

RESOLUTION No. 2008-182-869

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH ANDES CONSTRUCTION GROUP, INC. FOR FAÇADE IMPROVEMENTS, IN THE AMOUNT OF \$236,115.99, PLUS A CONTINGENCY, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in July 2005, the City executed a contract with Miami Dade County's Office of Community and Economic Development for façade improvements in an effort to identify businesses that wanted to participate in a façade improvement program, and

WHEREAS, initially, 3 business locations were identified as willing participants in the program; however, after the production of the required plans, none of the businesses were willing to execute contracts with the City, and

WHEREAS, in an effort to salvage the County's Grant funds, the City's Community Development Department sought to identify other eligible business locations for the façade improvements, and

WHEREAS, staff has identified the Stop N Shop Plaza, located at 4100 N.W. 167 Street; a contract with the owner of this plaza has been executed; and staff has proceeded to have the architectural plans drawn for the proposed improvements, and

WHEREAS, the City's Purchasing Division used the specifications provided, to prepare solicitation ITB #07-08-020, which was advertised on June 16, 2008, and

WHEREAS, two sealed bids were received by the required deadline, and they were opened and publicly read on August 11, 2008, and

WHEREAS, one bid was determined to be non-responsive as they did not complete the entire bid form per the requirements, and

WHEREAS, the other bid was evaluated and it was determined that the City should contract with the second bidder, Andes Construction Group, Inc., to perform the renovations, and

WHEREAS, since only one bid was responsive, staff met with the owner of the property and the responsive contractor to negotiate a revised bid price of \$236,115.99,

WHEREAS, City staff is recommending that the City Council enter into an agreement with Andes Construction Group, Inc., in the amount of \$236,115.99, for façade renovations to the Stop N Shop Plaza,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

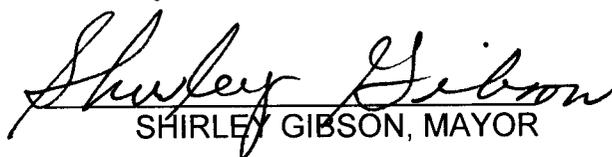
Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement with Andes Construction Group, Inc. in the amount of \$236,115.99, which shall include a 10% contingency, for façade renovations at the Stop N. Shop plaza located at 4100 N.W. 167<sup>th</sup> Street, a copy of which is attached hereto as **Exhibit A**.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one

to be maintained by the City; with one to be delivered to Andes Construction Group, Inc., and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON SEPTEMBER 24, 2008.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert  
SECOND BY: Vice Mayor Watson

VOTE: 7-0

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> X </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> X </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> X </u> (Yes)	<u> </u> (No)

SKD/teh

# City of Miami Gardens

1515NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilman Oliver G. Gilbert III  
Councilman André Williams

## Agenda Cover Page

Meeting Date: **September 24, 2008**

Fiscal Impact: No **X** Yes

(If yes, explain in Staff Summary)

Funding Source: Miami Dade OCED

Contract/P.O. Requirement: Yes **X** No

Sponsor Name/Department:

**Danny Crew, City Manager**

Public hearing

Ordinance

1st Reading  2nd Reading

Advertising requirement: Yes **X** No

RFP/RFQ/Bid # ITB#07-08-020

Façade Improvement Project

Quasi-Judicial

Resolution **X**

### Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT WITH ANDES CONSTRUCTION GROUP, INC. FOR FAÇADE IMPROVEMENTS, IN THE AMOUNT OF \$236,115.99, PLUS A CONTINGENCY, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

### Staff Summary

#### Background

In July 2005, the City executed a contract with Miami Dade County's Office of Community and Economic Development for façade improvements. Initially, 3 business locations were identified as willing participants in the program. Unfortunately, after several months of negotiating with each business, and after the production of the required plans, none of the businesses were willing to execute contracts with the City.

In an effort to not forfeit the County's Grant funds, the City's Community Development Department sought to identify other eligible business locations for the façade improvements. Staff identified the Stop N Shop Plaza, located at 4100 N.W. 167 Street. A contract with the owner of this plaza has been executed and we proceeded to have the architectural plans drawn for the proposed improvements. The Purchasing Division used the specifications provided to prepare solicitation ITB #07-08-020, which advertised on June 16, 2008. A broadcast notice was sent to 1,235 vendors through

Demandstar by Avia (providing notification to all vendors registered in that category). As part of the solicitation we required vendors attend a mandatory pre-bid conference that provided an overview of the project and allow for on-site inspections.

