasing of major items or supplies: \_\_\_\_\_

\_\_\_\_\_



(c) Supervision of field operations: \_\_\_\_\_

\_\_\_\_\_

NOTE: If, after filing this form and before the completion of the joint venture's work on the subject Contract, there is any significant change in the information submitted, the joint venture must inform the City in writing.

**AFFIDAVIT**

"The undersigned swear or affirm that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venture in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete, and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture relevant to the joint venture, by authorized representatives of the City. Any material misrepresentation will be grounds for terminating any Contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

|                       |                       |
|-----------------------|-----------------------|
| Name of Bidder: _____ | Name of Bidder: _____ |
| Signature: _____      | Signature: _____      |
| Name: _____           | Name: _____           |
| Title: _____          | Title: _____          |
| Date: _____           | Date: _____           |