Twenty contractors attended the mandatory pre-bid conference. Two sealed bids were received by the required deadline, and they were opened and publicly read on August 11, 2008. A copy of the bid document and submittals are available for review in the office of the Assistant to the Mayor/Council. One bid was determined to be non-responsive as they did not complete the entire bid form per the requirements. The tabulation sheet is attached as **Exhibit "A"**. The bid submittal was evaluated for compliance with the specifications and their ability to perform the work. Among other areas, we considered their bonding capacity, response to questionnaires, compliance with specifications, financial status, and their capacity to perform. References were found favorable.

Inasmuch as only one bid was responsive, staff met with the owner of the property and the responsive contractor to negotiate the bid prices. The revised bid amount is \$236,115.99.

The City's contract with the County for these funds expires December 31, 2008. It is our desire to move this project expeditiously in order to garner the benefit of these funds and more importantly to provide a much needed "facelift" to a highly visible business location.

The proposed resolution seeks City Council approval to authorize the City Manager to execute an agreement with Andes Construction Group, Inc. located in Weston, Florida in order to perform the façade improvements as stipulated in the Invitation to Bid documents.

#### **Recommendation**

City staff recommends the approval of the attached resolution authorizing the City Manager to execute an agreement with Andes Construction Group, Inc. for the façade improvements at the Stop N Shop Plaza.



**City of Miami Gardens**  
 1515 N.W. 167<sup>th</sup> Street: Bldg. 5 Suite 200  
 Miami Gardens, Florida 33169  
 Procurement Department

**Tabulation Sheet**  
**ITB#07-08-020 FAÇADE IMPROVEMENT PROJECT**  
**August 11, 2008 @ 2:00 p.m.**

Item	Andes Construction Group Weston, Fl	
Div 1		\$45,581.00
Div 2		\$50,050.00
Div 3		\$30,792.00
Div 4		\$8,175.00
Div 5		\$15,000.00
Div 6		\$30,000.00
Div 7		\$25,500.00
Div 8		\$4,750.00
Div 9		\$44,679.00
Div 10		\$48,000.00
Div 16		\$42,000.00
<b>Total Base Bid</b>		<b>\$344,527.00</b>
Alternates		
No 1.1		(\$32,000.00)
No1.2		(\$8,000.00)
No2		(\$48,000.00)
No 3.2		(\$10,000.00)
Total Alt		(\$98,000.00)
<b>Total Base Less Alternate</b>		<b>\$246,527.00</b>
Alternate #2	U of M	Unit Price
Replace storefront	Sq. Ft.	\$65.00
Junction box	Lineal Ft	\$150.00
Sign light fixtures above eyebrow	Fixture	\$550.00
Sign light fixtures below eyebrow	Fixture	\$350.00
Metal shutters	Sq. Ft.	\$25.00
Aluminum letters 7 1/2"	Letter	\$170.00
11"		\$200.00
18"		\$230.00
22"		\$280.00
Alternate #3		
Structural tube support		\$87,600.00

Dev-Con Construction & Consulting, LLC was non-responsive

This is only a tabulation of prices submitted and is not an indication of award or responsiveness.

**CITY OF MIAMI GARDENS  
CONSTRUCTION CONTRACT**

THIS CONTRACT made as of this 10 day of Sept, 2008, by and between Andes Construction Group, Inc., hereinafter referred to as the CONTRACTOR, and the CITY OF MIAMI GARDENS, FLORIDA, a Florida municipal corporation, hereinafter referred to as the CITY.

WITNESSETH, that whereas, the CITY has awarded to the CONTRACTOR the Work of performing certain construction:

NOW, THEREFORE, the CITY and the CONTRACTOR, for consideration hereinafter named, agree as follows:

**ARTICLE 1. CONTRACT DOCUMENTS**

1.1 Enumeration of Contract Documents:

The Contract Documents comprise the entire agreement between CITY and CONTRACTOR and consist of the following:

- (1) This Agreement and General Conditions (Exhibit 1)
- (2) Construction performance bond.
- (3) Construction payment bond.
- (4) Insurance certificate(s).
- (5) Notice of Award and Notice to Proceed.
- (6) Invitation to Bid and the Specifications prepared by the CITY (Exhibit 2).
- (7) CONTRACTOR's Response to the CITY's Invitation to Bid No. 07-08-020 dated August 11, 2008 (Exhibit 3).

Any amendments executed by the CITY and the CONTRACTOR shall become part of this Agreement. Documents not included in this Article do not, and shall not, form any part of this Agreement. In the event of any conflict between the documents or any ambiguity or missing specification or instruction, the following priority is established:

- a. Specific direction from the City Manager (or designee).
- b. This Agreement dated 9/10/08 and any attachments.
- c. Exhibit 1.
- d. Exhibit 2.
- e. Exhibit 3.

1.2 Conflict, Error or Discrepancy:

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to the CITY in writing at once and before proceeding with the Work affected shall obtain a written interpretation or clarification from CITY.

1.3 Representation of CONTRACTOR:

Execution of the Contract by the CONTRACTOR is a representation that CONTRACTOR has visited the Work site and is familiar with the local conditions under which the Work is to be performed.

1.4 Representation of CITY:

1.4.1 CDBG funds in the amount not to exceed One Hundred Thirty Thousand Dollars (\$130,000.00) are being utilized in this transaction for the purpose of this Project. Specifications & Contract Documents related to the Project, attached as composite Exhibits, as amended from time to time, represent the scope of work and responsibilities of the parties under the CDBG Program and that the parties agree to abide by and comply with their roles and responsibilities.

1.4.2 The CITY has the sole responsibility and obligation of interpreting the intent and purpose of the Program and Contract Documents

1.4.3 The CITY and CONTRACTOR acknowledge and agree that funds provided derive from CDBG Program funds appropriated to the CITY by the U.S. Department of Housing and Urban Development for the uses and purposes referred to in this Agreement. If such funds, in whole or in part, are no longer available to the CITY, then CONTRACTOR acknowledges and agrees that CITY may scale back the terms of this Agreement, as necessary, or terminate this Agreement without any liability.

## **ARTICLE 2. SCOPE OF WORK**

The CONTRACTOR hereby agrees to furnish all of the materials, tools, equipment, labor, services, incidentals and everything necessary to perform; and shall perform, all of the Work, herein referred to as Work in accordance with the Contract Documents.

## **ARTICLE 3. CONTRACT TIME**

3.1 CONTRACTOR shall be issued a Notice of Award by the CITY. CONTRACTOR shall commence scheduling activities and permit applications within five (5) calendar days after receipt of the Notice of Award. The Notice to Proceed and Purchase Order will not be issued until CONTRACTOR'S submission to CITY of all required documents including, but not limited to: Performance and Payment Bonds, Insurance Certificates fully executed Contract.

3.1.1 The receipt of all necessary permits by CONTRACTOR and acceptance of the full construction schedule in accordance with general terms and conditions section, submittal schedule and schedule of values is a condition precedent to the issuance of the Notice to Proceed to mobilize on the Project site and commence with the Work. The CONTRACTOR shall submit all necessary documents required by this provision within **fifteen** (15) calendar days of the issuance of Notice of Award.

3.2 The Work must begin within ten (10) calendar days from Notice to Proceed or the date fixed in the Notice to Proceed, whichever is later, and shall be carried on at a rate to insure its substantially completed within Seventy (70) calendar days from the issuance of the Notice to Proceed, completed and ready for final payment in accordance with Article 6 within One Hundred (100) days from the date certified by CITY as the date of Substantial Completion.

3.3 Upon failure of CONTRACTOR to substantially complete the WORK, herein referred to as Substantial Completion, within the specified period of time, plus approved time extensions, if any, CONTRACTOR shall pay to CITY the sum of Two Hundred and Fifty Dollars (\$250.00) for each calendar day after the time specified in Section 2.2 above, plus any approved time extensions, for Substantial Completion. After Substantial Completion should CONTRACTOR fail to complete the remaining Work within the time specified in Section 2.2 above, plus approved time extensions, if any, for completion and readiness for final payment, CONTRACTOR shall pay to CITY the sum of One Hundred and Fifty Dollars (\$150.00) for each calendar day after the time specified in Section 2.2 above, plus any approved extensions, if any, for completion and readiness for final payment. These amounts are not penalties, but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages which the CITY will suffer as a result of the CONTRACTOR'S failure to perform and that will be obviate a formal resolution concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Contract as required hereunder.

The above-stated liquidated damages shall apply separately to each portion of the Project for which a time for completion is given.

3.4 CITY is authorized to deduct liquidated damages from monies due to CONTRACTOR for the Work under this Contract.

3.5 CONTRACTOR shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by the Architect/Engineer in administering the construction of the WORK beyond the completion date specified above, plus approved time extensions, if any. Architect/Engineer construction costs shall be pursuant to the contract between CITY and Architect/Engineer, a copy of which is available upon request of the CONTRACTOR. All such costs shall be deducted from the monies due CONTRACTOR for performance of WORK by means of unilateral credit change orders issued by CITY, as costs are incurred by Architect/Engineer and agreed to by CITY.

#### **ARTICLE 4. COMPENSATION**

CITY shall pay CONTRACTOR as full compensation for the all material, services, labor and performance, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown in the Contract Documents, the sum of Two

Hundred Seventy-Five Thousand Six Hundred Fifteen Dollars and ninety-nine cents (\$275,615.99) in accordance with HUD regulations and the Davis-Bacon Act (40 USC 267a) as amended and incorporated by reference in this Agreement.

#### **ARTICLE 5. PROGRESS PAYMENTS**

CONTRACTOR may make Application for Payment for Work completed, at intervals of not more than once a month. However, the CITY shall not pay more than ninety percent (90%) of the total Contract Price as progress payments. The CONTRACTOR'S application shall show a complete breakdown of the Project components as dictated by the CITY, including an updated Schedule of Values showing the quantities completed and the amount requested, together with such supporting evidence as may be required by the CITY. CONTRACTOR shall submit with each Application for Payment, an updated progress schedule acceptable to the CITY as required by the General Conditions and a release of liens relative to the Work which is the subject of the Application. Each Application for Payment shall be submitted in triplicate to the CITY. The CITY shall make payment to the CONTRACTOR within thirty (30) business days after approval by the CITY of CONTRACTOR'S Application for Payment and submission of an acceptable updated progress schedule.

Ten percent (10%) of all monies earned by the CONTRACTOR shall be retained by the CITY until Final Completion and acceptance by the CITY in accordance with the terms and conditions stipulated in the Contract Documents.

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

- a) Defective Work not remedied.
- b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
- c) Failure of CONTRACTOR to make payments properly to Sub-Contractors or for material or labor.
- d) Damage to another CONTRACTOR not remedied.
- e) Liquidated damages, as well as costs incurred by the CITY for extended construction administration.

When the above grounds are removed or resolved or CONTRACTOR provides a surety bond or a consent of Surety, satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

#### **ARTICLE 6. ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice from CONTRACTOR that the Work is complete and ready for final inspection and acceptance, CITY shall, within ten (10) calendar days, make an inspection thereof. The CONTRACTOR shall only receive payments if CITY finds the Work acceptable, the requisite documents have been submitted, the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, the Architect/Engineer and CITY'S Representative will submit a statement stating such to the CITY Manager.

Before the Final Payment, CONTRACTOR shall deliver to CITY a complete waiver of lien(s) or release of all lien(s), as applicable, arising out of this Contract, or receipts in full for all Work; and an Affidavit certifying that all suppliers and Sub-Contractors have been paid in full, and that all other indebtedness connected with the Work has been paid.

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

- A. Defective Work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.
- C. Failure of CONTRACTOR to make payments properly to Sub-Contractors or for material or labor.
- D. Damage to another CONTRACTOR not remedied.
- E. Liquidated damages and costs incurred by CITY for extended construction administration.

When the above grounds are removed or resolved satisfactorily to the CITY, payment may be made.

Final payment constituting the entire unpaid balance of the Contract sum shall be paid by CITY to the CONTRACTOR within thirty (30) days after completion of all Work, Contract fully performed and a final certificate for payment has been issued by the CITY'S representative.

#### **ARTICLE 7. MISCELLANEOUS**

7.1 Conflict: Where there is a conflict between any provision set forth within the Contract Documents and a more stringent state or federal provision which is applicable to this Project, the more stringent state or federal provision shall control.

7.2 Independent Contractor: CONTRACTOR is an independent contractor under this Contract. Services provided by CONTRACTOR pursuant to this Contract shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees, agents, or subcontractors of the CITY, and CONTRACTOR shall be responsible for any actions of its officer, employees, agent and subcontractors. This Contract shall not constitute or make the parties a partnership or joint venture.

7.3 Qualifications: CONTRACTOR, and the individual executing this Contract on behalf of the CONTRACTOR, warrants to the CITY that the CONTRACTOR is a Florida (corporation sole proprietorship, etc.) in good standing, and that the CONTRACTOR has all the required licenses and certifications of competency required by the State of Florida and the County of Miami-Dade to perform the Work herein described. CONTRACTOR shall insure that all Sub-Contractors have all required licenses and certifications of competency required by the State of Florida and the County of Miami-Dade to perform the Work herein described.

7.4 Entire Contract – Modification: No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Contract, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Contract contains the entire understanding of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Contract is executed. If any term in the CONTRACTOR'S proposal appears to be in direct or apparent conflict with the Contract, then the terms of the Contract shall control.

7.5 Third Party Beneficiaries: Neither CONTRACTOR nor CITY intend to directly or substantially benefit a third party by 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. 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.

7.6 Notices: All notices required in this Contract shall be sent by certified mail, return receipt requested and, if sent to the CITY shall be mailed to:

City of Miami Gardens  
Attn: City Manager  
1515 NW 167<sup>th</sup> Street, Suite 200  
Miami Gardens, FL 33169

With a Copy to: City Attorney  
C/O City of Miami Gardens  
1515 NW 167<sup>th</sup> Street, Suite 200  
Miami Gardens, FL 33169

And if sent to the CONTRACTOR shall be mailed to:

Name: Andes Construction Group Inc.  
Address: 577 Bridgeton Road  
Address:

Fed. ID# 65-1097235  
Telephone #954-608-4413  
Fax # 954-659-1959

City, State & Zip: Weston, FL 33326  
Contact Person: Ilan Cohen

Title: President

7.7 Assignment and Performance: Neither this Contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONTRACTOR shall not subcontract any portion of the Work required by this Contract except as authorized in the General Conditions. CONTRACTOR represents that all persons delivering the services required by this Contract have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Work and to provide and perform such services to CITY'S satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of CONTRACTOR'S performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

7.8 Materiality and Waiver of Breach: CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth in these Contract Documents is substantial and important to the formation of this Contract and, therefore, is a material term hereof. CITY'S failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

7.9 Severance: In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective, unless CITY or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

7.10 Applicable Law and Venue: 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. **By entering into this Contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Project. CONTRACTOR shall specifically bind all Sub-Contractors to the provisions of this Contract.**

7.11 Enforcement Costs: If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, expenses and court costs, including appellate fees incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

7.12 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 and CONTRACTOR.

7.13 Prior Contracts: This document incorporates and includes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Contracts or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Contracts, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 6.11 above.

7.14 Future Litigation: Contractor certifies that it shall notify the City within five (5) days of the receipt of any claims, lawsuits, or actions filed against Contractor relating to any construction projects, work or tasks either performed by Contractor or to be performed by Contractor.

7.15 Indemnification: Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by 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. One percent ( 1%) of the

contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as follows:

WITNESSES:

Gerson P  
GERSON CARVAJAL

CONTRACTOR:

[Signature]  
By: \_\_\_\_\_  
Print Name: ILAN COHEN  
Title: PREZIDENT

ATTEST:

Ronetta Jaffer  
City Clerk

CITY OF MIAMI GARDENS

[Signature]  
City Manager

APPROVED AS TO FORM:

[Signature]  
CITY Attorney

Dated: