



City of Miami Gardens INVITATION TO BID

The City of Miami Gardens is requesting sealed bids from qualified contractors to establish a term contract to provide electrical, plumbing, carpentry, drywall, and mechanical work HVAC on an as needed basis for City facilities.

BID SUBMISSION:

Bids will be received by sealed envelope in the Procurement Department, City of Miami Gardens. **If Delivered by mail send to:** Procurement Department, 1515 N.W. 167th Street; Bldg. 5, Suite 200, Miami Gardens, Florida 33169. **If Delivered in person:** Procurement Department location, 1515 NW 167th Street; Bldg. 7, Suite 440 until 2:00 P.M. on Thursday, **June 21, 2012** at which time names of bidders submitting bids will be read in the Council Chambers by the Procurement Manager or designee. Bids received after this time will not be considered and no time extensions will be permitted. Please clearly mark bids.

"ITB# 11-12-031 PRE-QUALIFICATION OF PROFESSIONAL CONTRACTORS

Copies of this Proposal Document may be obtained by contacting DemandStar by Onvia at www.demandstar.com or call toll free 1-800-711-1712 and request Document #11-12-031 or may be found on the City's web site at www.miamigardens-fl.gov. Vendors who obtain specifications and plans from other sources other than DemandStar.com are cautioned that the bid package may be incomplete. All addendums will be posted and disseminated by DemandStar.

FOR INFORMATION

For information on this Invitation to Bid, contact the Procurement Department, (305) 622-8000.

ACCEPTANCE AND REJECTIONS

The City of Miami Gardens reserves the right to reject any or all Proposals with or without cause; to waive any or all irregularities with regard to the specifications and to make the award to the Consultant offering the greatest advantage to the City.

Please be advised that Pursuant to City Ordinance 2008-03-139 "Cone of Silence", public notice is hereby given that a Cone of Silence is imposed concerning this City's competitive purchasing process, which generally prohibits communications concerning the ITB until such time as the City Manager makes a written communications concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

“ITB# 11-12-031 PRE-QUALIFICATION OF PROFESSIONAL CONTRACTORS”

June 21, 2012”

1.0 GENERAL CONDITIONS

1.1 SEALED BIDS:

Original copy of Bid Form as well as any other pertinent documents must be returned in order for the Bid to be considered for award. All Bids are subject to the conditions specified herein and on the attached Special Conditions, Specifications and Bid Form.

The completed Bid must be submitted in a sealed envelope clearly marked with the Bid Title to the Procurement Department, City of Miami Gardens, 1515 N W 167th Street; Bldg 5 Suite 200, if by mail, and Bldg 7, Suite 440, if in person, Miami Gardens, Florida 33169 until 2:00 p.m., local time on date due.

1.2 EXECUTION OF BID:

The Bid must contain a manual signature of an authorized representative in the space provided on the Bid Form. Failure to properly sign Bid shall invalidate same and it shall NOT be considered for award. All Bids must be completed in pen or be typewritten. No erasures are permitted. If a correction is necessary draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed by the person signing the Bid. Any illegible entries, pencil Bids or corrections not initialed will not be tabulated. The original Bid conditions and specifications together with bidder's response CANNOT be changed or altered in any way after submitted to the City.

1.3 PRICES QUOTED:

Deduct trade discounts and quote firm net prices. Give both unit price and extended total, when requested. Prices must be stated in units of quantity specified in the Bid specifications. In case of discrepancy in computing the amount of the Bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in special conditions). Bidders are to list discounts to be given the City for prompt payment. Award, if made, will be in accordance with terms and conditions stated herein. Each item must be proposed separately and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of Bid(s). All prices quoted shall be guaranteed for 90 days from Bid date unless otherwise specified in Special Conditions.

1.3.1 TAXES:

The City of Miami Gardens is exempt from all Federal Excise and State taxes. The applicable tax exemption number is shown on the Purchase Order.

1.3.2 MISTAKES:

Bidders are expected to examine the specifications, delivery schedules, Bid prices and extensions and all instructions pertaining to supplies and services. Failure to do so will be at the bidder's risk.

1.3.3 UNDERWRITERS' LABORATORIES:

Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be U.L. listed or re-examination listing where such has been established by U.L. for the item(s) offered and furnished.

1.3.4 BID'S CONDITIONS:

The City reserves the right to waive irregularities in Bids or to reject all Bids or any part of any Bid deemed necessary for the best interest of the City of Miami Gardens, Florida.

1.4 EQUIVALENTS:

If bidder offers makes of equipment or brands of supplies other than those specified, it must be indicated in the Bid. Specific article(s) of equipment/supplies shall conform in quality, design and construction with all published claims of the manufacturer.

Brand Names: Catalog numbers, manufacturers' and brand names, when listed, are informational guides as to a standard of acceptable product quality level only and should not be construed as an endorsement or a product limitation of recognized and legitimate manufacturers. Bidders shall formally substantiate and verify that product(s) offered conform with or exceed quality as listed in the specifications.

Bidder shall indicate on the Bid form the manufacturers' name and number if proposing other than the specified brands, and shall indicate ANY deviation from the specifications as listed. Other than specified items offered requires complete descriptive technical literature marked to indicate detail(s) conformance with specifications and **MUST BE INCLUDED WITH THE BID. NO BIDS WILL BE CONSIDERED WITHOUT THIS DATA.**

Lacking any written indication of intent to quote an alternate brand or model number, the Bid will be considered as a Bid in complete compliance with the specifications as listed on the attached form.

1.5 NON-CONFORMANCE TO CONTRACT CONDITIONS:

Items may be tested for compliance with specifications. Any item delivered, not conforming to specifications, may be rejected and returned at bidder's expense. These items and items not delivered as per delivery date in Bid and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the bidder. Any violation of these stipulations may also result in Bidder's Name being removed from the vendor list.

1.6 SAMPLES:

Samples of items, when required, must be furnished free of expense and, if not destroyed, will, upon request, be returned at the bidder's expense. Bidders will be responsible for the removal of all samples furnished within (30) days after Bid opening. All samples will be disposed of after thirty (30) days. Each individual sample must be labeled with bidder's name. Failure of bidder to either deliver required samples or to clearly identify samples may be reason for rejection of the Bid. Unless otherwise indicated, samples should be delivered to the Procurement Department, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169.

1.7 DELIVERY:

Unless actual date of delivery is specified (or if specified delivery cannot be met), show number of days (in calendar days) required to make delivery after receipt of purchase order, in space provided. Delivery time may become a basis for

making an award. Delivery shall be within the normal working hours of the City, Monday through Friday, excluding holidays.

1.8 INTERPRETATIONS:

Unless otherwise stated in the Bid, any questions concerning conditions and specifications should be submitted in writing to the Procurement Manager, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169 Facsimile (305) 474-1285.

1.9 AWARDS:

The City of Miami Gardens reserves the right to reject any and all Bids or any portion of any Bid deemed necessary in the best interest of the City; to accept any item or group of items; to acquire additional quantities at prices quoted on the Bid Form unless additional quantities are not acceptable, in which case the Bid Form must be noted "BID IS FOR SPECIFIED QUANTITY ONLY". The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. All awards made as a result of this Bid shall conform to applicable Florida Statutes.

No bid will be accepted from, nor will any contract be awarded to any person or firm which is in arrears to the City upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the City or who has failed to perform faithfully any previous contract with the City.

1.10 BID OPENING:

Names of Bidders who submitted bids shall be publicly read in the Council Chamber, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169 on the date and at the time specified on the Bid Form. All Bids received after that time shall be returned, unopened.

1.11 INSPECTION, ACCEPTANCE & TITLE:

Inspection and acceptance will be destination unless otherwise provided. Title to/or risk of loss or damage to all items shall be the responsibility of the successful bidder until acceptance by the City unless loss or damage result from negligence by the City. If the materials or services supplied to the City are found to be defective or not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return product at bidder's expense.

1.12 PAYMENT:

Payment will be made by the City after the items awarded to a bidder have been received, inspected, and found to comply with award specifications, free of damage or defect and properly invoiced.

1.13 DISPUTES:

Any actual or prospective Bidder, Proposer, Offeror or Contractor who is aggrieved in connection with a solicitation or award of a Bid or Contract may avail themselves of the procedures contained in Ordinance 2007-25-131 in order to resolve disputed matters or complaints.

The Procurement Manager shall post a tabulation of the Bid results with intended award recommendations no later than thirty calendar days after bid due date. Posting shall be on the City's web site for public viewing.

Any actual or prospective bidder, proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may file a written protest with the City Clerk and mailed by the protester to all responders to the bid proposal within seventy-two hours (72) hours of the City's recommendation for award or the City's actual award whichever comes first. The written protest shall state all the particular grounds on which it is based, shall include all pertinent documents and evidence. The protest letter to the City Clerk shall include proof of mailing/receipt to other responders to the bid and shall be accompanied by a cashier's check in the amount of \$500.00 representing the filing fee, plus a cost bond in the amount of \$2,500.00 to reimburse the City for all administrative costs associated with the appeal process. The \$2,500.00 bond shall be returned to the Protester if the Protester prevails in the hearing before the hearing examiner/special master. If the Protester does not prevail the City shall keep the bond. Any grounds not stated shall be deemed waived.

Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the vendor of all rights of protest under this Bid/Proposal Protest Procedure.

In the event of a timely protest, the City Manager shall select a hearing examiner or special master, who shall be a member of the Florida Bar, who shall hold a hearing and submit written findings and recommendations within fifteen (15) days of the filing of the protest. The hearing examiner shall consider the written protests, supporting documents in evidence, the City's recommendations and supporting documentation and all evidence presented at the hearing. Such finding and recommendation shall be filed with the City Clerk.

The hearing examiner's findings and recommendations shall be final. Appeals of a decision by the hearing examiner shall be to the Miami-Dade County Circuit Court. The prevailing party in the appeal may be entitled to recover any and all attorneys' fees and costs incurred in the appeal.

1.14 LEGAL REQUIREMENTS:

Federal, State, county and City laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the bidder will in no way be a cause for relief from responsibility.

The individual executing this proposal on behalf of the Company warrant to the City that the Company is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Company possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.

1.15 INDEMNIFICATION:

To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the City and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly

employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against the City or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

The official title of the City is "City of Miami Gardens". This official title shall be used in all insurance, or other legal documentation. City of Miami Gardens is to be included as "Additional Insured" with respect to liability arising out of operations performed for City of Miami Gardens by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

1.16 PATENTS & ROYALTIES:

The bidder, without exception, shall indemnify and save harmless the City of Miami Gardens, Florida and its employees from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by The City of Miami Gardens, Florida. If the bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

1.17 OSHA:

The bidder warrants that the product and services supplied to the City of Miami Gardens, Florida shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be considered as a breach of contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the bidder responsible for same.

1.17A SAFETY PRECAUTIONS:

The bidder shall, if required, maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents and all minimum safety standards required by Municipal, County, State and Federal ordinances and laws shall be strictly met by the bidder

1.18 SPECIAL CONDITIONS:

Any and all Special Conditions that may vary from these General Conditions shall have precedence.

1.19 ANTI-DISCRIMINATION:

The bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

1.20 QUALITY:

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this Bid shall be new. The items Bid must be new, unless recycled materials are certified by bidder, the latest model, of the best quality, and highest grade workmanship.

1.21 LIABILITY, INSURANCE, LICENSES AND PERMITS:

Where bidders are required to enter or go onto City of Miami Gardens property to deliver materials or perform work or services as a result of a Bid award, the successful bidder will assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all Miami-Dade County and City of Miami Gardens building requirements and the Florida Building Code. The bidder shall be liable for any damages or loss to the City occasioned by willful, wanton or gross negligence of the bidder (or agent) or any person the bidder has designated in the completion of the contract as a result of the Bid.

1.22 BID BONDS, PERFORMANCE BONDS, CERTIFICATES OF INSURANCE:

Bid Bonds, when required, shall be submitted with the Bid in the amount specified in Special Conditions. After acceptance of Bid, the City will notify the successful bidder to submit a performance bond and certificate of insurance in the amount specified in Special Conditions.

1.23 DEFAULT/FAILURE TO PERFORM:

The City shall be the sole judge of nonperformance, which shall include any failure on the part of the successful bidder to accept the award, to furnish required documents, and/or to fulfill any portion of this contract within the time stipulated.

Upon default by the successful bidder to meet any terms of this agreement, the City will notify the bidder three (3) days (weekends and holidays excluded) to remedy the default. Failure on the contractor's part to correct the default within the required three (3) days shall result in the contract being terminated. The City will notify the contractor in writing of its intentions with the effective date of the termination. The following shall constitute default:

- A) Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- B) Failure to begin the work under this contract within the time specified.
- C) Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- D) Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the contract.
- E) Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful bidder incapable of performing the work in accordance with and as required by the contract.
- F) Failure to comply with any of the terms of the contract in any material respect.

In the event of default of a contract, the successful bidder shall pay all attorney's fees and court costs incurred in collecting any damages. The successful bidder shall pay the City for any and all costs incurred in ensuing the completion of the project.

1.24 CANCELLATION:

The City of Miami Gardens reserves the right to cancel this contract by written notice to the contractor effective the date specified in the notice should any of the following apply:

- A) The contractor is determined by the City to be in breach of any of the terms and conditions of the contract and/or to have failed to perform his/her services in a manner satisfactory to the City. In the event the contractor is found to be in default, the contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated loss of revenue or the canceled portions of the contract.
- B) The City has determined that such cancellation will be in the best interest of the City to cancel the contract for its own convenience.
- C) Funds are not available to cover the cost of the services. The City's obligation is contingent upon the availability of appropriate funds.

1.25 BILLING INSTRUCTIONS:

Invoices, unless otherwise indicated, must show purchase order numbers; work order number and/or quotation number, if applicable; details of service(s) performed including service date, brief description, and shall be submitted in DUPLICATE to Accounts Payable, City of Miami Gardens, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169.

1.26 SUBSTITUTIONS

The City of Miami Gardens, Florida WILL NOT accept substitute shipments of any kind. Bidder(s) is expected to furnish the brand quoted in their Bid once awarded. Any substitute shipments will be returned at the bidder's expense.

1.27 FACILITIES:

The City reserves the right to inspect the bidder's facilities at any time with prior notice.

1.28 BID TABULATIONS:

Bidders desiring a copy of the Bid tabulation may request same by enclosing a self-addressed stamped envelope with the Bid.

1.29 APPLICABLE LAW AND VENUE:

The law of the State of Florida shall govern the contract between the City of Miami Gardens and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

1.30 CLARIFICATION AND ADDENDA TO BID SPECIFICATIONS:

If any person contemplating submitting a Bid under this Invitation for Bid is in doubt as to the true meaning of the specifications or other Bid documents or any part thereof, the Bidder must submit to the City of Miami Gardens Procurement Manager at least seven (7) calendar days prior to scheduled Bid opening, a request for clarification. All such requests for clarification must be made in

writing and the person submitting the request will be responsible for its timely delivery.

Any interpretation of the Bid, if made, will be made only by Addendum duly issued by the City of Miami Gardens Procurement Manager. The City shall issue an Informational Addendum if clarification or minimal changes are required. The City shall issue a Formal Addendum if substantial changes which impact the technical submission of Bids is required. A copy of such Addendum will be sent to each Bidder receiving the Invitation for Bid. In the event of conflict with the original Contract Documents, Addendum shall govern all other Contract Documents to the extent specified. Subsequent addendum shall govern over prior addendum only to the extent specified.

1.31 CONTRACT:

A) A contract may be awarded to the lowest responsive, responsible Bidder(s) whose Bid(s), conforming to the Invitation for Bid, is most advantageous to the City of Miami Gardens. The lowest responsive, responsible Bidder(s) will be determined in conjunction with the method of award which is described in the Special Conditions. Tie Bids will be decided as described herein.

B) The City shall award a contract to a Bidder through action taken by the City Council or the City Manager of the City of Miami Gardens, Florida.

C) The General Terms and Conditions, the Special Conditions, the Technical Specification, and the Bidder's Bid are collectively and integral part of the contract between the City of Miami Gardens and the successful Bidder.

D) While the City of Miami Gardens may determine to award a contract to a Bidder(s) under this Invitation to Bid, said award may be conditional on the subsequent submission of other documents as specified in the Special Conditions. The Bidder shall be in default of any conditional award if any of these documents are not submitted in a timely manner and in the form required by the City. If the Bidder is in default, the City, through the Procurement Manager, will void its acceptance of the Bidder's offer and may determine to select the second lowest responsive, responsible Bidder or re-solicit Bids. The City may, at its sole option, seek monetary restitution from the defaulting Bidder as a result of damages or excess costs sustained and/or may prohibit the Bidder from submitting future Bids for a period of one year.

E) The City reserves the right to exercise the option to renew a term contract of any successful Bidder(s) to a subsequent optional period; provided that such option is stipulated in the Special Conditions and is contained in any contract ultimately awarded in regard to this Bid.

F) The City reserves the right to automatically extend any contract for a maximum period not to exceed ninety (90) calendar days in order to provide City departments with continual service and supplies while a new contract is being solicited, evaluated and/or awarded, in regard to this Bid.

G) The Bidder agrees and understands that the contract may not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at its sole option.

1.32 ASSIGNMENT:

The contractor shall not assign, transfer, convey, sublet or otherwise dispose of any contract, including any or all of its right, title, or interest therein, or his or its

power to execute such contract to any person, company or corporation without prior written consent of the City of Miami Gardens, which consent may be withheld.

1.33 LAWS, PERMITS AND REGULATIONS:

The bidder shall obtain and pay for all licenses, permits and inspection fees required for this project; and shall comply with all laws, ordinances, regulation building code requirements applicable to the work contemplated herein.

1.34 OPTIONAL CONTRACT USAGE:

Other State agencies, and/or Governmental Entities in the State of Florida may purchase from the resulting contract. Contractors shall sell these commodities or services to the other State agencies and/or Governmental Entities in the State of Florida at the agencies' and/or entities option or as otherwise provided by law.

1.35 SPOT MARKET PURCHASES:

It is the intent of the City to purchase the items specifically listed in this Bid from the selected bidder. However, items that are to be "Spot Market Purchased" may be purchased by other methods, i.e. Federal, State or local contracts.

1.36 WARRANTIES OF USAGE:

Any estimated quantities listed are for information and tabulation purposes only. No warranty or guarantee of quantities needed is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.

1.37 PUBLIC ENTITY CRIMES:

As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor 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 Bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit Bids on leases 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 S.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

1.38 CODE OF ETHICS:

As provided in Article 9 Ethics in Public Contracting of the City of Miami Gardens Ordinance No. 2005-10-28 and Ordinance 2008-03-139 "Cone of Silence", from the time of advertising until the City Council deliberates on the making of an award, there is a prohibition on communication with the City Manager and his staff and Mayor and City Council. The ordinance does not apply to oral communications at pre-bid/proposal conference, oral presentations before selection committees, contract negotiations, public presentations made to the City Council during any duly noticed public meeting or communications in writing at any time with any City employee, official or member of the City Council unless specifically prohibited by the applicable RFP, RFQ or bid documents. A copy of all written communications must be filed with the City Clerk.

1.39 NON-COLLUSION:

By submitting this bid, Bidder certifies that this offer is made without prior understanding, agreement, or connection with any corporation, firm or person submitting an offer for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

No premiums, rebates or gratuities are permitted, either with, prior to or after any delivery of material or provision of services. Any violation of this provision may result in the Contract cancellation, return of materials or discontinuation of services and the possible removal from the vendor bid list(s).

1.40 PROHIBITION OF INTEREST:

No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Charter relating to this issue. Bidders must disclose any such affiliation. Bidders have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the City, or that may reasonably be perceived as having this effect. Failure to disclose any such affiliation/situations will result in disqualification of the bidder and may result in removal from the vendor bid list(s).

1.41 FLORIDA PUBLIC RECORDS ACT:

All material submitted regarding this bid becomes the property of the City. Bids may be reviewed by any person ten (10) days after the public opening. Bidders should take special note of this as it relates to any proprietary information that might be included in their offer.

Any resulting contract may be reviewed by any person after the contract has been executed by the City. The City has the right to use any or all information/material submitted in response to this bid and/or any resulting contract from same. Disqualification of a bidder does not eliminate this right.

1.42 TIED BIDS:

In the event of an identical tied bid or proposal, preference will be given to local vendors. If none of the vendors are local, preference will be given to a vendor with a Drug-Free Workplace Program in accordance with Section 287.087, Florida Statutes.

1.43 UNBALANCED BIDS:

When a unit price bid has variable or estimated quantities, and the bid shows evidence of unbalanced bid pricing, such bid may be rejected.

1.44 LOCAL PREFERENCE:

In accordance with the City of Miami Gardens Code of Ordinances Sec. 16, regarding preference to local business, when evaluation percentages are used to evaluate, and when a non-local business is the highest ranked proposer, and the ranking of a local proposer is within 10% of the ranking, then the local proposer shall proceed to negotiate. When a local business's price is within 10% of the lowest non-local business, then the local business can offer a best and final bid, within five days of bid opening, equal to or lower than the amount of the low bid submitted by the non-local business.

1.45 PREFERENCE MONETARY CONTRIBUTIONS TO LOCAL SCHOOLS:

In accordance with the City of Miami Gardens Code of Ordinance regarding preference to businesses that make monetary contributions to local public schools, when evaluation percentages are used to evaluate, and when a non-contributing business is the highest ranked proposer, and the ranking of a contributing proposer is within 5% of the ranking, then the contributing proposer shall proceed to negotiate. When a contributing business's price is within 5% of the non-contributing business, then the contributing business can offer a best and final bid within five days of bid opening, equal to or lower than the amount of the low bid submitted by the non-contributing business. Lists of local schools

and complete ordinance can be viewed on the City's web page www.miamigardens-fl.gov.

1.46 DRUG FREE WORKPLACE AFFIDAVIT:

Pursuant to Section 893.02(4), Florida Statutes, each bidder shall complete the form on Drug Free Workplace Affidavit and submit same with any bid response.

1.47 MINORITY BUSINESS ENTERPRISES:

The City of Miami Gardens encourages Minority Business Enterprises to participate in this solicitation.

Ordinance 2011-01-243, establishes a program enabling the City to collect relevant data to determine if MBEs that are eligible and qualified to perform services on behalf of the City, are being given the opportunity to provide these services.

The City of Miami Gardens encourages prime contractor, if subcontractors are to be let, when economically feasible, to take affirmative steps to assure that Minority Businesses are used when possible. Affirmative steps shall include:

- Placing qualified minority businesses on solicitation lists;
- Assuring that minority businesses are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by minority, women's businesses;
- Establishing delivery schedules, where the requirement permits, which encourage participation minority businesses;
- Using the services and assistance of the Minority Business Development Agency of the Department of Commerce.

**“ITB# 11-12-031– PRE-QUALIFICATION OF PROFESSIONAL
CONTRACTORS
June 21, 2012**

2.0 SPECIAL CONDITIONS

2.1 PURPOSE:

The purpose of this bid is to establish a term contract, by means of sealed bids, with licensed Electrical Contractors, Plumbing Contractors and Mechanical Contractors, General Contractors on an as-needed, when-needed basis as specified herein, from sources of supply that will give prompt and efficient service.

The City has twenty Park facilities a Police facility as well as a Public Works facility which include lighted fields and courts, parking lots; buildings with central air conditioning and buildings with wall units; irrigation systems and restrooms; four pools which include locker rooms, courts, parking lots and offices; and one maintenance facility. Additional facilities may be added or deleted throughout the contract term.

2.2 TERM OF CONTRACT:

It is requested that the bidder quote fixed prices that will be guaranteed to the City of Miami Gardens for an initial period of two (2) years. The City reserves the right to exercise the option to renew annually (subject to the appropriation of funds), not to exceed a maximum of three (3) years. Annual renewals will be based on the successful bidder agreeing to the same terms and conditions and by filing written notice to the City not less than ninety (90) days prior to renewal date of any adjustment in the contract amount. Contract renewal shall be based on satisfactory performance; mutual acceptance; and determination that the contract is in the best interest of the City. This contract is not an exclusive contract.

No price increase will be accepted during the initial contract period. Renewal terms allow for a request for an increase at the time of renewal based on bidder's cost increase not to exceed 2.5 percent (2.5%). A written notice sent to the City for approval of any increase prior to renewal accompanied by bidder's documentation to substantiate need for price increase. No more than one price increase will be accepted during the renewal period.

The bidder may make application for price adjustment to the renewal contract if the Consumer Price Index; U.S. Bureau of Labor Statistics; All Urban Consumers; U.S. City Average; that occurred between the newest C.P.I. index publication available at time of request increases 2.5% or more during this period of the contract.

If during the contract period, the total C.P.I. decreases 2.5% or more, the bidder is required to extend to the City a price decrease equal in percentage to the percentage of the index.

Contractor is required to have current licenses throughout the term of contract.

2.3 METHOD OF AWARD:

The City will pre-qualify multiple bidders, whose bids conform to the specifications and are most advantageous to the City based on prices submitted. These pre-qualified bidders may be contacted for competition on future projects.

Reponses to future competition will be based on the prices submitted. However, the City will allow pre-qualified bidders to offer discounted pricing on individual projects in an effort to guarantee competition.

Competitive quotations will not be required for jobs less than \$2,500.00, however all jobs will require a written estimate. The City reserves the right to formally bid any job regardless of the estimated cost.

If bidder fails to bid on all items, within a professional service category, bidder shall be deemed non-responsive for that professional service.

Supplemental Contract Agreements may be required on a project by project basis. Sample agreement is attached for your review.

Bidders must have a dedicated phone and fax line, as well as on-line capabilities to receive request for quotations.

Bidder's office must be staffed with a qualified person to answer questions and inquiries.

It shall be the sole prerogative of the City as to the number of bidders who will be initially included under this contract. During the term of the contract, the City reserves the right to add or delete bidders as it deems in its best interests. If the City elects to add bidders, they must meet the same minimum qualifications established for the original competition.

2.4 PAYMENT:

Payment will be made upon final completion of each project. The City will pay the contract price minus any liquidated damages and/or other damages to the successful bidders(s) upon final completion and acceptance.

PURCHASING CARD PROGRAM:

The City has implemented a purchasing card program through Bank of America, using the VISA network. Contractors will receive payment from the purchasing card in the same manner as other Visa purchases. Accordingly, respondents shall presently have the ability to accept VISA or take whatever steps necessary to implement the ability before the start of the agreement term. The City can only accept VISA, however, the purchasing card is not the exclusive method of payment. Please indicate your ability to accept Visa purchasing card on Bid Form.

2.5 ESTIMATES:

Bidder will provide written "Not to Exceed" estimates on all projects. This estimate will include the estimated number of hours, hourly rate, number & type of employees required, design services if needed, permitting, estimated material cost and completion date. It will be the bidder's responsibility to ensure they have all information to prepare accurate estimates.

2.6 RESPONSE TIME:

An eight (8) hour response time is required for non-emergency services. A three (3) hour response time is required for emergency services. Failure to respond to a service call within the specified time will result in the City contacting a secondary contractor to perform the necessary repairs. The contractor will provide the City with a twenty-four (24) hour emergency contact telephone numbers.

2.7 HOURLY RATE:

The hourly rate quoted shall include full compensation for labor, equipment use, travel time and any other cost to the bidder. Hourly labor rates are specified as follows: **Note - Hourly rate will be calculated from bidder's arrival at job site. No hourly rate will be paid for travel time.**

Hourly Labor Rate I – hourly rate for straight time repairs, i.e. from 8:00 a.m. to 5:00 p.m. or on weekends or holidays. (Rate to include labor and travel, parts not included).

Hourly Labor Rate II – hourly rate for overtime repairs, i.e. before 8:00 a.m. or after 5:00 p.m. or on weekends or holidays. (Rate to include labor and travel, parts not included).

2.8 ADDITIONS/DELETIONS OF FACILITIES:

Although this solicitation and resultant contract identifies specific facilities to be serviced, it is hereby agreed and understood that any City Department or agency facility may be added to or deleted from this contract at the option of the City.

2.9 PRICES SHALL BE FIXED AND FIRM FOR TERM OF CONTRACT:

If the bidder is awarded a contract under this solicitation, the prices quoted by the bidder on the Bid Form shall remain fixed and firm during the term of this contract; provided, however, that the Bidder may offer incentive discounts from this fixed price to the City at any time during the contractual term.

2.10 SITE INSPECTION:

Prior to submitting its offer for any project it is required that the vendor visit the site of the proposed work and become familiar with any conditions which may in any manner affect the work to be done or affect the equipment, materials and labor required. Vendors are also advised to examine carefully drawings and specifications and be thoroughly aware regarding any and all conditions and requirements that may in any manner affect the work to be performed under the contract. No additional allowances will be made because of lack of knowledge of these conditions.

2.11 INSURANCE:

Bidders must submit with their bid, proof of insurance meeting or exceeding the following requirements or a letter of intent to provide the following requirements if awarded the contract:

2.11.1 Worker's Compensation Insurance – as required by law and Employer's Liability Insurance - \$1,000,000

The City of Miami Gardens will not accept filed certificates of exemption forms for Worker's Compensation Insurance.

2.11.2 General Liability Insurance - \$1,000,000 Combined Single Limit for bodily injury and property damage

2.11.3 Automobile Liability Insurance for owned vehicles, non-owned vehicles & hired vehicles - \$100,000 Combined Single Limit or Split Limits of 25/50/50

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide.

The successful bidder must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Miami Gardens as additional insured.

2.12 CONTACT PERSON:

For any additional information regarding the specifications and requirements of this proposal, contact: William Garviso, Facsimile: (305) 474-1285, e-mail: wgarviso@miamigardens-fl.gov

2.14 BID CLARIFICATION:

Any questions or clarifications concerning this Proposal shall be submitted in writing by mail or facsimile to the Procurement Department, 1515 NW 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169, FAX: (305) 474-1285, e-mail: wgarviso@miamigardens-fl.gov The proposal title/number shall be referenced on all correspondence. All questions must be received no later than seven (7) calendar days before the due date. All responses to questions/clarifications will be sent to all prospective bidders in the form of an addendum. NO QUESTIONS WILL BE RECEIVED VERBALLY OR AFTER SAID DEADLINE

2.16 MARKET PRICING (NOT USED)

2.17 WARRANTY:

The successful bidder will be required to warranty all work performed. Bidder shall warrant its products and/or service against faulty labor and/or defective workmanship.

The bidder shall promptly correct any deficiency, at no charge to the City, within five (5) calendar days after the bidder is notified of such deficiency in writing. If the bidder fails to honor the warranty and/or fails to correct or replace the defective work or items within the period specified, the City may, at its discretion, procure the products or services from another vendor and charge the bidder for any additional costs that are incurred by the City for this work or items.

2.18 REFERENCES/CONTRACT EXPERIENCE:

Each bid submittal must be accompanied by a list of five (5) references, of similar services, and a list of five (5) similar contract experiences, which shall include contact person, telephone number email and facsimile number. It is the responsibility of the bidder to ascertain that the contact person will be responsive.

2.19 COMPLETE PROJECT REQUIRED:

These specifications describe the various items or classes of work required, enumerating or defining the extent of same necessary, but failure to list any items or classes under scope of the several sections shall not relieve the contractor from furnishing, installing or performing such work where required by any part of these specifications, or necessary to the satisfactory completion of the project.

2.20 BID SUBMITTAL:

All bids submitted shall include the completed Bid Form and all required product information and any other items as indicated on the Bid Form. Bids will be considered "Non-Responsive" if the required information is not submitted by the date and time specified.

Before submitting bid, each bidder shall make all investigations and examinations necessary to ascertain if any addendums were issued by the Procurement Department.

2.21 BIDDER QUALIFICATIONS:

In order for bid submittals to be considered, **bidders must submit with their bid**, evidence that they are qualified to satisfactorily perform the specified work. Evidence shall include a certified Electrical, Plumbing, Mechanical Contract licenses issued by the State of Florida and/or Miami-Dade County, Florida. All information necessary to certify that the bidder: maintains a permanent place of business; has technical knowledge and practical experience in the type of equipment included in this scope of work; has available the organization and qualified manpower to the work and has adequate financial status to meet the financial obligations incident to the work.

2.22 LATE PROPOSALS:

The City of Miami Gardens cannot accept bid submittals received after opening time and encourages early submittal.

2.23 EXCEPTIONS TO SPECIFICATIONS:

Exceptions to the specifications shall be listed on the Bid Form and shall reference the section. Any exceptions to the General or Special Conditions shall be cause for the proposal to be considered non-responsive.

2.24 COMPLETE INFORMATION REQUIRED ON BID FORM:

All bids must be submitted on the attached Bid Form and all blanks filled in. To be considered a valid proposal, the ORIGINAL AND ONE COPY of the Invitation to Bid and Bid Form pages must be returned, properly completed, in a sealed envelope as outlined in the first paragraph of General Conditions.

2.25 SUB-CONTRACTORS;

No Sub-contracting is allowed.

2.26 SOUTHEAST FLORIDA GOVERNMENTAL CO-OPERATIVE PURCHASING GROUP:

The bidder understands and agrees if any of the governmental entities or municipalities who are members of the Southeast Florida Co-Op Purchasing Group may participate in the resulting contract with the same terms and conditions through the renewal periods.

Each governmental entity will be responsible for awarding the contract, issuing its own purchase orders, and for order placement. Each entity will require separate billings, be responsible for payment to the successful bidder and issue its own tax exemption certificate as required by the bidder.

2.27 HIRING OF CITY RESIDENTS:

The City of Miami Gardens is seeking to use this service as a means to provide employment opportunities to city residents that are currently unemployed. Therefore, the City is asking that each contractor submit a list of the number of staffing needed to fulfill this contract along with their bid.

While this is not a mandatory requirement, it should be noted that contractors that submit staffing needs and a commitment to hiring unemployed city residents will receive preferred rating of their bid.

2.28 BID BONDS:

The City may request performance and /or payment bonds on a project by project basis, in its best interest.

PERFORMANCE BOND:

When applicable, The vendor to whom a contingent award is made shall duly execute and deliver to the City a Performance and Payment Bond in an amount that represents 100% of the vendors offer price, to be in the form of a Cashier's Check, made payable to the City of Miami Gardens; a bond written by a surety company authorized to do business in the State of Florida and shall comply with State Statute 287.0935; or an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located Miami-Dade County, be in the amount of the contract and should clearly and expressly state that it cannot be revoked until express written approval has been given by the City of Miami Gardens. The City, to draw on same, would merely have to give written notice to the bank with a copy to the successful proposer. The successful vendor shall submit the stipulated performance and or payment bond within ten (10) calendar days following notice of award. Should the vendor fail to deliver the Performance Bond within the specified time, the vendor shall surrender its offer guaranty/ bid bond.

2.29 LIQUIDATED DAMAGES:

The application of liquidated damages will be determined on a project by project basis, in the City's best interest, and will be outlined on any applicable request for quote.

Failure to perform on a timely basis shall be cause to enforce liquidated damages, whereby the Bidder shall be subject to charges for liquidated damages for failure to perform on a project, as compensation due the City for loss of enjoyment or real property and land use. The City shall have the right to deduct the said liquidated damages from any amount due or that may become due to the bidder under this Bid or to invoice the bidder for such damages if the costs incurred exceed the amount due to the bidder. The Contractor shall also be responsible for all re-procurement costs, if it fails to commence or complete a project, to hire another contractor to perform the required job.

PRE-QUALIFICATION OF PROFESSIONAL CONTRACTORS
ITB#11-12-031
June 21, 2012

2 PERFORMANCE SPECIFICATIONS:

2.2 PURPOSE:

The purpose of this proposal is to establish an annual contract, with licensed contractors to furnish all materials, labor, supervision, and transportation, permits, licenses, equipment and any incidentals necessary for Electrical Contractors, Plumbing Contractors and Mechanical, General Contractors, HVAC Contractors services on an as-needed, when-needed basis per the specifications herein for the City of Miami Gardens.

3.2 GENERAL LOCATION OF WORK:

3.2.1 If property (public or private) is damaged while contractor is performing work specified or is removed for the convenience of the work, it shall be repaired or replaced at the expense of the contractor in a manner acceptable to the City of Miami Gardens prior to the final acceptance of the work. Such property shall include but not be limited to: structures, parkways, sidewalks, curbs and gutters, driveways, walls, fences, water features, footings, underground utilities, sod, shrubs, and trees.

3.2.2 Contractor shall notify the requesting department in writing of the site having pre-existing damage to structures, parkways, sidewalks, curbs, roadways, swales, adjacent improvements, etc., before beginning work. Failure to do so shall obligate the contractor to make repairs per section 3.2.1.

3.3 PROTECTION:

3.3.1 The contractor shall be solely responsible for pedestrian and vehicular safety and control within the work site and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection, and warning to persons and vehicular traffic within the area. All minimum safety standards required by Municipal, County, State and Federal ordinances and laws shall be strictly met by the contractor.

3.3.2 Contractor shall make all necessary arrangements with the utility companies concerned for protection of their lines during the work period. Contractor shall exercise extreme caution to eliminate any possibility of damage to any utilities. Prior to commencing of any work at each site the contractor shall locate and mark any existing gas lines, water lines, sprinkler heads, fire hydrants, sewers, septic tanks, drain fields, wells, drainage structures, telephone and power cables, buried markers and other utilities that may be endangered by or be a hazard to the misc. repairs.

3.3.3 Restore any damage to property to its original condition, at contractor's expense, as acceptable to the City of Miami Gardens.

3.3.4 Contractor shall protect all existing and newly installed work, materials, equipment, improvements performed under this contract.

3.4 EMPLOYEES:

3.4.1 Contractor shall employ (depending on discipline bidding on) at least one (1) Licensed Master Electrician; Licensed Master Plumber; Licensed Master Mechanical Contractor; and may employ at least one (1) Journeyman in each discipline; and at least one (1) helper.

- 3.4.2 Contractor shall be responsible for the appearance of all working personnel assigned to the project (clean and appropriately dressed at all times). Personnel must be able to supply proper identification at all times.
 - 3.4.3 All employees of the contractor shall be considered to be at all times the sole employees of the contractor, under the contractor's sole direction, and not an employee or agent of the City of Miami Gardens. The contractor shall supply competent and physically capable employees and the City may require the contractor to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on work site is not in the best interest of the City. City shall not have any duty to implement or enforce such requirements.
 - 3.4.4 Contractor shall assign an "On Duty" supervisor who speaks and reads English.
- 3.5 STORAGE OF MATERIALS:**
- 3.5.2 The contractor must provide for own storage of material and equipment, if needed. No on-site storage is permitted at the work area or other public areas.
- 3.6 REMOVAL OF DEBRIS AND CLEANING UP:**
- 3.6.1 Prior to acceptance of the work by the City, the contractor shall remove from site all trash and debris and shall dispose of such materials at approved dump sites.
- 3.7 PERMITS:**
- 3.7.1 ***Contractor shall obtain and pay for all required permits when applicable. The fee for City permits will not be waived and applicable Dade County surcharges shall apply.***
 - 3.7.2 All work not stated herein shall be in compliance with the South Florida Building Code and all other national, state, and local codes and regulations. All permits to be posted on job site.
 - 3.7.3 There may be instances when it is necessary to provide and perform professional Design Services in conjunction with the work that requires a Building or Repair Permit. Several trade types require permits and at times the permitted work requires detailed plans prepared by a Professional Architect or Engineer.
- 3.8 GENERAL REQUIREMENTS:**
- 3.8.1 Contractor must have immediate access to all equipment, tools and personnel necessary to perform all functions of the repairs, maintenance and installations the job may require. This includes but is not limited to bucket and aerial trucks, and interior lifts, backhoe, jack hammer w/ compressor, trencher, demo saw and Freon recovery unit to perform required work.
 - 3.8.2 All materials provided and work performed shall fully conform to all applicable local, state, and Federal regulations and codes. All materials incorporated into the work shall be new, unless otherwise approved by authorized City personnel. Contractor shall follow the manufacturer's operating and maintenance instructions for all work performed.
 - 3.8.3 Contractor shall make every effort to keep any interrupted normal operations to an absolute minimum and shall be coordinated with authorized City personnel.

3.9 DESCRIPTION OF WORK:

- 3.9.1 The City anticipates that the various **Electrical** work will include, but not limited to, repairs to recreation field lighting, repairs to security and parking lot lighting, adding additional circuits, upgrade and/or replacing panels and sub-panels, adding lines and grounds, installation of conduit and general wiring of fixtures and equipment.
- 3.9.2 The City anticipates that the various **Plumbing** work will include, but not limited to, installation, repairs or modifications on a variety of bathrooms and fixtures including sinks, toilets and hot water heaters. Installation, repairs or modifications to irrigation systems. Pool lines and pool pumps.
- 3.9.3 The City anticipates that the various **Mechanical, HVAC** work will include, but not limited to, repairs to central HVAC units and wall units, Freon recharge, etc. The City has several makes of A/C units including but not limited to: Rheem, Fredrick window units, Rudd, etc.
- 3.9.4 The City anticipates that the various **General Contractor** work will include, but not be limited to, repairs and/or installation of sheetrock, stucco, carpentry, and painting to City facilities.

3.10 PORTABLE TOILETS:

Contractor shall be responsible for portable toilets, etc.

The Contractor shall not permit any workers to use any existing facilities at the Work site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by City. The Contractor, Sub-Contractors of any tier, suppliers and employees shall comply with instructions or regulations of the City's Representative governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of City's operations. Any request for Work, a suspension of Work or any other request or directive received by the Contractor from occupants of existing buildings shall be referred to the City's Representative for determination.

3.11 WATER USAGE:

All City potable water used during the project shall be metered through a hydrant meter or meters/connections obtained from the City of North Miami Beach or Miami-Dade County Water and Sewer Department at Contractor's expense.



City of Miami Gardens
Facilities

Park's name	Park's address
Andover	NW 209 Street & 1 st Avenue
Brentwood	19405 & NW 32 nd Avenue, 33056
Buccaneer	3100 NW 207 th Street, 33056
Bunche	15600 Bunche Park Drive W, 33054
Carol	4250 NW 178 th Street, 33055
Cloverleaf	303 NW 191 st Street, 33169
Lake Lucerne	20701 NW 22 nd Avenue, 33056
Miami Carol City	3201 NW 185 th Street, 33056

Myrtle Grove	3030 NW 179 th Street, 33056
Norwood	19401 NW 14 th Avenue, 33169
Risco	19000 NW 37 th Avenue, 33056
Rolling Oaks	18701 NW 17 th Avenue, 33169
Scott	17710 NW 15 th Court, 33169
Vista Verde	21001 NW 39 th Avenue, 33056
Betty T Ferguson Community Complex	3000 NW 19 Street, 33056

Pool's name	Pool's address
Brentwood	18800 NW 28 th Place, 33056
Bunche	15600 Bunche Park Drive W, 33054
Myrtle Grove	3030 NW 179 th Street, 33056
Norwood	19401 NW 14 th Avenue, 33169

Maintenance Facility	3000 NW 179 th Street, 33169
-----------------------------	---

Police Department Headquarters	1020 NW 163 Drive, 33169
--------------------------------	--------------------------

Public Works Facility	1050 NW 163 Drive, 33169
-----------------------	--------------------------

City Hall	1515 NW 167 Street, 33169
-----------	---------------------------

3.12 BID CHECK LIST

- YES___ NO___ 1. Copy of appropriate Permits/License/Certifications**
- YES___ NO___ 2. Proof of ability to obtain insurance**
- YES___ NO___ 3. Bid Submittal Price**
- YES___ NO___ 4. Bid signed by authorized representative**
- YES___ NO___ 5. Contractor Representative Contact information**
- YES___ NO___ 6. References with Phone & Fax Numbers, E-mail Address**
- YES___ NO___ 7. List of Similar Contracts**
- YES___ NO___ 8. Bid prepared in duplicate**
- YES___ NO___ 9. City Business Tax Receipt (if applicable)**
- YES___ NO___ 10. MBE Certification**
- YES___ NO___ 11. Hiring Local Residents Affidavit**
- YES___ NO___ 12. Accept VISA Credit Card for payment**
- YES___ NO___ 13. Equipment List**

The blank spaces in the Bid submittal form must be filled in, and no change shall be made either in the phraseology of or in the items mentioned in the Bid form. A contractor must bid on complete sections of this bid. Sections will not be subdivided for award. Any bid containing a “NO BID” in any portion of a section will not be considered for that section award.

BID SUBMITTAL

Submit Proposal to:

**CITY OF MIAMI GARDENS
PROCUREMENT DEPARTMENT
1515 N W 167th Street
Mail to: Bldg. 5 Suite 200
Deliver to: Bldg. 7 suite 440
Miami Gardens, Florida 33169**

**BID #11-12-031
Title: Pre-Qualification of
Professional Contractors**

Date: June 21, 2012

(Contractor)

agrees to supply labor, equipment, supplies required for Contractor Services as defined in this Bid in accordance with the requirements of the Specifications, Drawing and Bid Documents.

Gentlemen:

The undersigned Bidder has carefully examined the Specification requirements, Bid/Contract Documents and is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done.

The undersigned agrees to provide the services called for by the Specifications, and Bid Documents, in the manner prescribed therein and to the standards of quality and performance established by the City for the unit Bid price stated in the spaces herein provided.

The undersigned agrees the right of the City to hold all Bids and Bid guarantees for a period not to exceed ninety (90) days after the date of Bid opening stated in the Invitation to Bid.

The undersigned accepts the invoicing and payment policies.

Upon award of this Bid the City and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Bid Documents.

The Contractor, by signing the Bid Submittal pages, acknowledges and agrees to abide by all the terms, conditions and specifications contained in this Bid Document. If this bid is accepted, the undersigned bidder agrees to enter into and execute the contract and accept the bid rates as full compensation for professional services under this contract.

All costs for materials, equipment, labor, maintenance, etc. required to provide professional services shall be included in this price.

SERVICE REQUIREMENTS OF THE CONTRACT CONTRACTOR:

Contractor shall insure adequate personnel and equipment to provide specified levels of service. YES NO

Contractor shall work with City of Miami Gardens personnel to insure satisfactory service. YES NO

Authorized Signature(Manual)

Authorized Signature (Printed)

Date

Corporate Seal

Submit Proposal to:
CITY OF MIAMI GARDENS
PROCUREMENT DEPARTMENT
 1515 N W 167th Street
Mail to: Bldg. 5 Suite 200
Deliver to: Bldg. 7 suite 440
 Miami Gardens, Florida 33169

BID #11-12-031
Title: Professional Services

Date: June 21, 2012

To be opened and publicly read, Thursday, June 21, 2012 at 2:00 P.M. in Council Chambers.

Contractor Name: _____ **Terms: Proposer see Paragraph 1.2**

Contractor Mailing Address: _____ **F.E.I.D. No:** _____

City, State, Zip Code: _____ **Cashier's Check/Proposal Bond is attached, when required, in the amount of \$ _____ N/A _____**

Telephone :() _____ **Fax:()** _____ **Toll Free: (800)** _____

Proposal Contact Person (Please print clearly):

=====

Supplier Qualification Statement

Proposer declares that there has been an examination of the specifications of the work and is informed fully in regard to all conditions pertaining to the scope of services to be provided in accordance with the proposal documents.

Item #	DESCRIPTION - ELECTRICAL	Price per Regular Hour	Price per Overtime Hour
#1	Licensed Master Electrician	\$	\$
#2	Licensed Journeyman Electrician	\$	\$
#3	Electrician Helper/Apprentice	\$	\$
#4	Aerial (Bucket Truck)60' w/operator	\$	\$
#5	Interior Mechanical Lift	\$	\$
#6	Back hoe w/operator	\$	\$
#7	Jack Hammer	\$	\$
#8	Trencher w/operator	\$	\$
#9	Line Truck w/operator	\$	\$
#10	Percent over Contractor's cost for parts & materials		%

Item #	DESCRIPTION – MECHANICAL- HVAC	Price per Regular Hour	Price per Overtime Hour
#1	Licensed Master Mechanical HVAC	\$	\$
#2	Licensed Journeyman Mechanical HVAC	\$	\$
#3	Mechanical HVAC Helper/Apprentice	\$	\$
#4	Aerial (Bucket Truck)35' w/operator	\$	\$
#5	Freon Recovery Unit	\$	\$
# 6	Percent over Contractor's cost for parts & materials	%	

Item #	DESCRIPTION – PLUMBING	Price per Regular Hour	Price per Overtime Hour
#1	Licensed Master Plumber	\$	\$
#2	Licensed Journeyman Plumber	\$	\$
#3	Plumber Helper/Apprentice	\$	\$
#4	Back hoe w/operator	\$	\$
#5	Interior Mechanical Lift	\$	\$
#6	Jack Hammer	\$	\$
#7	Trencher w/operator	\$	\$
#8	Percent over Contractor's cost for parts & materials	%	

Item #	DESCRIPTION – GENERAL	Price per Regular Hour	Price per Overtime Hour
#1	Carpenter	\$	\$
#2	Painter	\$	\$
#3	Drywall Installer/ Repair (Finisher)	\$	\$
#4	Percent over Contractor's cost for parts & materials	%	

Contractors cost for acquiring bonding when applicable _____%

Will accept VISA purchase card as payment _____ Yes _____ No

Dated this _____ day of _____, _____
(Month) (Year)

SUBMITTED BY:

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Signature: _____

The Contractor, certifies that the Bid Submittal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Bid for the same materials, supplies or equipment, or services and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Bid Submittal and certify that I am authorized to sign this Bid for the bidder and that the bidder is in compliance with all requirements of the Bid, including but not limited to, certification requirements. I certify that I have read and agree to all General Conditions:

Authorized Signature (Manual)

Authorized Signature (Printed)

_____ Date

_____ Corporate Seal

Bidder acknowledges the receipt of Addenda No.'s: (please list the date received in the square below)

1	2	3	4	5	6	7	8	9	10

CONTRACTOR SERVICE REPRESENTATIVE INFORMATION

The following individuals are the designated contacts assigned to the City:

REGULAR WORK HOURS:

Name: _____

Address: _____

Telephone: (____) _____

AFTER WORK HOURS, WEEKEND & HOLIDAYS:

Name: _____

Address: _____

Telephone: (____) _____

INDIVIDUAL, FIRM OR PARTNERSHIP

By: _____ / _____
(Signature) (Print name)

Address: _____

Telephone: (____) _____ Fax: (____) _____

E-Mail: _____
Social Security Number (OR) Taxpayer Identification Number (TIN):

CORPORATION

By: _____ / _____
(Signature) (Print name)

Address: _____

Telephone: (____) _____ **Fax:** (____) _____

E-Mail: _____

Taxpayer Identification Number (TIN/EIN): _____

State Under Which Corporation Was Chartered: _____

Corporate President: _____
(Print Name)

Corporate Secretary: _____
(Print Name)

Corporate Treasurer: _____
(Print Name)

CORPORATE SEAL

Attest By: _____
Secretary

DRUG FREE WORKPLACE

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service from businesses that are not located within the City of Miami Gardens are received by the City for the procurement of commodities or contractual services, a Bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- 1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.**
- 2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.**
- 3. Give each employee engaged in providing the commodities or contractual services that are under Bid a copy of the statement specified in subsection (1).**
- 4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.**
- 5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.**
- 6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.**

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Contractor's Signature

QUESTIONNAIRE

Proposer's Name: _____

Principal Office Address: _____

Official Representative: _____

Individual

Partnership (Circle One)

Corporation

If a Corporation, answer this:

When Incorporated:

In what State: _____

If Foreign Corporation:

Date of Registration with

Florida Secretary of State: _____

Name of Resident Agent: _____

Address of Resident Agent: _____

President's Name: _____

Vice President's Name: _____

Treasurer's Name: _____

Members of Board of Directors:

If a Partnership:

Date of Organization: _____

General or Limited Partnership*: _____

Name and Address of Each Partner:

Name

Address

1. _____

2. _____

3. _____

*Designate general partners in Limited Partnership

1. Number of years of relevant experience in operating similar business: _____

2. Have any similar agreements held by proposer for a similar project to the proposed project ever been canceled?

Yes ()

No ()

If yes, give details on a separate sheet.

3. Has the proposer or any principals of the applicant organization failed to qualify as a responsible proposer, refused to enter into a contract after an award has been made, failed to complete a contract during the past five (5) years, or been declared to be in default in any contract in the last five (5) years?

If yes, please explain:

4. Has the proposer or any of its principals ever been declared bankrupt or reorganized under Chapter 11 or put into receivership?

If yes, give date, court jurisdiction, action taken, and any other explanation deemed necessary.

5. Person or persons interested in the proposal and Questionnaire Form _____ (have) _____ (have not) been convicted by a Federal, State, County or Municipal Court of any violation of law, other than traffic violations. To include stockholders over ten percent (10%). (Strike out inappropriate words).

Explain any convictions on a separate sheet.

6. Lawsuits (any) pending or completed involving the corporation, partnership or individuals with more than ten percent (10%) interest:
 - A. List all pending lawsuits:
 - B. List all completed lawsuits:
 - C. List all judgments from lawsuits in the last five years:
 - D. List any criminal violations and/or convictions of the proposer and/or any of its principals:
7. Conflicts of Interest. The following relationships are the only potential, actual or perceived conflicts of interest in connection with this proposal: (If none, so state).
8. List the work you will perform with your own forces on this project: List any Sub-Contractors for this project:

The proposer understands that information contained in this Questionnaire will be relied upon by the City of Miami Gardens in awarding the proposed Agreement and such information is warranted by the proposer to be true. The undersigned proposer agrees to furnish such additional information, prior to acceptance of any proposal relating to the qualifications of the proposer, as may be required by the City Manager.

The proposer further understands that the information contained in this questionnaire may be confirmed through a background investigation conducted by the Miami Gardens Police Department. By submitting this questionnaire, the proposer agrees to cooperate with this investigation, including but not necessarily limited to fingerprinting and providing information for credit check.

I certify that the information and responses provided on this Questionnaire are true, accurate and complete. The Owner of the Project or its representatives may contact any entity or reference listed in this Questionnaire. Each entity or reference may make any information concerning the Contractor available to the Owner.

Dated _____, 20__

REFERENCES

As specified in the Special Conditions of this Bid Document, Bidders are to present the details of a minimum of five (5) references of similar work. (Additional references may be submitted on a separate sheet)

COMPANY NAME, ADDRESS, CITY, STATE, ZIP PHONE & FAX NUMBER	
Company Name:	
Address:	
Contact Name:	
Phone:	Fax:
E-mail:	
Company Name:	
Address:	
Contact Name:	
Phone:	Fax:
E-mail:	
Company Name:	
Address:	
Contact Name:	
Phone:	Fax:
E-mail:	
Company Name:	
Address:	
Contact Name:	
Phone:	Fax:
E-mail:	

**LIST OF EQUIPMENT AVAILABLE
FOR THIS CONTRACT**

List all equipment which will be dedicated to Demolition Services listed in this bid document. (Additional equipment may be submitted on a separate sheet in this format)

EQUIPMENT	NUMBER AVAILABLE	EMPLOYEES & EXPERIENCE ASSIGNED TO OPERATE THIS EQUIPMENT
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

SERVICE CONTRACTS EXPERIENCE

As specified in the Special Conditions of this Bid Document, Bidders are to present the details of service contract experience. It is mandatory that all service contracts for governmental entities be included (Additional contracts may be submitted on a separate sheet in this format)

CONTRACTING COMPANY NAME, ADDRESS, CITY, STATE, ZIP PHONE & FAX NUMBER	DATE OF CONTRACT, LOCATION AND BRIEF DESCRIPTION OF WORK PERFORMED
1. Company Name:	1.
Address:	
Contact Name:	
Phone: Fax: Email	
2. Company Name:	2.
Address:	
Contact Name:	
Phone: Fax: Email	
3. Company Name:	3.
Address:	
Contact Name:	
Phone: Fax: Email	
4. Company Name:	4.
Address:	
Contact Name:	
Phone: Fax: Email	

City of Miami Gardens
Procurement Department

The City of Miami Gardens is seeking to use this project as a means to provide employment opportunities to city residents that are currently unemployed.

BIDDERS AFFIDAVIT

NOTE: This Affidavit must be properly executed by the bidder.

Bid No. _____ Date: _____

Bid Title

Company _____ Name

Authorized Representative _____

Certifies they will in good faith attempt to hire a total of _____ unemployed residents of the City of Miami Gardens to complete the project as specified herein.

Good faith efforts include but are not limited to the following:

- Advertisement in general circulation media

- Contact local agencies specializing in job placements, e.g. Workforce One, South Florida Workforce, Job Corp etc.

Job Corp Contact Information:

Anthony Robinson, Program Director

Miami Job Corps

Robinson.Anthony@jobcorp.org

(305) 620-3104

City of Miami Gardens
Procurement Department

Ordinance 2011-01-243, establishes a program enabling the City to collect relevant data to determine if MBEs that are eligible and qualified to perform services on behalf of the City, are being given the opportunity to provide these services. **MBE Certification must be submitted with this form(s)**

A Good Faith Effort

A Good Faith Effort shall be shown on each project or purchase regardless of the dollar amount. Good Faith Effort to secure MBE participation shall be documented and shall include, but not necessarily be limited to, the following actions:

1. Advertisement in general circulation media, trade association publications and minority business enterprise media to provide notice of subcontracting opportunities;
2. Provide notice to a reasonable number of specific MBEs that their interest in the contract is being solicited. Notice shall be given in sufficient time to allow the MBEs to participate effectively;
3. Providing interested MBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner;
4. Negotiating in good faith with qualified MBEs for specific sub-bids, including reasons for rejection of any such sub-bids offered.

Contractor Name: _____ Address: _____

Federal ID _____ Phone _____ Email _____

Minority Business Certified? YES NO

MBE Certification Attached? YES NO

Contractor Official a Minority YES NO

Black _____ Hispanic _____ Asian _____ Native American _____

() No Sub-Contracting Opportunities existed for this contract

() No Firms were contacted because:

This schedule must be submitted with the bid or proposal

Company Name, Address, Phone & Email	Type of Ownership BM – African Am HM – Hispanic AM – Asian NM – Native Am.	Trade or Services to be performed	Contact Method

Collusion

The City will not accept collusion among the prime bidders, an MBE or any other individual business or joint venture, or evidence of undue influence on an MBE to alter the committed quantities or its quotation.

Certification: It is hereby certified that the following information is true and accurate account of contacts and responses for sub-contracting opportunities on this contract

Signed _____ Name/Title _____

Date _____

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification (required): <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number	Employer identification number						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; height: 20px;"> </td> <td style="width: 33%; height: 20px;"> </td> <td style="width: 33%; height: 20px;"> </td> </tr> </table>				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; height: 20px;"> </td> <td style="width: 33%; height: 20px;"> </td> <td style="width: 33%; height: 20px;"> </td> </tr> </table>			

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

PROJECT: Pre-Qualification of Professional Services

OWNER: CITY OF MIAMI GARDENS

CONSULTANT:

INSTRUCTIONS

- A. All questions are to be answered in full, without exception. If copies of other documents will answer the question completely, they may be attached and clearly labeled. If additional space is needed, additional pages may be attached and clearly labeled.
- B. The City of Miami Gardens shall be entitled to contact each and every person/company listed in response to this questionnaire. The proposer, by completing this questionnaire, expressly agrees that any information concerning the proposer in possession of said entities may be made available to the City.
- C. Only complete and accurate information shall be provided by the proposer. The proposer hereby warrants that, to the best of its knowledge and belief, the responses contained herein are true, accurate, and complete. The proposer also acknowledges that the City is relying on the truth and accuracy of the responses contained herein. If it is later discovered that any material information given in response to a questions was provided by the proposer, knowing it was false, it shall constitute grounds for immediate disqualification, termination, or rescission by the City of any subsequent agreement between the City and the proposer.
- D. If there are any questions concerning the completion of this form, the proposer is encouraged to contact Pam Thompson, CPPO, Procurement Manager, facsimile: (305) 474-1285.

“SAMPLE CONTRACT AGREEMENT DOCUMENTS”

PERFORMANCE BOND

(This bond meets and exceeds the requirements of Florida Statutes Section 255.05)

STATE OF FLORIDA)

SS

COUNTY OF)

KNOW ALL MEN BY THESE PRESENTS that we, _____
_____ as Principal, hereinafter called Contractor, and
_____ as Surety, are firmly bound unto the City of Miami
Gardens, Florida, as Obligee, hereinafter called the City, in the Penal sum of _____
Dollars (\$_____), for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, Contractor, on the ____ day of _____, 20____, entered into a
certain contract with the City, hereto attached, for **ITB #11-12-031** Entitled, "**Professional
Services** " construction project located at _____, Miami Gardens, FL which Contract
is made a part hereof by reference thereto.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that,
if the Contractor shall well and truly perform and fulfill all the undertakings, covenants, terms,
conditions and agreements of said Contract, and all duly authorized modifications of said
Contract that may hereafter be made, notice of which modifications to the Surety being hereby
waived, then this obligation shall be void; otherwise to remain in full force and effect.

WHENEVER the Principal shall be and is declared by the City to be in default under the
Contract, or whenever the Contract has been terminated by default of the Contractor, the City
having performed the City's obligations thereunder, the Surety shall:

1. Complete the Contract in accordance with its terms and conditions, pay the City
to complete the contract, or at the City's sole option, shall:

2. Obtain a Bid/Proposal or Bids/Proposals for submission to the City for
completing the Contract in accordance with its terms and conditions, and upon
determination by the City and the Surety of the responsible Bidder, arrange for a
Contract between such Bidder and the 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 the City to the Contractor under the Contract and any amendments thereto, less the amount properly paid by the City to the Contractor.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the City named herein or the successors or assignees thereof.

The Surety shall and does hereby agree to indemnify the City and hold it harmless of, from and against any and all liability, loss, cost, damage or expense, including reasonable attorneys fees, engineering and architectural fees or other professional services which the City may incur or which may accrue or be imposed upon it by reason of any negligence, default, act and/or omission on the part of the Contractor, any Subcontractor and Contractor's or Subcontractors agents, servants and/or employees, in, about or on account of the Construction of the work and performance of said Contract by the Contractor.

This Bond shall remain in full force and effect for such period or periods of time after the date of acceptance of the project by the City as are provided for in the Contract Documents, and the Contractor hereby guarantees to repair or replace for the said periods all work performed and materials and equipment furnished, which were not performed or furnished according to the terms of the Contract Documents. If no specific periods of warranty are stated in the Contract Documents for any particular item of work, material or equipment, the Contractor hereby guarantees the same for a minimum period of one (1) year from the date of final acceptance by the City of the entire project.

Any suit on this bond must be instituted within such period or periods as may be provided by law.

IN WITNESS WHEREOF, the above bounded parties have caused this Bond to be executed by their appropriate officials of the _____ day of _____, 20_____.

WITNESS:

PRINCIPAL:

(If sole Proprietor or partnership)

(Firm Name)

BY _____

Title: (Sole Proprietor or Partner)

PRINCIPAL (If Corporation)

(Corporate Name)

BY _____
(President)

Attest: _____
(Secretary)

(CORPORATE SEAL)

**COUNTERSIGNED BY
RESIDENT FLORIDA
AGENT OF SURETY:**

SURETY:

(Copy of Agent's current
License as issued by State
of Florida Insurance
Commissioner

By: _____
Attorney-in-fact
(Power of Attorney must be attached)

CERTIFICATES AS TO CORPORATE PRINCIPAL

Successful Bidder Must Submit when Contract is Signed

LABOR AND MATERIAL PAYMENT BOND

(SECTION 255.05, FLA. STATUTE)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, (CONTRACTOR), whose primary office is located at _____, and whose phone number is _____, and _____, as SURETY, are bound to the City of Miami Gardens, Florida, as Obligee, (CITY), in the amount of _____ Dollars (\$ _____) for the payment of which CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has entered into a Contract, dated the _____ day of _____, 20____, with the CITY in response to ITB/Purchase Order No.11-12-031, which is by reference made a part of this Bond and which shall be performed at _____, Miami Gardens, FL legally described as: _____

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

- (1) Performs the Contract between the CONTRACTOR and the CITY, at the times and in the manner prescribed in the Contract; and
- (2) Promptly makes payments to all claimants, as defined in Section 255.05 (1), Florida Statutes, supplying CONTRACTOR with labor, materials, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the Contract: and
- (3) Pays CITY all losses, damages, expenses, costs and attorney's fees at trial and appellate proceedings, that CITY sustains because of default by CONTRACTOR under the Contract: and
- (4) 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.

The SURETY waives notice of and agrees that any changes in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or any changes does not affect the SURETY's obligation under this Bond.

Whenever CONTRACTOR shall be, and is declared by CITY to be, in default under the Contract, and the CITY having performed CITY's obligations under the Contract, the SURETY shall promptly remedy the default or promptly:

- (1) Complete the CONTRACT in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, or, if the CITY elects, upon determination by the CITY 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, including other costs and damages for which the SURETY may be liable. 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 less the amount properly paid the CITY to CONTRACTOR.
- (3) The Surety shall defend, indemnify and hold harmless the City from and against any and all liability, loss, cost, damage or expense, including reasonable attorneys fees, at trial and appellate levels, engineering and architectural fees or other professional services which the CITY may incur or which may accrue or be imposed upon the City by reason of any negligence, default, act and/or omission on the part of the CONTRACTOR, any Subcontractor or their agents, servants or employees, in, about, arising out of or on account of work and performance of the Contract by the CONTRACTOR.
- (4) This Bond shall remain in full force and effect until after the date of the City's acceptance of the work as is provided for in the Contract Documents. The CONTRACTOR guarantees to repair or replace all work performed and materials and equipment furnished, which are not performed or furnished according to the terms of the Contract. If no specific periods of warranty are stated in the Contract for any particular item of work, material or equipment, the CONTRACTOR warrants and guarantees the work, material or equipment for a minimum period of one (1) year from the date of the City's final acceptance of the Work.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the City.

Any action under this Bond must be instituted in accordance with Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, the above bounded parties have caused this Bond to be executed by their appropriate officials of the _____ day of _____, 20_____.

WITNESS:

PRINCIPAL:

(If sole Proprietor or partnership)

(Firm Name)

BY _____

Title: (Sole Proprietor or Partner)

PRINCIPAL (If Corporation)

(Corporate Name)

BY _____

(President)

Attest: _____

(Secretary)

(CORPORATE SEAL)

**COUNTERSIGNED BY
RESIDENT FLORIDA
AGENT OF SURETY:**

(Copy of Agent's current
License as issued by State
of Florida Insurance
Commissioner

SURETY:

By: _____

Attorney-in-fact

(Power of Attorney must be attached)

CERTIFICATES AS TO CORPORATE PRINCIPAL

ASSIGNMENT OF ANTITRUST CLAIMS

Contractor Subcontractor Supplier (strike inapplicable words) and City recognize that in actual economic practice, overcharges resulting from price-fixing violations of the antitrust laws are in fact usually borne by the City. Therefore, Contractor Subcontractor Supplier, for an in consideration of payment in the amount of (bid amount)\$ _____ for Contract Number **ITB#11-12-031** and other good and valuable considerations, receipt of which is hereby acknowledged, hereby assigns, conveys, sells and transfers to the City of Miami Gardens, Florida, all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or any of the several states for price-fixing of services, goods or materials furnished in connection with performance of this contract.

Contractor Subcontractor Supplier and City also recognize that the public interest in vigorous enforcement of the antitrust laws is furthered by private treble damage actions. Therefore, City hereby consents to reassign to Contractor Subcontractor Supplier all of part of the antitrust claims assigned herein, at the sole discretion of City, when it appears that the best interests of the State of Florida and its citizens would be served thereby.

As used herein, the words "price-fixing" include, but are not limited to, price-fixing, resale price maintenance, collusive bidding, bid rigging, complementary bidding, combinations or conspiracies to restrict output or supply, and all other forms of agreements or understandings which have the purpose or effect of tampering with the price structure of services or articles of commerce.

Signed _____
Duly Authorized Agent For:

Title of Duly Authorized Agent
Whose signature appears above:

Dated this _____ day of _____,

Witness: _____ Date _____

SAMPLE
CITY OF MIAMI GARDENS
CONSTRUCTION CONTRACT

THIS CONTRACT made as of this _____ day of _____, 20____, by and between _____, 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
- (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
- (7) CONTRACTOR's Response to the CITY's Invitation to Bid No. _____ dated _____

The aforementioned documents are hereby incorporated herein by reference, and made a part hereof

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 _____ and any attachments.
- c. Agreement & General Conditions
- d. Bid Document including all plans & drawings.
- e. Contractor's bid submittal

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.

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 withincalendar days from the issuance of the Notice to Proceed, completed and ready for final payment in accordance with Article 6 within days from the date certified by CITY as the date of Final 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 ofDollars () for each calendar day after the time specified in Section 3.2 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 3.2 above, plus approved time extensions, if any, for

completion and readiness for final payment, CONTRACTOR shall pay to CITY the sum of Dollars () for each calendar day after the time specified in Section 3.2 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 Dollars (\$XXX,XXX.00).

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. Upon Final Completion and acceptance one half (1/2) of the retainage will be returned to CONTRACTOR in accordance with the terms and conditions stipulated in the Contract Documents.

One half (1/2) of the retainage fee shall be held and shall be redeemable upon satisfactory completion of the twelve (12) months or six (6) months warranty period. The City shall select length of warranty period upon notice of award.

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, or agents or sub-contractors 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 167th Street, Suite 200
Miami Gardens, FL 33169

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

And if sent to the CONTRACTOR shall be mailed to:

Name:	Fed. ID#
Address:	Telephone #
Address:	Fax #
City, State & Zip:	
Contact Person:	Title

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 Risk of Loss; Ownership: The risk of loss, injury or destruction of any personal property, including but not limited to the XXXXXXXXXXXXXXXX, shall be on CONTRACTOR until acceptance of the Work by CITY. Title to the Work shall pass to CITY upon final acceptance of the Work by CITY.

7.16 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:

Print Name: _____

CONTRACTOR:

By: _____

Print Name: _____

Title: _____

Seal:

ATTEST:

City Clerk

CITY OF MIAMI GARDENS

City Manager

APPROVED AS TO FORM:

CITY Attorney

Dated:

GENERAL CONDITIONS

TABLE OF ARTICLES

1. GENERAL PROVISIONS .

- 1.1 Basic Definitions
- 1.2 Specifications and Drawings
- 1.3 Required Provisions Deemed Inserted
- 1.4 Provisions to the Bid
- 1.5 Bid Tabulations
- 1.6 Applicable Law and Venue
- 1.7 Clarification and Addenda to Bid Specifications
- 1.8 Contract Award
- 1.9 Tied Bids

2. CITY

- 2.1 Information and Services Required of the City
- 2.2 City's Right to Stop the Work
- 2.3 City's Right to Carry Out the Work
- 2.4 Clarifications and Interpretations
- 2.5 Extent of City Rights

3. CONTRACTOR

- 3.1 Contractor's Warranty
- 3.2 Compliance with Laws, Permits, Regulations and Inspections
- 3.3 Anti-Kickback
- 3.4 Supervision and Construction Procedures
- 3.5 Contractor's Employees
- 3.6 Use of Site
- 3.7 Security
- 3.8 Review of Contract Documents and Field Conditions by Contractor
- 3.9 Cleaning and Removal
- 3.10 Cutting and Patching
- 3.11 Indemnification
- 3.12 Patents and Royalties
- 3.13 Materials, Labor, and Workmanship
- 3.14 Approved Equal
- 3.15 Shop Drawings, Product Data and Samples
- 3.16 Record Drawings
- 3.17 Operating Instructions and Service Manual
- 3.18 Taxes
- 3.19 Contractor's Construction Schedules
- 3.20 Weather-Hurricane Precautions

4. ADMINISTRATION OF THE CONTRACT

- 4.1 Rights of the City
- 4.2 Architect or Engineer (A/E)
- 4.3 Review of the Work
- 4.4 Resolution of Disputes

5. SUBCONTRACTORS

- 5.1 Award of Sub-Contracts
- 5.2 Sub-Contractual Relations
- 5.3 Contingent Assignment of Sub-Contract

6. SEPARATE CONTRACTS AND COOPERATION

- 6.1 City's Right to other Contracts
- 6.2 Communication
- 6.3 Neglect
- 6.4 Damages
- 6.5 Delay
- 6.6 Progress Schedule
- 6.7 Refusals

7. FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS

8. CHANGE ORDERS

9. NOTIFICATION AND CLAIM FOR CHANGE OF CONTRACT TIME OR CONTRACT PRICE

- 9.1 Change if Contract Time
- 9.2 No Damages for Delay
- 9.3 Excusable Delay
- 9.4 Progress and Completion
- 9.5 Liquidated Damages

10. PAYMENTS AND COMPLETION

- 10.1 Commencement, Prosecution and Completion
- 10.2 Contract Sum
- 10.3 Schedule of Values
- 10.4 Applications for Payment
- 10.5 Approval for Payment
- 10.6 Decisions to Withhold Approval
- 10.7 Progress Payments
- 10.8 Failure of Payment
- 10.9 Substantial Completion
- 10.10 Partial Occupancy or Use
- 10.11 Final Completion and Final Payment
- 10.12 No Interest
- 10.13 Purchasing Card Program

11. PROTECTION OF PERSONS AND PROPERTY

- 11.1 Safety Precautions and Programs
- 11.2 Safety of Persons and Property

12. INSURANCE & BONDS

- 12.1 Insurance
- 12.2 Commercial General Liability
- 12.3 Licensed for Use Vehicle Liability
- 12.4 Workers' Compensation Insurance
- 12.5 Liability Insurance General Requirements
- 12.6 Builder's Risk Insurance

- 12.7 Products and Completed Operations Insurance
- 12.8 Bonds

13. UNCOVERING AND CORRECTION OF THE WORK

- 13.1 Uncovering of the Work
- 13.2 Correction of the Work
- 13.3 Acceptance of Nonconforming Work

14. MISCELLANEOUS PROVISIONS

- 14.1 Written Notice
- 14.2 Rights and Remedies
- 14.3 Tests and Inspections
- 14.4 Records
- 14.5 Codes and Standards
- 14.6 General Provisions
- 14.7 Anti-Discrimination
- 14.8 Non-Collusion

15. TERMINATION OR SUSPENSION OF THE CONTRACT

- 15.1 Termination by City for Cause
- 15.2 Suspension by the City for Convenience
- 15.3 Termination by the City for Convenience

16. OVERSIGHT/SILENCE OF SPECIFICATIONS

- 16.1 Oversight of Specifications
- 16.2 Silence of Specifications

ARTICLE 1 GENERAL PROVISIONS

1.1 Basic Definitions

As used in the Contract Documents, the following terms shall have the meanings and refer to the parties designated in these definitions.

1.1.1 Architect/Engineer (A/E)

When the term "A/E" is used herein, it shall refer to the Architect of Record or the Engineer of Record specified and designated by the City.

1.1.2 Acceptance

The formal written acceptance by the City of the completed Work. Acceptance shall mean that all of the work required by the Contract or individual work orders issued are fully executed and completed in accordance to the Construction Documents so that no work remains to be completed. No further performance of work shall be required except in regards to the correction of latent defects, gross mistakes and fraud. This shall require that all close-out documentation be fully completed, submitted, and approved.

1.1.3 City/Owner

The City/Owner shall mean the City of Miami Gardens, a Florida municipal corporation, having principal offices at 1515 NW 167th Street, Miami Gardens, Florida 33169, which is a party hereto and/or for which this Contract is to be performed. In all respects hereunder, City's performance is pursuant to City's position as the owner of this construction project. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall not be attributable in any manner to City as a party to this Contract.

1.1.4 Elected Body

The Mayor and City Council are the governing and legislative body of the City.

1.1.5 Administration

The City Manager, City Administration and/or the Office of the City Attorney of the City of Miami Gardens, Florida.

1.1.6 City's Representative

The City's Representative is authorized by the City as the administrator of the Contract and will represent the City during the progress of the Work. Communications from the A/E to the Contractor and from the Contractor to the A/E shall be through the City's Representative, unless otherwise indicated in the Contract Documents.

1.1.7 Engineer/Architect/Consultant

The City Engineer/Architect or Representative to provide professional services on this project for the City of Miami Gardens, Florida.

1.1.8 Contract

The Contract Documents form the Contract and are the exclusive statement of agreement between the parties. The Contract represents the entire and integrated agreement between the parties hereto including, but not limited to, contract time and liquidated damages, and supersedes prior representations or agreements, either written or oral. The Contract Documents shall not be construed to create a Contractual relationship of any kind between the City and a Sub-Contractor or any lower-tier Sub-Contractor.

1.1.9 Contractor

The Contractor is the individual, firm, incorporated or unincorporated business entity or corporation with whom the City has entered into the Contract for Construction. The term "Contractor" means the Contractor or the Contractor's authorized representatives.

1.1.10 Contract Documents

Contract Documents – The Contract Documents shall consist of the Contract, Drawings, Plans and Specifications, General Conditions, Invitation to Bidders, Instruction to Bidders, Technical Conditions, Supplement Conditions, Bid Form, Notice of Award, Notice to Proceed, Certificate(s) of Insurance, Payment and Performance Bonds and any additional documents which are required to be submitted

under the Contract, and all amendments, modifications and supplements, change orders and work directive changes issued on or after the effective date of this Agreement.

1.1.11 Contract Price

The original amount established in the bid form submittal and award by the City to complete the work, as may be amended by an eligible and authorized Change Order.

1.1.12 Contract Time

The original time between commencement final completion, including any milestone dates thereof, established in ARTICLE 2 of the Contract, as may be amended by Change Order.

1.1.13 Change Order

A document which is signed by the City and authorizes an addition, deletion or revision in the Work to be performed pursuant to this Contract, within the general scope of this Contract, or an adjustment in the term of compensation or an adjustment in time, issued on or after the effective date of the Contract. A change order must comply with the Contract Documents and the Procurement Ordinance of the City.

1.1.14 Field Order

A written order which orders minor changes in the Work, but which does not involve a change in the Contract price or Contract time.

1.1.14 Day

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

1.1.15 Drawings

The drawings which show the character and scope of the Work to be performed and which are referred to in Section 1.2.

1.1.16 Final Completion

The date when all punch list items are completed, including all closeout requirements, submittals and approval by the A/E, is given to the City in writing.

1.1.17 Knowledge. The terms "knowledge," "recognize" and "discover," and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent Contractor familiar with the Work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent Contractor familiar with the Work.

1.1.18 Notice To Proceed

A written notice given by CITY to CONTRACTOR fixing the date on which the Work shall commence and the CONTRACTOR begins to perform its obligations under the Contract Documents.

1.1.19 Project

ENTIRE PROJECT INCLUDING PHASES AS INDICATED IN THE CONTRACT DOCUMENTS PER ARCHITECT and drawings he prepared.

1.1.20 Punch List

"Punch List" means the list of items, prepared in connection with the inspection of the Project by the City's Representative and the A/E in connection with Substantial Completion of the Work or a portion of the Work, which the City's Representative or A/E has designated as remaining to be performed, completed or corrected before the Work will be accepted by the City.

1.1.21 Substantial Completion

The terms "Substantial Completion" or "substantially complete" as used herein shall be construed to mean the completion of the entire Work in accordance with the Contract, including all submittals required under the Contract Documents, except minor "Punch List" items which in the opinion of the A/E and/or the City's Representative will not interfere with the complete and satisfactory use of the facilities for the purposes intended.

1.1.22 Supplemental and Special Conditions

The terms "Supplemental Conditions" or "Special Conditions" shall mean the part of the Contract Documents which amend, supplement, delete from, or add to these General Conditions.

1.1.23 Work/Material

Work shall mean supervision, labor, equipment, tools, material, supplies, incidentals, operations and activities required by the Contract Documents or reasonably inferable by Contract as necessary to

produce the results intended by the Contract Documents in a safe, expeditious, orderly, and workmanlike manner, and in the best manner known to each respective trade.

1.1.24 Inspector

An authorized representative of A/E or City assigned to make necessary inspections of material furnished by Contractor and of the work performed by Contractor.

1.1.25 Sub-Contractor

A person, firm, entity or corporation having a direct contract with Contractor at any tier, other than employees of the 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.

1.1.26 Surety

The surety company or individual, authorized to transact surety ship in the State of Florida, which is bound by the performance bond and payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor's satisfactory performance of the work under the Contract and for payment of all debts pertaining thereto, in accordance with Section 255.05, Florida Statutes.

1.1.27 Substitution

A substitution is a Contractor proposal of an alternate product or method in lieu of has been specified or shown in the Contract Documents, which is not an "or equal" as set forth in Section 3.13.1.

1.1.28 Shop Drawings

Shop Drawings are drawings, diagrams, schedules and other product data specifically prepared for the Work by the Contractor or a Sub-Contractor, sub-Sub-Contractor, manufacturer, supplier or distributor to illustrate the specific requirements for some portion of the Work. The A/E's construction drawings shall not be used as Shop Drawings.

1.1.29 Product Data

Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

1.1.30 Samples

Samples are physical samples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.2 Contract Documents, Specifications and Drawings

1.2.1 The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction system, standards and workmanship and performance of related services for the Work identified in the Contract. Specifications are separated into titled divisions for convenience of reference only. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Sub-Contractors or in establishing the extent of Work to be performed by any trade. Such separation will not operate to make the City or the A/E an arbiter of labor disputes or work agreements.

1.2.2 The drawings herein referred to, consist of drawings prepared by the A/E and are enumerated in the Contract Documents.

1.2.3 Drawings are intended to show general arrangements, design, and dimensions of Work and are graphic, pictorial and partly diagrammatic. Dimensions shall not be determined by scale or rule. If figured dimensions are lacking, they shall be supplied by the A/E on the Contractor's written request (RFI) to the A/E and City's Representative.

1.2.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.5 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or

both in accordance with the A/E's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor and each Sub-Contractor shall verify field measurements at the Work site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the City's Representative and A/E for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the City's Representative and A/E before making the change.

1.2.6 Data in the Contract Documents concerning lot size, ground elevations, present facilities, structures or obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the A/E believes reliable, but the A/E and City do not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contacting utility entities and by prospecting.

1.2.7 Only work included in the Contract Documents is authorized, and the Contractor shall do no work other than that described therein.

1.2.8 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that it has performed its own investigation and examination of the Work site and its surroundings and satisfied itself before entering into this Contract as to:

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;
- .3 uncertainties of weather, flooding and similar characteristics of the site;
- .4 conditions bearing upon security and protection of material, equipment, and Work in progress;
- .5 the form and nature of the Work site, including the surface and sub-surface conditions;
- .6 the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
- .7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.

The City assumes no responsibility or liability for the physical condition or safety of the Work site or any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The City shall not be required to make any adjustment in either the Contract Sum or Contract Time concerning any failure by the Contractor or any Sub-Contractor to comply with the requirements of this Paragraph.

1.3 Required Provisions Deemed Inserted

1.3.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein; and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

1.4 Provisions to the Bid

1.4.1 Sealed Bids Three Copies with one original copy of Bid Form as well as any other pertinent documents must be returned in order for the Bid to be considered for award. All Bids are subject to the conditions specified herein and on all attached documents including but not limited to: Supplemental Conditions, Specifications and Bid Form.

1.4.2 The completed Bid must be submitted in a sealed envelope clearly marked with the Bid Title to the City Clerk, City of Miami Gardens, 1515 N W 167th Street; Bldg 5 Suite 200, Miami Gardens, Florida

33169 until 2:00 p.m., local time on date due. All Bids received after that time shall be returned, unopened.

1.4.3 Bid Opening: Bids shall be opened and publicly read in the Council Chamber, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169 on the date and at the time specified on the Bid Form.

1.4.4 Execution of Bid: The Bid must contain a manual signature of an authorized representative in the space provided on the Bid Form. Failure to properly sign Bid shall invalidate same, and it shall NOT be considered for award. All Bids must be completed in pen or be typewritten. No erasures are permitted. If a correction is necessary draw a single line through the entered figure and enter the corrected figure above it. Corrections must be initialed by the person signing the Bid. Any illegible entries, pencil Bids or corrections not initialed will not be tabulated. The original Bid conditions and specifications together with Bidder's response CANNOT be changed or altered in any way after submitted to the City.

1.4.5 Prices Quoted: Deduct trade discounts and quote firm net prices. Give both unit price and extended total, when requested. Prices must be stated in units of quantity specified in the Bid specifications. In case of discrepancy in computing the amount of the Bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in special conditions). Bidders are to list discounts to be given the City for prompt payment. Award, if made, will be in accordance with terms and conditions stated herein. Each item must be proposed separately and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of Bid(s). All prices quoted shall be guaranteed for not less than 90 days from Bid date, unless otherwise stated in the Bid.

1.4.6 Interpretation: Unless otherwise stated in the Bid, any questions concerning conditions and specifications should be submitted in writing to the Procurement Manager, 1515 N W 167th Street; Bldg. 5 Suite 200, Miami Gardens, Florida 33169 Facsimile (305) 474-1285, e-mail: wgarviso@miamigardens-fl.gov.

1.4.7 No bid will be accepted from, nor will any Contract be awarded to any person or firm which is in arrears to the City upon any debt or Contract or which is a defaulter as surety or otherwise upon any obligation to the City or who has failed to perform faithfully any previous Contract with the City.

1.4.8 Bid Disputes: Any actual or prospective Bidder, Proposer, Offeror or Contractor who is aggrieved in connection with a solicitation or award of a Bid or Contract may avail themselves of the procedures contained in Ordinance 2007-25-131 in order to resolve disputed matters or complaints.

- The Procurement Manager shall post a tabulation of the Bid results with intended award recommendations. Posting shall be on the City's web site; www.DemandStar.com for public viewing.
- Any actual or prospective Bidder who is aggrieved in connection with the solicitation or award of Contract may file a written protest with the City Clerk and mailed by the protester to all participants in the competitive process within seventy-two hours (72) hours of the City's recommendation for award or the City's actual award whichever comes first. The written protest shall state all the particular grounds on which it is based, shall include all pertinent documents and evidence. The protest letter to the City Clerk shall include proof of mailing/receipt to other participants to the bid and shall be accompanied by a cashier's check in the amount of \$500.00, representing the filing fee, plus a cashier's check in the amount of \$2,500.00 to reimburse the City for all administrative costs associated with the appeal process. The \$2,500.00 check shall be returned to the Protester if the Protester prevails in the hearing before the hearing examiner/special master. If the Protester does not prevail the City shall keep the check. Any grounds not stated shall be deemed waived.
- Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the vendor of all rights of protest under this Bid/Proposal Protest Procedure.
- In the event of a timely protest, the City Manager shall select a hearing examiner or special master, who shall be a member of the Florida Bar, who shall hold a hearing and submit written findings and recommendations within fifteen (15) days of the filing of the protest. The hearing examiner shall consider the written protests, supporting documents in evidence, the City's recommendations and supporting documentation and all evidence presented at the hearing. Such finding and recommendation shall be filed with the City Clerk.

- The hearing examiner's findings and recommendations shall be final. Appeals of a decision by the hearing examiner shall be to the Miami-Dade County Circuit Court.

1.5 Bid Tabulations: Bidders desiring a copy of the Bid tabulation may request same by enclosing a self-addressed stamped envelope with the Bid.

1.6 Applicable Law and Venue: The law of the State of Florida shall govern the Contract between the City of Miami Gardens and the successful Bidder, and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

1.7 Clarification and Addenda to Bid Specifications: If any person contemplating submitting a Bid under this Invitation for Bid is in doubt as to the true meaning of the specifications or other Bid documents or any part thereof, the Bidder must submit to the City of Miami Gardens Procurement Manager at least ten (10) calendar days prior to scheduled Bid opening, unless otherwise stated in the Bid, a request for clarification. All such requests for clarification must be made in writing and the person submitting the request will be responsible for its timely delivery.

- Any interpretation of the Bid, if made, will be made only by Addendum duly issued by the City of Miami Gardens Procurement Manager. The City shall issue an Informational Addendum if clarification or minimal changes are required. The City shall issue a Formal Addendum if substantial changes which impact the technical submission of Bids are required. Notification of such Addendum will be disseminated by www.DemandStar.com. In the event of conflict with the original Contract Documents, Addendum shall govern all other Contract Documents to the extent specified. Subsequent addendum shall govern over prior addendum only to the extent specified.

1.8 Contract Award:

A) Contract may be awarded to the lowest responsive, responsible Bidder(s) whose Bid(s), conforming to the Invitation for Bid, is most advantageous to the City of Miami Gardens. The lowest responsive, responsible Bidder(s) will be determined in conjunction with the method of award which is described in the Instructions to Bidders. Tie Bids will be decided as described herein.

B) The City shall award the Contract to a Bidder through action taken by the City Council or the City Manager of the City of Miami Gardens, Florida.

C) All of the documents obtained with the bid including, but not limited to: the General Terms and Conditions, the Special Conditions, the Supplemental Conditions, the Technical Specification, Drawings and Plans and the Bidder's Bid are collectively an integral part of the Contract between the City of Miami Gardens and the successful Bidder.

D) While the City of Miami Gardens may determine to award the Contract to a Bidder(s) under this Invitation to Bid, said award may be conditional on the subsequent submission of other documents as specified in the Bid Documents. The Bidder shall be in default of any conditional award, if any of these documents are not submitted in a timely manner and in the form required by the City. If the Bidder is in default, the City, through the Procurement Manager, will void its acceptance of the Bidder's offer and may determine to select the second lowest responsive, responsible Bidder or re-solicit Bids. The City may, at its sole option, seek monetary restitution from the defaulting Bidder as a result of damages or excess costs sustained and/or may prohibit the Bidder from submitting future Bids for a period of one year.

E) The Bidder agrees and understands that the Contract may not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at its sole option.

1.9 Tied Bids: In the event of an identical tied bid or proposal, preference will be given to local vendors. If none of the vendors are local, preference will be given to a vendor with a Drug-Free Workplace Program in accordance with Section 287.087, Florida Statutes.

ARTICLE 2 CITY REQUIREMENT

2.1 Information and Services Required of the City

2.1.1 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the City will secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

2.1.2 When requested in writing by the Contractor, information or services under the City's control, which are reasonably necessary to perform the Work, will be furnished by the City with reasonable promptness to avoid delay in the orderly progress of the Work.

2.2 City's Right to Stop the Work

2.2.1 If the Contractor fails to correct Work which is not in strict accordance with the requirements of the Contract Documents or fails to carry out Work in strict accordance with the Contract Documents, the City's Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work will not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 City's Right to Carry Out the Work

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a seven (7) day period after receipt of a written notice from the City to correct such default or neglect, the City may, without prejudice to other remedies the City may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to City.

2.3.2 In the event the Contractor has not satisfactorily completed all items on the Punch List within thirty (30) days of its receipt, or by the Final Completion Date, whichever is latest, the City reserves the right to complete the Punch List without further notice to the Contractor or its surety. In such case, City shall be entitled to deduct from payments then or thereafter due the Contractor the cost of completing the Punch List items, including compensation for the A/E's additional services. If payments then or thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to City.

2.4 Clarifications and Interpretations

2.4.1. The City shall issue, with reasonable promptness, such written clarifications, RFI responses or interpretations of the Contract Documents as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Should Contractor fail to request interpretation of questionable items in the Contract Documents, City shall not entertain any excuse for failure to execute the work in a satisfactory manner.

2.4.2 The City shall interpret and decide matters concerning performance under the requirements of the Contract Documents, and shall make decisions on all claims, disputes or other matters in question. Written notice of each claim, dispute or other matter will be delivered by claimant to the other party but in no event later than five (5) days after the occurrence of the event, and written supporting data will be submitted to the other party within five (5) calendar days after such occurrence. All written decisions of the City on any claim or dispute will be final and binding. The A/E shall interpret the intent in matters regarding technical requirements of the drawings and specifications

2.4.3 The Contractor shall perform the work to the reasonable satisfaction of the City in accord with the Contract Documents. In cases of disagreement or ambiguity, the City shall decide all questions, difficulties, and disputes of whatever nature, which may arise under or by reason of this Contract, or the quality, amount and value of the work and the City's decisions on all claims, questions and determination are final.

2.5 Extent of City Rights

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the City (1) granted in the Contract Documents, (2) at law or (3) in equity.

2.5.2 In no event shall the City, City's Representative, City's Consultant nor the A/E shall have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or

procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the City in the Contract Documents.

ARTICLE 3 CONTRACTOR RESPONSIBILITIES

3.1 Contractor's Warranty

3.1.1 The Contractor warrants all equipment and materials furnished, and work performed, under this Contract, against defective materials and workmanship for a period of 1 year after acceptance as provided in this Contract, unless a longer period is specified, regardless of whether the same were furnished or performed by the Contractor or any Sub-Contractors of any tier. Upon written notice from the City of any breach of warranty during the applicable warranty period due to defective material or workmanship, the affected part or parts thereof shall be repaired or replaced by the Contractor, at no cost to the City. Should the Contractor fail or refuse to make the necessary repairs, replacements, and tests when requested by the City, the City may perform, or cause the necessary work and tests to be performed, at the Contractor's expense, or exercise the City's rights under Article 14 of these Conditions. The City may charge the Contractor for all direct, indirect and consequential costs of such removal, repairs and/or replacement (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals).

3.1.2 Should one or more defects mentioned above appear within the specified period, the City shall have the right to continue to use or operate the defective part or apparatus until the Contractor makes repairs or replacements or until such time as it can be taken out of service without loss or inconvenience to the City.

3.1.3 Where defective work (and damage to other work) has been corrected, removed or replaced under this Article, the correction period with respect to such work will be extended for an additional period of one (1) year after such correction, removal or replacement has been satisfactorily completed.

3.1.4 The above warranties are not intended as a limitation, but are in addition to all other express warranties set forth in this Contract and such other warranties as are implied by law, custom, and usage of trade. The Contractor, and its surety or sureties, if any, shall be liable for the satisfaction and full performance of the warranties set forth herein.

3.1.5 Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City, nor expiration of warranty stated herein, will constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any responsibility for non-conforming work. The Contractor shall immediately remedy any defects in the Work and pay for any damage to other Work resulting therefrom upon written notice from the City. Should the Contractor fail or refuse to remedy the non-conforming work, the City may perform, or cause to be performed the work necessary to bring the work into conformance with the Contract Documents at the Contractor's expense.

3.1.6 The Contractor agrees to defend, indemnify, and save harmless The City of Miami Gardens, its officers, agents, employees and volunteers, from and against all loss or expense from any injury or damages to property of others suffered or incurred on account of any breach of the aforesaid obligations and covenants.

3.2 Compliance with Laws, Permits, Impact Fees, Regulations and Inspections

3.2.1 The Contractor shall, without additional expense to the City, comply with all applicable laws, ordinances, rules, statutes, and regulations.

3.2.2 All fees, permits, inspections, or licenses required by municipality, governmental agency, or political subdivision shall be obtained by and paid for by the Contractor. The Contractor, of its own expense, is responsible to ensure that all inspections required by said permits or licenses on property, easements, or utilities are conducted as required. All connection charges, assessments or transportation fees as may be imposed by any utility company or others shall be at the Contractor's sole expense.

3.2.3 The fees for City permits will not be waived; Contractor shall pay City fees and the Miami-Dade County surcharge of \$.60/\$1,000.

3.2.4 Impact fees levied by the City(s) and/or Miami-Dade County shall be paid by Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the municipality as

evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to Contractor in no event shall include profit or overhead of Contractor.

3.2.5 Contractor shall verify all locations of underground utilities with all of the proper entities.

3.2.6 It is not the Contractor's primary responsibility to ascertain that the Contract Documents are in accordance with applicable Regulations, unless such Regulations bear upon performance of the Work. However, if the Contractor has knowledge that any Contract Documents are at variance with any Regulations, including Americans with Disabilities Act - Accessibility Guidelines (ADA-AG), ordinances, rules, regulations or codes applying to the Work, Contractor shall promptly notify the A/E and the City's Representative, in writing, and any necessary changes will be adjusted as provided in Contract Documents.

3.3 Anti-Kickback

3.3.1 No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

3.3.2 No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any A/E, engineering, inspection, construction, or material supply contract or any subcontract of any tier in connection with the construction of the Work shall have a financial interest in this Contract or in any part thereof, any material supply contract, subcontract of any tier, insurance contract, or any other contract pertaining to the Work.

3.4 Supervision, and Construction Procedures

3.4.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall supply sufficient and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Work with diligence to ensure completion thereof within the time specified in the Contract Documents, and shall pay when due any laborer, Sub-Contractor of any tier, or supplier.

3.4.2 The Contractor, if an individual, shall give the Work an adequate amount of personal supervision, and if a partnership or corporation or joint venture the Work shall be given an adequate amount of personal supervision by a partner or executive officer, as determined by the City's Representative.

3.4.3 The Contractor and each of its Sub-Contractors of any tier shall submit to the City such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the City may request concerning Work performed or to be performed under the Contract.

3.4.4 The Contractor shall be represented at the site by a competent superintendent from the beginning of the Work until its final acceptance, unless otherwise permitted in writing by the City's Representative. The superintendent for the Contractor shall exercise general supervision over the Work and such superintendent shall have decision making authority of the Contractor. Communications given to the superintendent shall be binding as if given to the Contractor. Contractor's superintendent shall speak competent English.

3.4.5 The Contractor shall establish and maintain a permanent bench mark to which access may be had during progress of the Work, and Contractor shall establish all lines and levels, and shall be responsible for the correctness of such. Contractor shall be fully responsible for all layout work for the proper location of Work in strict accordance with the Contract Documents.

3.4.6 The Contractor shall establish and be responsible for wall and partition locations. If applicable, separate Contractors shall be entitled to rely upon these locations and for setting their sleeves, openings, or chases.

3.4.7 The Contractor's scheduled outage/tie-in plan, time, and date is subject to approval by the City's Representative. Failure of Contractor to comply with the provisions of this Paragraph shall cause Contractor to forfeit any right to an adjustment of the Contract Sum or Contract Time for any postponement, rescheduling or other delays ordered by City in connection with such Work. The Contractor shall follow the following procedures for all utility outages/tie-ins or disruption of any building system:

- .1 All shutting of valves, switches, etc., shall be by the City's personnel.
- .2 The Contractor shall request an outage/tie-in meeting at least two weeks before the outage/tie-in is required.
- .3 The City's Representative will schedule an outage/tie-in meeting at least one week prior to the outage/tie-in.

3.4.8 The Contractor shall coordinate all Work so there shall be no prolonged interruption of existing utilities, systems and equipment of City. Any existing plumbing, heating, ventilating, air conditioning, or electrical disconnection necessary, which affect portions of this construction or building or any other building, must be scheduled with the City's Representative, to avoid any disruption of operation within the building under construction or other buildings or utilities. In no case shall utilities be left disconnected at the end of a work day or over a weekend. Any interruption of utilities, either intentionally or accidentally, shall not relieve the Contractor from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workers responsible for the repair and restoration leave the job.

3.4.9 The Contractor shall be responsible for repair of damage to property on or off the project occurring during construction of project, and all such repairs shall be made to meet code requirements or to the satisfaction of the City's Representative if code is not applicable.

3.4.10 The Contractor shall be responsible for all shoring required to protect its work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

3.4.11 The Contractor shall maintain at his own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, ladders, hoists and all necessary, proper, and adequate equipment, apparatus, and appliances useful in carrying on the Work and which are necessary to make the place of Work safe and free from avoidable danger, and as may be required by safety provisions of applicable laws, ordinances, rules regulations and building and construction codes.

3.4.12 During the performance of the Work, the Contractor shall be responsible for providing and maintaining warning signs, lights, signal devices, barricades, guard rails, fences, and other devices appropriately located on site which shall give proper and understandable warning to all persons of danger of entry onto land, structure, or equipment.

3.4.13 The Contractor shall pump, bail, or otherwise keep any general excavations free of water. The Contractor shall keep all areas free of water before, during and after concrete placement. The Contractor shall be responsible for protection, including weather protection, and proper maintenance of all equipment and materials installed, or to be installed by him.

3.4.14 The Contractor shall be responsible for care of the Work and must protect same from damage of defacement until acceptance by the City. All damaged or defaced Work shall be repaired or replaced to the City's satisfaction, without cost to the City.

3.4.15 When requested by the City's Representative, the Contractor, at no extra charge, shall provide scaffolds or ladders in place as may be required by the A/E or the City for examination of Work in progress or completed.

3.4.16 The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Sub-Contractors of any tier and their agents and employees, and any entity or other persons performing portions of the Work.

3.4.17 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the City's Representative or A/E in their respective administrations of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.4.18 The Contractor shall be responsible for inspection of portions of the Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.5 Contractor's Employees

3.5.1 Contractor shall be responsible for the appearance of all working personnel assigned to the project (clean and appropriately dressed at all times). Personnel must be able to supply proper identification at all times.

3.5.2 All employees of the Contractor shall be considered to be at all times the sole employees of the Contractor, under the Contractor's sole direction and not an employee or agent of the City. Contractor shall supply competent, suitable qualified and physically capable employees, the City may require the Contractor to remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose presence on City property is not in the best interest of the City. City shall not have any duty to implement or enforce such requirements.

3.5.3 Each employee of the Contractor shall be citizen of the United States or an alien who has been lawfully admitted for permanent residence as evidence by an Alien Registration Receipt Card. The Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965, (18 USC4082)(c)(2).

3.6 Use of Site

3.6.1 The Contractor shall limit operations and storage of material to the area within the Work limit lines shown on Drawings, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.

3.6.2 Only materials and equipment, which are to be used directly in the Work, shall be brought to and stored on the Work site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Work site. Protection of construction materials and equipment stored at the Work site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

3.6.3 No project signs shall be erected without the written approval of the City's Representative, which permission may be given or withheld in the absolute discretion of the City.

3.6.4 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property at the site of the Work or to the City or occupant of any adjacent land or areas resulting from the performance of the Work.

3.6.5 The Contractor shall not permit any workers to use any existing facilities at the Work site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by City. The Contractor, Sub-Contractors of any tier, suppliers and employees shall comply with instructions or regulations of the City's Representative governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of City's operations. Any request for Work, a suspension of Work or any other request or directive received by the Contractor from occupants of existing buildings shall be referred to the City's Representative for determination.

3.6.6 Contractor shall provide own construction office or facility and supply its workers and Sub-Contractors of any tier with lavatories, toilets, etc. at Contractor's expense. Contractor shall also provide office space for City Representative.

3.6.7 All work will be performed Monday through Friday, excluding City holidays, from 7:30 a.m. to 5:00 p.m., unless prior written approval is provided by City.

3.6.8 The Contractor and the Sub-Contractor of any tier shall have its' name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the project. The signs are required on such vehicles during the time the Contractor is working on the project.

3.7 Security

3.7.1 The Contractor is responsible for project security. Contractor shall protect and secure the site, materials, and equipment from theft and damage, by whatever means deems effective, at Contractor's expense.

3.8 Review of Contract Documents and Field Conditions by Contractor

3.8.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the A/E and City and shall report, at once, in writing to the A/E and City's Representative any errors, inconsistencies or omissions discovered. Contractor shall have fifteen (15) days following the date of Award of Contract to report to the A/E and the City, errors, inconsistencies or omissions therein. If the Contractor performs any construction activity which it knows or should have known involves a recognized error, inconsistency or omission in the Contract Documents without such written notice to the A/E and City's Representative, the Contractor shall assume full responsibility for such performance and shall bear the full amount of the attributable costs for correction.

3.8.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing (RFI) to the A/E and City's Representative within twenty-four (24) hours. During the progress of work, Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions. Contractor shall consult all Contract Documents to determine the exact location of all work and verify spatial relationships of all work. Any question concerning said location or spatial relationships shall be submitted to the City's Representative and A/E. Specific locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined in consultation with City's Representative and A/E. Contractor shall be responsible for the proper fitting of the Work in place.

3.8.3 The Contractor shall provide, at the proper time, such material as required for support of the Work. If openings or chases are required, whether shown on Drawings or not, the Contractor shall see they are properly constructed. If required openings or chases are omitted, the Contractor shall cut them at the Contractor's own expense, but only as directed by the A/E, through the City Representative.

3.8.4 Should the Contract Documents fail to particularly describe materials or goods to be used, it shall be the duty of the Contractor to inquire of the A/E and the City's Representative what is to be used and to supply it at the Contractor's expense, or else thereafter replace it to the City's Representative's satisfaction. At a minimum, the Contractor shall provide the quality of materials as generally specified throughout the Contract Documents.

3.8.5 Contractor shall not be entitled to an adjustment in the Contract time or an adjustment in the Contract Sum if a change or Work is required due to an error, inconsistency, omission or violation that the Contractor failed to timely report.

3.8.6 Contractor shall be responsible for inspection of portions of Work already performed under Contract to determine that such portions are in proper condition to receive subsequent Work.

3.9 Cleaning and Removal

3.9.1 The Contractor shall keep the Work site and surrounding areas free from accumulation of waste materials, rubbish, debris, and dirt resulting from the Work and shall clean the Work site and surrounding areas as requested by the A/E and the City's Representative, including mowing of grass greater than 6 inches high. The Contractor shall be responsible for the cost of clean up and removal of debris from premises. The building and premises shall be kept clean, safe, in a workmanlike manner, and in compliance with OSHA standards at all times. At completion of the Work, the Contractor shall remove from and about the Work site tools, construction equipment, machinery, fencing, and surplus materials. Further, at the completion of the work, all dirt, stains, and smudges shall be removed from every part of the building, all glass in doors and windows shall be washed, and entire Work shall be left broom clean in a finished state ready for occupancy. The Contractor shall advise his Sub-Contractors of any tier of this provision, and the Contractor shall be fully responsible for leaving the premises in a finished state ready for use to the satisfaction of the City's Representative. If the Contractor fails to comply with the provisions of this paragraph, the City may do so and the cost thereof shall be charged to the Contractor.

3.9.2 Contractor shall dispose of all excess materials at an appropriate legal site. City may request copies of disposal receipts and, if requested, Contractor will furnish the same within five (5) days.

3.9.3 Contractor will have not more than 72-hour notice to clear work site of rubbish, debris and other work site materials and to restore or replace distributed, displaced or damaged property, if Contractor fails to comply, the City may employ labor or equipment as it deems necessary to clear the site at Contractor's expense. If a dispute arises among the Contractor, the City's Contractors as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials

and rubbish, the City may clean up and allocate the cost among those responsible as the City's Representative determines.

3.9.4 All salvageable material and/or equipment removed from the existing construction for which specific use, relocation or other disposal is not specifically noted on the Drawings or otherwise specified, will remain the property of the City and be turned over to the City. All material and/or equipment not in salvageable condition as determined by the City's Representative must be disposed of by the Contractor. The actual storage site for salvageable material will be designated by the City. (If applicable)

3.10 Cutting and Patching

3.10.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.10.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate Contractor except with written consent of the City and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

3.10.3 If the Work involves renovation and/or alteration of existing improvements, Contractor acknowledges that cutting and patching of the Work is essential for the Work to be successfully completed. Contractor shall perform any cutting, altering, patching, and/or fitting of the Work necessary for the Work and the existing improvements to be fully integrated and to present the visual appearance of an entire, completed, and unified project. In performing any Work which requires cutting or patching, Contractor shall use its best efforts to protect and preserve the visual appearance and aesthetics of the Work to the reasonable satisfaction of both the City's Representative and A/E. The Contractor shall not cut any structural members without the prior written approval of the A/E.

3.11 Indemnification

3.11.1 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the City and its consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any negligent, or grossly negligent or willful and wanton act or omission of Contractor, any Sub-Contractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

3.11.2 In any and all claims against the City or any of their consultants, agents or employees by any employee of Contractor, any Sub-Contractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Sub-Contractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

3.11.3 It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefor.

3.11.4 The official title of the City is "City of Miami Gardens". This official title shall be used in all insurance, or other legal documentation. City of Miami Gardens is to be included as "Additional Insured" with respect to liability arising out of operations performed for City of Miami Gardens by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

3.12 Patents and Royalties

3.12.1 The Contractor, without exception, shall indemnify and save harmless the City of Miami Gardens, Florida, and its employees from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the Contract, including its use by the City of Miami Gardens, Florida. If the Contractor uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the Contract prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

3.12.2 If the Contractor uses any design, device, or material covered by letters patent or copyright, he shall provide for such use by suitable agreement with the City of such patented or copyrighted design, device, or material. Without exception, the Contract Sum includes, and the Contractor shall pay, all royalties, license fees or costs arising from the use of such design, device, or material in any way involved in the Work. The Contractor and/or sureties shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, or material or any trademark or copyright in connection with Work agreed to be performed under this Contract and shall indemnify the City for any cost, expense, or damage it may be obligated to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work.

3.13 Materials, Labor, and Workmanship

3.13.1 Materials and equipment incorporated into the Work shall strictly conform to the Contract Documents and representations and approved Samples provided by Contractor and shall be of the most suitable grade of their respective kinds for their respective uses, and shall be fit and sufficient for the purpose intended, merchantable, of good new material and workmanship, and free from defect. Workmanship shall be in accordance with the highest standard in the industry and free from defect in strict accordance with the Contract Documents.

3.13.2 Materials and fixtures shall be new and of latest design unless otherwise specified, and shall provide the most efficient operating and maintenance costs to the City. All Work shall be performed by competent workers and shall be of best quality.

3.13.3 The Contractor shall carefully examine the Contract Documents and shall be responsible for the proper fitting of his material, equipment, and apparatus into the building.

3.13.4 Materials and workmanship shall be subject to inspection, examination, and test by the A/E and the City's Representative via a City authorized testing lab at any and all times during manufacture, installation, and construction of any of them, at places where such manufacture, installation, or construction is performed.

3.13.5 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.13.6 Unless otherwise specifically noted, the Contractor shall provide and pay for supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, 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.

3.13.7 Substitutions

3.13.7.1 Contractor may make a proposal to the A/E and the City's Representative to use substitute products or methods as set forth herein, but the A/E's and the City's Representative's decision concerning acceptance of a substitute shall be final. The Contractor must do so in writing within forty-five (45) days after the commencement of the Work and setting forth the following:

.1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.

.2 Reasons the substitution is advantageous and necessary, including the benefits to the City and the Work in the event the substitution is acceptable.

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.

.4 The adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.

.5 An affidavit stating that (a) the proposed substitution conforms to and meets all of the Contract Documents, except as specifically disclosed and set forth in the affidavit and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the A/E.

.6 Proposals for substitutions shall be submitted to the A/E and City's Representative in sufficient time to allow the A/E and City's Representative no less than ten (10) working days for review. No substitution will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

3.13.7.2 Substitutions may be rejected without explanation in City's sole discretion and will be considered only under one or more of the following conditions:

.1 Required for compliance with interpretation of code requirements or insurance regulations then existing;

.2 Unavailability of specified products, through no fault of the Contractor;

.3 Material delivered fails to comply with the Contract Documents;

.4 Subsequent information discloses inability of specified products to perform properly or to fit in designated space;

.5 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; or

.6 When in the judgment of the City or the A/E, a substitution would be substantially to the City's best interests, in terms of cost, time, or other considerations.

3.13.7.3 Whether or not any proposed substitution is accepted by the City or the A/E, the Contractor shall reimburse the City for any fees charged by the A/E or other consultants for evaluating each proposed substitute.

3.14 Approved Equal

3.14.1 Whenever in the Contract Documents any article, appliance, device, or material is designated by the name of a manufacturer, vendor, or by any proprietary or trade name, the words "or approved equal," shall automatically follow and shall be implied unless specifically indicated otherwise. The standard products of manufacturers other than those specified will be accepted when, prior to the ordering or use thereof, it is proven to the satisfaction of the City's Representative and the A/E they are equal in design, appearance, spare parts availability, strength, durability, usefulness, serviceability, operation cost, maintenance cost, and convenience for the purpose intended. Any general listings of approved manufacturers in any Contract Document shall be for informational purposes only, and it shall be the Contractor's sole responsibility to ensure that any proposed "or equal" complies with the requirements of the Contract Documents.

3.14.2 The Contractor shall submit to A/E and City's Representative a written and full description of the proposed "or equal" including all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and similar information demonstrating that the proposed "or equal" strictly complies with the Contract Documents. The A/E or City's Representative shall take appropriate action with respect to the submission of a proposed "or equal" item. If Contractor fails to submit proposed "or equals" as set forth herein, it shall waive any right to supply such items. The Contract Sum and Contract Time shall not be adjusted as a result of any failure by Contractor to submit proposed "or equals" as provided for herein. All documents submitted in connection with preparing an "or equal" shall be clearly and obviously marked as a proposed "or equal" submission.

3.14.3 No approvals or action taken by the A/E or City's Representative shall relieve Contractor from its obligation to ensure that an "or equal" article, appliance, device or material strictly complies with the requirements of the Contract Documents. Contractor shall not propose "or equal" items in connection with Shop Drawings or other Submittals, and Contractor acknowledges and agrees that no approvals or action taken by the A/E or City's Representative with respect to Shop Drawings or other Submittals shall constitute approval of any "or equal" item or relieve Contractor from its sole and exclusive responsibility. Any changes required in the details and dimensions indicated in the Contract Documents for the

incorporation or installation of any "or equal" item supplied by the Contractor shall be properly made and approved by the A/E at the expense of the Contractor. No 'or equal' items will be permitted for components of or extensions to existing systems when, in the opinion of the A/E, the named manufacturer must be provided in order to ensure compatibility with the existing systems, including, but not limited to, mechanical systems, electrical systems, fire alarms, smoke detectors, etc. No action will be taken by the A/E with respect to proposed "or equal" items prior to receipt of bids, unless otherwise noted.

3.15 Shop Drawings, Product Data and Samples

3.15.1 Shop Drawings, Product Data, Samples and similar submittals (collectively referred to as "Submittals") are not Contract Documents. The purpose of their submittals is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.15.2 Within forty-five (45) calendar days after the award date, Contractor shall submit to A/E a complete list of preliminary data and submittal schedule on items for which Shop Drawings are to be submitted and shall identify the critical items. Approval of this list by A/E shall in no way relieve 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

3.15.3 Contractor shall submit to A/E for review and approval six (6) copies of all Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of the Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of compliance with the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable A/E to review the information as required. Any resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

3.15.4 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 the Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to A/E along with its comments as to compliance, noncompliance, or features requiring special attention.

3.15.5 The Contractor, at its own expense, shall submit Samples required by the Contract Documents with reasonable promptness as to cause no delay in the Work or the activities of separate Contractors and no later than twenty (20) days before materials are required to be ordered for scheduled delivery to the Work site. Samples shall be labeled to designate material or products represented, grade, place of origin, name of producer, name of Contractor and the name and number of the City's project. Quantities of Samples shall be twice the number required for testing so that A/E can return one set of the Samples. Materials delivered before receipt of A/E's approval may be rejected by A/E and in such event, Contractor shall immediately remove all such materials from the Work site. When requested by A/E or City's Representative, samples of finished masonry and field applied paints and finishes shall be located as directed and shall include sample panels built at the site of approximately twenty (20) square feet each.

3.15.6 Contractor shall submit three (3) copies of all material color charts, color chips or color samples within sixty (60) days after start of construction to allow for selection, color coordination and final acceptance by the City. Color charts, chips or color samples shall be manufacturer's full color range and of standard sizes unless specified otherwise.

3.15.7 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the A/E. Such Work shall be in accordance with approved submittals.

3.15.8 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents such Submittals strictly comply with the requirements of the Contract Documents and that the Contractor has determined and verified field measurements and field construction criteria related thereto, that materials are fit for their intended use and that the fabrication, shipping, handling, storage, assembly and installation of all materials, systems and equipment are in accordance with best practices in the industry, manufacturer's printed and approved instructions, and are in strict compliance with any applicable requirements of the Contract Documents. Contractor shall also coordinate each Submittal with other Submittals.

3.15.9 Contractor shall be responsible for the correctness and accuracy of the dimensions, measurements and other information contained in the Submittals.

3.15.10 Each Submittal will bear a stamp or specific indication that the Submittal complies with the Contract Documents and Contractor has satisfied its obligations under the Contract Documents with respect to Contractor's review and approval of that Submittal. Each Submittal shall bear the signature of the representative of Contractor who approved the Submittal, together with the Contractor's name, City's name, number of the Project, and the item name and specification section number. Approval of Submittals by the A/E will be within **fifteen (15) calendar days from date of receipt**.

3.15.11 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the A/E's approval of Shop Drawings, Product Data, Samples or similar submittals. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the A/E's approval thereof. Specifically, but not by way of limitation, Contractor acknowledges that A/E's approval of Shop Drawings shall not relieve Contractor for responsibility for errors and omissions in the Shop Drawings, since Contractor is responsible for the correctness of dimensions, details and the design of adequate connections and details contained in the Shop Drawings.

3.15.12 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the A/E on previous Submittals.

3.15.13 The Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the A/E or applicable Regulations, by a licensed engineer or other design professional.

3.15.14 Any cost to City for the A/E to review and approve Shop Drawings submitted more than twice will be at Contractor's expense.

3.16 Record Drawings

3.16.1 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either City or A/E may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by A/E to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to City and A/E for approval. If not approved, Contractor shall make the revisions requested by A/E or City's Representative. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to City.

3.17 Operating Instructions and Service Manuals

3.17.1 The Contractor shall submit five (5) volumes of operating instructions and service manuals to the A/E before completing 50% of the adjusted Contract Amount. Payments beyond 50% of the adjusted Contract amount may be withheld until all operating instructions and service manuals are received. The operating instructions and service manuals shall contain:

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

(a) Recommended spare parts including catalog number and name of local suppliers or factory

representative.

(b) Belt sizes, types, and lengths.

(c) Wiring diagrams.

.5 Manufacturer's Certificate of Warranty: Manufacturer's certificates of warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern. Warranties shall be submitted as listed in Section 10.9.3

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

.7 Contractor shall provide a minimum of two (2) training classes for City staff on the operation and maintenance of all equipment. Classes shall be performed at the convenience of the City.

3.17.2 Submission

.1 Manuals shall be bound into volumes of standard 8 1/2" x 11" hard binders. Large drawings too bulky to be folded into 8 1/2" x 11" shall be separately bound or folded and in brown envelopes, cross-referenced and indexed with the manuals.

.2 The manuals shall identify the City's project name, project number, and include the name and address of the Contractor and major Sub-Contractors of any tier who were involved with the activity described in that particular manual.

3.18 Taxes

3.18.1 CONTRACTOR shall pay all applicable sales, consumer, use and other taxes required by law. CONTRACTOR is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

3.19 Contractor's Construction Schedules

3.19.1 The Contractor, within fifteen (15) days after the issuance of the Notice of Award, shall prepare and submit for the City's and A/E's information Contractor's construction schedule for the Work and shall set forth interim dates for completion of various components of the Work and Work Milestone Dates as defined herein. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work. The Contractor shall conform to the most recent schedule.

3.19.2 The construction schedule shall be in a detailed format satisfactory to the City's Representative and the A/E. If the City's Representative or A/E has a reasonable objection to the schedule submitted by Contractor, the construction schedule shall be promptly revised by the Contractor. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the City of any delays or potential delays. The Contractor shall submit two (2) week "Look Ahead" schedules to the City's Representative and A/E at every construction meeting. The Contractor shall revise his schedule to reflect revisions and/or recovery actions and submit it to the City for review and approval. Additional costs resulting therefrom will be borne by the Contractor.

3.19.3 In the event the City's Representative or A/E determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, facilities, (3) expediting delivery of materials, and (4) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum concerning Extraordinary Measures required by the City under or pursuant to this Paragraph 3.19.3. The City may exercise the rights furnished the City under or pursuant to this Paragraph 3.19.3 as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.20 Weather – Hurricane Precautions

3.20.1 Extensions to the Contract time for delays caused by the effects of inclement weather shall be submitted as a request for a change order in the Contract time pursuant to Article 6.5. These time extensions are justified only when rains or other inclement weather conditions or related adverse soil conditions prevent Contractor from productively performing controlling items of work identified on the accepted schedule or updates resulting in requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station. The 10-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the Contractor would normally expect to encounter. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if the City determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied:

.1 Contractor being unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates due to adverse weather conditions; or

.2 Contractor must make major repairs to the Work damaged by weather. Providing the damage was not attributable to a failure to perform or neglect by Contractor, and providing that Contractor was unable to work at least fifty percent (50%) of the normal workday on controlling items of work identified on the accepted schedule or updates.

3.20.2 Hurricane -Within thirty days of the date of Notice to Proceed (NTP), Contractor shall submit to the A/E a Hurricane Preparedness Plan. The plan should outline the necessary measures which the Contractor proposes to perform at no additional cost to the City in case of a hurricane warning. The plan shall detail these measures with specific action items defining responsible personnel.

3.20.3 During such periods of time as are designated by the National Oceanic and Atmospheric Administration's, National Weather Service as being a hurricane, hurricane warning, or alert, the Contractor, at no cost to the City, shall take all precautions necessary to secure the Work site in response to all threatened storm events, regardless of whether the City has given the Contractor notice of same.

.1 Contractor's compliance with any specific hurricane warning or alert precautions will not constitute "Additional Work" pursuant to the Contract.

.2 Additional work relating to hurricane warning or alert at the Work site will be addressed by a Field Order in accordance with Article 7 – Field Orders.

.3 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 additional Contract time as noncompensable, excusable delay and shall not give rise to a claim for compensable delay.

.4 In the event of inclement weather, or whenever the A/E shall direct; Contractor will cause Sub-Contractors to protect carefully the Work and materials against damage or injury from the weather. If, in the opinion of the A/E, any portion of Work or materials shall have been damaged or injured, such Work and materials shall be removed and replaced at the expense of the Contractor.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 Rights of the City

4.1.1 The City's Representative will administer the Construction Contract. The A/E will assist the City's Representative with the administration of the Contract as indicated in these Contract Documents.

4.1.2 If, in the judgment of the City's Representative, it becomes necessary to accelerate the work, the Contractor, when directed by the City's Representative in writing, shall cease work at any point and transfer its workers to such point or points and execute such portions of the work as may be required to enable others to hasten and properly engage and carry out the work, all as directed by the City's Representative. The additional cost of accelerating the work, if any, will be borne by the City, unless the Contractor's work progress is behind schedule as shown on the most recent progress schedule.

4.1.3 The City's Representative, by written notice, may, require a Contractor to remove from involvement with the Work, any of Contractor's personnel or the personnel of its Sub-Contractors of any tier whom the City's Representative may deem abusive, incompetent, careless, or a hindrance to proper and timely execution of the Work. The Contractor shall comply with such notice promptly, but without detriment to the Work or its progress.

4.1.4 The City's Representative will schedule Work status meetings that shall be attended by representatives of the Contractor and appropriate Sub-Contractors of any tier. Material suppliers shall attend status meetings if required by the City's Representative. These meetings shall include but not be limited to preconstruction meetings.

4.2 Architect or Engineer (A/E)

4.2.1 A/E will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures or for safety measures and programs in connection with the Work since these are solely the Contractor's responsibilities.

4.2.2 A/E will have the authority to recommend to the City the rejection of Work which does not conform to the Construction Documents. A/E will recommend to the City, if in their professional judgment, defects and deficiencies in the construction warrant that Work be stopped.

4.2.3 A/E will review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data and Samples, for information given and the design concepts expressed in the Construction Documents. If the A/E is required to review a submittal more than two (2) times due to incomplete or incorrect submittals by Contractor, an appropriate Change Order may be issued by the A/E deducting a sum reasonably sufficient to compensate A/E from payments due or become due to Contractor as compensation for A/E's additional expenses and services made necessary by the Contractor's incomplete or incorrect submittals.

4.2.4 The A/E will interpret requirements of the Contract Documents with respect to the quality, aesthetics, quantity and other technical requirements of the Work itself within a reasonable time after written request of the Contractor. Contractor shall provide City's Representative a copy of such written request.

4.3 Review of the Work

4.3.1 The A/E and the City's Representative shall, at all times, have access to the Work; and the Contractor shall provide proper and safe facilities for such access.

4.3.2 The City's Representative shall have authority to reject Work that does not strictly comply with the requirements of the Contract Documents. Whenever the City's Representative considers

it necessary or advisable for implementation of the intent of the Contract Documents, City's Representative shall have the authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed.

4.3.3 The fact that the A/E or the City's Representative observed, or failed to observe, faulty Work, or Work done which is not in accordance with the Contract Documents, regardless of whether or not the City has released final payment, shall not relieve the Contractor from responsibility for all damages and additional costs of the City as a result of defective or faulty Work.

4.4 Resolution of Disputes

4.4.1 To prevent all disputes and litigation, it is agreed by the parties hereto that City's Representative shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Contract as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents and City's Representative's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided herein. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of City and Contractor shall be submitted to City's Representative in writing within twenty-one (21) calendar days. Unless a different period of time is set forth herein, City's Representative requires additional time to gather information or allow the parties to provide additional information. All non-technical administrative disputes shall be determined by the City Manager pursuant to the time periods provided herein. During the tendency of any dispute and after a determination thereof, Contractor and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

4.4.2 In the event the determination of a dispute under this Section is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within ten (10) 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 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) 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 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. A 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 Section.

ARTICLE 5 SUBCONTRACTORS

5.1 Award of Sub-Contracts

5.1.1 Pursuant to Article 10, the Contractor shall furnish the City and the A/E, in writing, with the name, and trade for each Sub-Contractor and the names of all persons or entities proposed as manufacturers of products, materials and equipment identified in the Contract Documents and where applicable, the name of the installing Contractor. The City's Representative will reply to the Contractor in writing if the City has reasonable objection to any such proposed person or entity. The Contractor shall not Contract with a proposed person or entity to which the City has made reasonable and timely objection.

5.1.2 The Contractor may request to change a Sub-Contractor. Any such request shall be made in writing to the City's Representative. The Contractor shall not change a Sub-Contractor, person, or entity previously disclosed if the City makes reasonable objection to such change.

5.1.3 The Contractor shall be responsible to the City for acts, defaults, and omissions of its Sub-Contractors of any tier.

5.2 Sub Contractual Relations

5.2.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor of any tier, to the extent of the Work to be performed by the Sub-Contractor of any tier, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the City and the A/E. Each Sub-Contract agreement of any tier shall preserve and protect the rights of the City and the A/E under the Contract Documents with respect to the Work to be performed by the Sub-Contractor of any tier so that Sub-Contracting thereof will not prejudice such rights and shall allow to the Sub-Contractor of any tier, unless specifically provided otherwise in the Sub-Contract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the City. Where appropriate, the Contractor shall require each Sub-Contractor to enter into similar agreements with its sub-Sub-Contractors. The Contractor shall make available to each proposed Sub-Contractor of any tier, prior to the execution of the Sub-Contract agreement, copies of the Contract Documents to which the Sub-Contractor of any tier shall be bound. Sub-Contractors of any tier shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Contractors of any tier.

5.2.2 All agreements between the Contractor and a Sub-Contractor or supplier of any tier shall contain provisions whereby Sub-Contractor or supplier waives all rights against the City, Contractor, City's Representative, A/E and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any of the perils covered by property or builders risk insurance coverage required of the Contractor in the Contract Documents. If insureds on any such policies require separate waiver forms to be signed by any Sub-Contractors of any tier or suppliers, Contractor shall obtain the same.

5.3 Contingent Assignment of Sub Contract

5.3.1 No assignment by the Contractor of any amount or any part of the Contract or of the funds to be received thereunder will be recognized, unless such assignment has had the written approval of the City, and the surety has been given due notice of such assignment and has furnished written consent hereto. In addition to the usual recitals in assignment Contracts, the following language must be set forth: "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor of the Contract and to claims and to liens for services rendered or materials supplied for the performance of the Work called for in said Contract in favor of all persons, firms or corporations rendering such services or supplying such materials.

ARTICLE 6 SEPARATE CONTRACTS AND COOPERATION

6.1 The City reserves the right to let other Contracts in connection with the Work.

6.2 It shall be the duty of each Contractor to whom Work may be awarded, as well as all Sub-Contractors of any tier employed by them, to communicate immediately with each other in order to schedule Work, locate storage facilities, etc., in a manner that will permit all Contractors to work in harmony in order that Work may be completed in the manner and within the time specified in the Contract Documents.

6.3 No Contractor shall delay another Contractor by neglecting to perform his work at the proper time. Each Contractor shall be required to coordinate his work with other Contractors to afford others reasonable opportunity for execution of their work. Any costs caused by defective or ill-timed work, including actual damages and liquidated damages for delay, if applicable, shall be borne by the Contractor responsible therefor.

6.4 Each Contractor shall be responsible for damage to City's or other Contractor's property done by him or persons in his employ, through his or their fault or negligence. If any Contractor shall cause damage to any other Contractor, the Contractor causing such damage shall upon notice of any claim, settle with such Contractor.

6.5 The Contractor shall not claim from the City money damages or extra compensation under this Contract when delayed in initiating or completing his performance hereunder, when the delay is caused by labor disputes, acts of God, or the failure of any other Contractor to complete his

performance under any Contract with the City, where any such cause is beyond the City's reasonable control.

6.6 Progress schedule of the Contractor for the Work shall be submitted to other contractors as necessary to permit coordinating their progress schedules.

6.7 If Contractors or Sub-Contractors of any tier refuse to cooperate with the instructions and reasonable requests of other Contractors performing work for the City under separate contract, in the overall coordinating of the Work, the City's Representative may take such appropriate action and issue such instructions as in his judgment may be required to avoid unnecessary and unwarranted delay.

ARTICLE 7 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS

7.1 The City's Representative or A/E shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Field Order involves no change in the Contract price or the Contract time.

7.2 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 Instruction involve no change in the Contract price or Contract time.

ARTICLE 8 CHANGE ORDERS

8.1 The City, as authorized by its governing body, may authorize written Change Orders regarding changes in, extensions of time, or additions to Work to be performed or materials to be furnished pursuant to the provisions of the Contract.

8.2 On approval of any Contract change increasing the Contract price, Contractor shall ensure that the performance bond and payment bond are increased so that each reflects the total Contract price as increased.

8.3 The amount of adjustment in the Contract price for authorized Change Orders will be agreed upon before such Change Orders becomes effective and will be determined as follows.

.1 By an acceptable unit price or lump sum proposal from the Contractor and the Sub-Contractors of any tier. Breakdowns shall be of sufficient detail to allow evaluation by the City and A/E and include a listing of each item of material with unit prices and number of hours of labor for each task.

.2 By a time and material basis with or without a specified maximum, including all overhead and profit, total cost not to exceed maximum specified. The City's Representative will approve daily the Contractor's time and material for the Work. Time must be submitted on daily time sheets.

.3 By unit prices contained in the Contractor's original proposal and incorporated in the Construction Contract. Unit prices contained in the Contractor's original proposal are understood to include the Contractor's overhead and profit. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of such unit prices to quantities of the Work proposed will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

.4 The Contractor shall submit labor rates for all Sub-Contractors as provided herein.

8.4 Overhead and profit on Change Orders shall be applied as follows:

.1 The overhead and profit charged by the Contractor shall be considered to include, but not limited to, performance bonds, builder's risk and public liability insurance, job site office expense, normal hand tools, incidental job supervision, field supervision, rentals of construction equipment,

company benefits for full time employees assigned to the Work, and payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the Work. Company benefits shall include but not limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and applicable holiday pay. The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:

Overhead and Profit

- Not more than a combined 15% total overhead & profit- To the Contractor or the Sub-Contractor for Work performed with their respective forces or materials purchased
- No overhead or profit will be paid for special consultants including, but not limited to, engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the work described in the Change Order. Fees will be paid as a direct pass through.

.2 The Cost of Work shall NOT include any of the following:

- Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and Contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in Contractor's 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.
- 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 of Contractor, any Sub-Contractor, 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.
- Other overhead or general expense costs of any kind and the cost of any item not expressly included above.

.3 On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change in direct cost for the Contractor or Sub-Contractor of any tier performing the Work.

.4 The percentages for overhead and profit credit to the City on Change Orders that are strictly decreases in the quantity of work or materials shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved, but shall not be less than the following:

Overhead and Profit

- Not less than 15%- Credit to the City from the Contractor or Sub-Contractor for Work performed with their respective forces or materials purchased.

8.5 The Contractor shall provide Change Order pricing and backup in a timely manner. No claim for an addition to the Contract sum will be valid unless authorized in writing by the City. In the event that none of the foregoing methods are agreed upon, the City may direct the Work to be performed by force account or accounts. The cost of such Work will be determined by the Contractor's actual labor and material cost to perform the Work plus applicable overhead and profit as outlined above

8.6 No changes or additions to work to be performed, materials to be furnished, or in the provisions of the Contract will be authorized until execution and delivery by the City to the Contractor of the written order referred to in this paragraph. Any work completed by the Contractor outside the original project scope without written approval from the City will be deemed as a waiver by the Contractor for additional compensation for said work.

8.7 Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work".

ARTICLE 9

NOTIFICATION AND CLAIM FOR CHANGE OF CONTRACT TIME OR CONTRACT PRICE

9.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice by the Contractor to the City's Representative and A/E within five (5) 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 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 City in accordance with Section 4.4 hereof, 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 SECTION.** Each claim the Contractor makes for a Contract change for any cause shall be accompanied by a revised schedule reflecting the effects and proposals to minimize these effects on the project.

9.2 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 Section 9.1. Such delays shall include, but not be limited to, force majeure, acts or neglect by any separate contractor employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God. Any unauthorized work performed by the Contractor prior to NTP shall not be the basis for a claim from the Contractor of any kind. In no event shall claims be made after the final payment is made under Final Payment of these General Conditions.

9.3 No Damages for Delay

9.3.1 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 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 the City or its Representative. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided herein.

9.4 Excusable Delay – Non-Excusable Delay

9.4.1 Excusable Delay – Delay which extends the completion of the Work and which is caused by circumstances beyond the control of Contractor or its Sub-Contractors, suppliers or vendors and by the City or A/E, is an Excusable Delay.

9.4.2 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 Section 9.1 hereof, Contractor shall be entitled only to a time extension and no further compensation for delay.

9.4.3 Non-Excusable Delay – Delays to the critical path which were foreseeable at the time of contract award or unforeseeable delays caused by the Contractor due to the Contractor's fault or negligence or its own inefficiencies or problems, due to its inability to coordinate Sub-Contractors and/or other flaws in its planning. In these types of delays the Contractor is not entitled to extra time and the City may be allowed to assess liquidated damages or actual damages, depending on the Contract Documents.

9.5 Progress and Completion

9.5.1 Contractor acknowledges and agrees that time is of the essence of this Contract

9.5.2 Contract Time is the period of time set forth in the Contract for Construction required for Substantial Completion and Final Completion of the entire Work or portions of the Work as defined in the Contract Documents. Time limits stated in the Contract Documents are of the essence of the Contract. The Contract Time may only be changed by a Change Order. By executing the Contract, the Contractor confirms that the Contract Time is a sufficient period for performing the Work in its entirety.

9.5.3 The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance and bonds required by Article 12 to be furnished by the Contractor.

9.5.4 The Contractor shall proceed expeditiously and diligently with adequate forces and shall achieve Substantial Completion and Final Completion within the time specified in the Contract Documents.

9.6 Delay in Completion

9.6.1 The Contractor shall be liable for all of the City's damages for delay in achieving Substantial Completion and/or Final Completion of the entire Work or portions of Work as set forth in the Contract Documents within the Contract Time unless liquidated damages are specifically provided for in the Contract Documents. If liquidated damages are specifically provided for in the Contract for Construction, Contractor shall be liable for such liquidated damages as forth in Section 9.7.

9.7 Liquidated Damages

9.7.1 If Liquidated Damages are prescribed in the Invitation to Bidders, Bid Form and in the Contract Documents, the City may deduct from the Contract Sum and retain as Liquidated Damages, and not as penalty or forfeiture, the sum stipulated in the Contract Documents for each calendar day after the date specified for completion of the Work that the entire Work is not substantially complete and/or finally complete.

9.7.2 The City's Representative shall establish the date of Substantial completion and the date of Final Completion of the Work which shall be conclusive and binding on the City and Contractor for the purpose of determining whether or not Liquidated Damages shall be assessed under terms hereof and the sum total amount due.

9.7.3 Liquidated Damages or any matter related thereto shall not relieve the Contractor or his surety of any responsibility or obligation under this Contract.

ARTICLE 10

PAYMENTS AND COMPLETION

10.1 Commencement, Prosecution, and Completion

10.1.1 The Contractor shall commence Work within ten (10) days upon the date of a "Notice to Proceed" from the City or the date fixed in the Notice to Proceed. Contractor shall prosecute the Work with faithfulness and diligence, and the Contractor shall complete the Work within the Contract Time set forth in the Contract Documents.

10.1.2 The City will prepare and forward three (3) copies of the Contract and Performance and Payment Bonds to the Contractor to whom the Contract for the Work is awarded and such Contractor shall return two (2) properly executed prescribed copies of the Contract and Bonds to the City.

10.1.3 The construction period, when specified in consecutive calendar days, shall begin when the Contractor receives notice requesting the instruments listed in below. Before the City will issue Notice to Proceed to permit the Contractor to begin Work, the City shall have received the

following instruments, properly executed as described in the Contract Documents. The documents below shall have been received by the City within fifteen (15) days after receipt of request for documents:

- .1 Contract
- .2 Bond (See Article 12)
- .3 Insurance (See Article 12)
- .4 List of Sub-Contractors of any tier

10.1.4 In the event Contractor fails to provide City such documents, Contractor may not enter upon the site of the Work until such documents are provided. The date the Contractor is required to commence and complete the Work shall not be affected by the City denying Contractor access to the site as a result of Contractor's failure to provide such documents and Contractor shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of its failure to comply with the provisions of this Section.

10.1.5 Contracts executed by partnerships shall be signed by all general partners of the partnership. Contracts signed by corporations shall be signed by the President or Vice President and the Secretary or Assistant Secretary. In case the Assistant Secretary or Vice President signs, it shall be so indicated by writing the word "Asst." or "Vice" in front of the words "Secretary" and "President". The corporate seal of the corporation shall be affixed. For all other types of entities, the Contractor and the person signing the Contract on behalf of Contractor represent and warrant that the person signing the Contract has the legal authority to bind Contractor to the Contract.

10.1.6 Any successful Contractor which is a corporation organized in a state other than Florida or any Contractor doing business in the State of Florida under a fictitious name shall furnish, at no cost to the City, no later than the time at which the executed Contract for Construction, the Payment Bond, and the Performance Bond are returned, a properly certified copy of its current Certificate of Authority and License to do business in the State of Florida. No Contract will be executed by the City until such certificate is furnished by the Contractor.

10.1.7 Within fifteen (15) calendar days of the issuance of a Notice of Award, the Contractor shall submit one (1) signed copy of the following instruments. No payment will be processed until all of these instruments are received and approved by the City's Representative.

- .1 progress and payment schedule
- .2 Contractor's Schedule of Values
- .3 List of material suppliers
- .4 Itemized breakdown of anticipated equipment rates. Overhead and profit shall not be included.

10.2 Contract Sum

10.2.1 The City shall compensate Contractor for all Work described herein and in the Contract Documents the Contract Sum set forth in the Contract for Construction, subject to additions and deletions, if any, as provided hereunder.

10.3 Schedule of Values

10.3.1 Within fifteen (15) days after receipt of the Notice of Award, the Contractor shall submit to the City's Representative a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City's Representative may require. This schedule, unless objected to by the City's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment. The values set forth in such schedule shall not be used in any manner as fixing a basis for additions to or deletions from the Contract Sum.

10.3.2 The progress and payment schedule of values shall show the following:

- .1 The proposed schedule for tasks identified in the Contractor's Progress and Payment Schedule in bar chart form.
- .2 Important milestones which may impact the progress schedule (such as the anticipated delivery of structural steel, completion of rough-in, completion of utility relocations, etc.).

.3 Rate of progress proposed by the Contractor in terms of cumulative percent complete, shown as an "S" curve superimposed on the bar chart schedule.

.4 Anticipated monthly payments by the City based on the rate of progress proposed by the Contractor.

.5 The dates shown for Tasks on the Contractor's progress and payment schedule shall agree with the start and finish dates provided on the Contractor's Schedule of Values.

10.4 Applications for Payment

10.4.1 The Contractor shall submit monthly to the City's Representative and the A/E an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the City's Representative or A/E may require, such as copies of requisitions from Sub-Contractors and material suppliers, and reflecting retainage as provided for herein.

10.4.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Sub-Contractor or material supplier

10.4.3 Progress payments shall be made on account of materials and equipment delivered to the site and incorporated in the Work. No payments will be made for materials and equipment stored at the Project site but not yet incorporated into the Work except as provided in Paragraph 10.4.4.

10.4.4 If approved in advance and in writing by City, progress payments may be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. City may in its sole discretion refuse to grant approval for payments for materials and equipment stored at the Project site but not yet incorporated in the Work. Any approval by City for payment for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work shall be conditioned upon Contractor's demonstrating that such materials and equipment are adequately protected from weather, damage, vandalism and theft and that such materials and equipment have been inventoried and stored in accordance with procedures established by or approved by the City. Nothing in this clause shall imply or create any liability on the part of the City for the Contractor's inventory and storage procedures or for any loss or damage to material, equipment or supplies stored on the site, whether incorporated into the work or not. In the event any such loss or damage occurs, the Contractor remains solely responsible for all costs associated with replacement of the affected materials, supplies and equipment including labor and incidental costs, and shall have no claim against the City for such loss.

10.4.5 The Application for Payment shall constitute a representation by the Contractor to the City that the Work has progressed to the point indicated; the quality of the Work covered by the Application for Payment is in accordance with the Contract Documents; and the Contractor is entitled to payment in the amount requested.

10.4.6 The Contractor will be reimbursed for ninety percent (90%) of the value of all labor furnished and material installed and computed in the same manner, less all previous payments made.

10.5 Approval for Payment

10.5.1 The City's Representative or A/E will, within fifteen (15) days after receipt of the Contractor's Application for Payment, either approve Contractor's Application for Payment for such amount as the City's Representative determines is properly due, or notify the Contractor of the City's Representative's reasons for withholding certification in whole or in part as provided in Section 10.6.

10.6 Decisions to Withhold Approval

10.6.1 The City's Representative may decide not to certify payment and may withhold approval in whole or in part, based on the A/E's reasonable rejection of the pay request to the extent reasonably necessary to protect the City. If the City's Representative is unable to approve payment in the amount of the Application, the City's Representative will notify the Contractor as provided in Paragraph 10.5.1. If the Contractor and City's Representative cannot agree on a revised amount, the City's Representative will promptly issue approval for payment for the amount for which the City's Representative is able to determine is due Contractor. The City's Representative may also decide not to approve payment or, because of subsequently discovered

evidence or subsequent observations, may nullify the whole or a part of approval for payment previously issued, to such extent as may be necessary in the City's Representative opinion to protect the City from loss because of:

- .1 defective Work not remedied or damage to completed Work;
- .2 failure to supply sufficient skilled workers or suitable materials;
- .3 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .4 failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials or equipment;
- .5 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .6 damage to the City or another Contractor;
- .7 reasonable evidence that the Work will not be completed within the Contract Time or an unsatisfactory rate of progress made by Contractor;
- .8 Contractor's failure to comply with applicable rules, regulations, Statutes, Ordinances, standards;
- .9 Contractor's or Sub-Contractor's failure to comply with Contract Prevailing Wage requirements; or
- .10 Contractor's failure to carry out the Work in strict accordance with the Contract Documents.
- .11 Contractor's failure to provide up-dated construction schedule
- ..12 installation of work, materials or equipment without an approved shop drawing

10.6.2 When the above reasons for withholding approval are removed, approval will be made for amounts previously withheld.

10.7 Progress Payments

10.7.1 Based upon Applications for Payment submitted to the City by the Contractor and approvals issued by the City's Representative, the City shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Applications for Payment shall be in a format approved by the City.

10.7.2 The period covered by each Application for Payment shall be one (1) calendar month.

10.7.3 The City shall make payment to Contractor for amounts due and approved by City's Representative not later than thirty (30) days after the City approves a properly detailed Application for Payment which is in compliance with the Contract Documents. The City shall not have the obligation to process or pay such Application for Payment until it receives an Application for Payment satisfying such requirements.

10.7.4 Based on the Schedule of Values submitted by Contractor, Applications for Payment submitted by Contractor shall indicate the percentage of completion of each portion of Contractor's Work as of the end of the period covered by the Application for Payment.

10.7.5 The Contractor shall promptly pay each Sub-Contractor and supplier, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Sub-Contractor's or supplier's portion of the Work, the amount to which said Sub-Contractor or supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of each Sub-Contractor's or supplier's portion of the Work. The Contractor shall, by appropriate agreement with each Sub-Contractor or supplier, require each Sub-Contractor or supplier to make payments to sub-Sub-Contractors in similar manner.

10.7.6 Neither the City nor A/E shall have an obligation to pay or to see to the payment of money to a Sub-Contractor of any tier nor a laborer or employee of Contractor except to the extent required by law. Retainage provided for by the Contract Documents are to be retained and held for the sole protection of City, and no other person, firm or corporation shall have any claim or right whatsoever thereto.

10.7.7 An approval for payment by City's Representative, a progress payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Contract Documents.

10.8 Failure of Payment

10.8.1 If the City is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment by Contractor shall be made promptly upon demand by the City. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the City, or the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Contract Sum and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the City is entitled from any payment then or thereafter due the Contractor from the City, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that to which the City is entitled.

10.9 Substantial Completion

10.9.1 Substantial Completion is the stage in the progress of the Work as defined in Paragraph 1.1.21 as certified by the City.

10.9.2 When the Contractor considers the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Contractor shall notify the City and the A/E. The City's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City's Representative's inspection discloses any item which is not in accordance with the requirements of the Contract Documents, the Contractor shall complete or correct such item upon notification by the City's Representative. The Contractor shall then submit a request for another inspection by the City's Representative to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the City will issue a Certificate of Substantial Completion. Substantial Completion shall transfer from the Contractor to the City responsibilities for security, maintenance, heat, utilities, damage to the Work and insurance. In no event shall Contractor have more than thirty (30) days to complete all items on the Punch List and achieve Final Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or as agreed otherwise. In the event the Contractor refuses or fails to complete any item on the Punch List by the specified time, the City has, as its option, the right to, after ten (10) days notice to the Contractor, have the work performed by others and back-charge the Contractor or delete the unfinished work from the Contract and deduct the total cost of performing the Work from the Contract.

10.9.3 All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the City's Representative before the certified date for Substantial Completion.

10.10 Partial Occupancy or Use

10.10.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work and insurance. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by the City's Representative.

10.10.2 Immediately before such partial occupancy or use, the City, and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. **10.11 Final Completion and Final Payment**

10.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City's Representative and the A/E will promptly make such inspection and, when the City's Representative and A/E find the Work acceptable under the Contract Documents and the Contract fully performed, the City's Representative will promptly issue a final approval for payment; otherwise, City's Representative will return Contractor's Final Application for Payment to Contractor, indicating in writing the

reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Submission of a Final Application for Payment shall constitute a further representation that conditions listed in Paragraph 10.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The final approval for payment will not be issued by the City's Representative until all warranties and guarantees have been received and accepted by the City.

10.11.2 The City will request the Contractor to submit the application for final payment along with a manually signed notarized letter on the Contractor's letterhead certifying that:

- .1 labor costs, prevailing wage rates, fringe benefits and material costs have been paid.
- .2 Sub-Contractors of any tier and manufacturers furnishing materials and labor for the project have fully completed their Work and have been paid in full.
- .3 the project has been fully completed in accordance with the Contract Documents as modified by Change Orders, if any.
- .4 the acceptance by Contractor of its Final Payment, by check or electronic transfer, shall be and operate as a release of all claims of Contractor against City for all things done or furnished or relating to the Work and for every act or alleged neglect of City arising out of the Work.
- .5 a certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until as least thirty (30) days prior written notice has been given to the City.
- .6 written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

10.11.3 Final Payment constituting the entire unpaid balance due shall be paid by the City to the Contractor within thirty (30) days after City's receipt of Contractor's Final Application for Payment which satisfies all the requirements of the Contract Documents and City's receipt of all information and documents set forth in Section 10.11.

10.11.4 No payment under this Contract, including but not limited to, final payment, shall constitute acceptance by City of any Work or act not in accordance with the requirements of the Contract Documents.

10.11.5 Acceptance of final payment by the Contractor shall constitute a waiver of claims by the payee except those previously made in writing and identified by the payee as unsettled at the time of final Application for Payment.

10.12 No Interest

10.12.1 Any monies not paid by City when claimed to be due to Contractor under this Contract, including, but not limited to, any and all claims for Contract 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.

10.13 Purchasing Card Program

10.13.1 The City has implemented a purchasing card program through Sun Trust Bank, using the VISA network. Contractors will receive payment from the purchasing card in the same manner as other Visa purchases. Accordingly, respondents must presently have the ability to accept VISA or take whatever steps necessary to implement the ability before the start of the agreement term. VISA acceptance is mandatory but is not the exclusive method of payment. Please indicate your ability to accept Visa purchasing card on Bid Form.

ARTICLE 11 PROTECTION OF PERSONS AND PROPERTY

11.1 Safety Precautions and Programs

11.1.1 The Contractor shall at all time conduct operations under this Contract in a manner to avoid the risk of bodily harm to persons or risk of damage to any property. The Contractor shall

promptly take precautions which are necessary and adequate against conditions created during the progress of the Contractor's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to property. The Contractor shall continuously inspect Work, materials, and equipment to discover and determine any such conditions and shall be solely responsible for discovery, determination, and correction of any such conditions. The Contractor shall comply with applicable safety laws, standards, codes, and regulations in the jurisdiction where the Work is being performed, specifically, but without limiting the generality of the foregoing, with rules regulations, and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments.

11.1.2 In the event the Contractor encounters on the site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), lead, mercury, or other material known to be hazardous, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the City's Representative and the A/E in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the City's Representative and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless by written agreement of the City's Representative and the Contractor. "Rendered Harmless" shall mean that levels of such materials are less than any applicable exposure standards, including, but not limited to, OSHA regulations, as well as all Federal, State and local environmental agencies.

11.1.3 The Contractor warrants that the product and services supplied to the City of Miami Gardens, Florida, shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be considered as a breach of Contract. Any fines levied because of inadequacies to comply with these requirements shall be borne solely by the Contractor responsible for same.

11.2 Safety of Persons and Property

11.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide protection to prevent damage, injury, or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Sub-Contractors of any tier; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

11.2.1.1 The Contractor shall maintain suitable and sufficient guards and barriers and, at night, suitable and sufficient lighting for the prevention of accidents and all minimum safety standards required by Municipal, County, State and Federal ordinances and laws shall be strictly met by the Contractor.

11.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

11.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities.

11.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise the highest degree of care and carry on such activities under supervision of properly qualified personnel.

11.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in

Article 11 caused in whole or in part by the Contractor, a Sub-Contractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, and for which the Contractor is responsible under Article 11, except damage or loss attributable solely to acts or omissions of City or the A/E or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations stated elsewhere in the Contract.

11.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents, and the maintaining, enforcing and supervising of safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the City's Representative and A/E. The Contractor shall hold regularly scheduled safety meetings to instruct Contractor's personnel on safety practices, accident avoidance and prevention, and the Project Safety Program. The Contractor shall furnish safety equipment, and enforce the use of such equipment by its employees and it's Sub-Contractors of any tier.

11.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

11.2.8 The Contractor shall promptly report in writing to the City all accidents arising out of or in connection with the Work which cause death, lost time injury, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the City

11.2.9 The Contractor shall promptly notify in writing to the City of any claims for injury or damage to personal property related to the work, either by or against the Contractor.

ARTICLE 12 INSURANCE & BONDS

12.1 Insurance

12.1.1 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, and pay for from the date of the Contract for the Work and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, City and others against all hazards or risks of loss described below. The form of such insurance together with carriers thereof, in each case, shall be approved by City, but, regardless of such approval, it shall be the responsibility of Contractor to maintain the insurance coverages set forth herein.

12.1.2 The Contractor shall not be allowed on the City's property without proof of the insurance coverages set forth herein

12.2 Commercial General Liability

12.2.1 Contractor shall secure and maintain from the date of the Contract for Construction and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than \$2,000,000 per occurrence and \$5,000,000 in aggregate.

12.2.2 CGL insurance shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the Contractor, its agents, or any Sub-Contractors of any tier or by anyone directly or indirectly employed by either of them.

12.2.3 CGL insurance shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. In particular, and not by way of any limitation, the CGL insurance shall cover the Contractor's indemnity obligations contained in the Contract Documents.

12.2.4 There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

12.2.5 "The City of Miami Gardens" shall be endorsed as an "additional insured" under the CGL policy.

12.2.6 Contractor waives all rights against City and its agents, officers, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

12.3 Licensed for Use Vehicle Liability

12.3.1 Contractor shall secure and maintain from the date of the Contract for Construction until the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include Contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than \$2,000,000 combined single limit for bodily injury and property damage per accident.

12.3.2 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

12.4 Workers' Compensation Insurance

12.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement. In case any Work is sublet, Contractor shall require any Sub-Contractor of any tier to provide the insurance coverages required under this Section 12.4.

12.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable laws, including the statutes of the State of Florida. Contractor's employers' liability coverage limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

12.5 Liability Insurance General Requirements

12.5.1 All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by City.

12.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A-" and financial ratings not lower than "XI" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

12.5.3 Contractor shall cause its insurance carriers to waive all rights of subrogation against the City and its officers, employees and agents.

12.5.4 Contractor shall not permit any Sub-Contractor to begin work until after similar minimum insurance to cover Sub-Contractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Contract, then in that event, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the services required by this Contract unless all required insurance remains in full force and effect.

12.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide City additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by City.

12.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.

12.5.7 Failure of City to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by City of such certificates, policies and binders or failure of City to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.

12.5.8 The City shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.

12.5.9 If Contractor fails to maintain the insurance required by the Contract Document, City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If City is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.

12.5.10 By requiring the insurance set forth herein and in the Contract Documents, City does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to City in the Contract Documents.

12.5.11 If Contractor's liability policies do not contain a standard separation of insured's provision, such policies shall be endorsed to provide cross-liability coverage.

12.5.12 If a part of the Work hereunder is to be subcontracted, the Contractor shall: (1) cover any and all Sub-Contractors in its insurance policies; (2) require each Sub-Contractor to secure insurance which will protect said Sub-Contractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 12 hereunder; and (3) require each Sub-Contractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

12.5.13 It is understood and agreed that the insurance coverages required by the provisions of this Article 12 are required in the public interest and that the City does not assume any liability for acts of Contractor or Sub-Contractors of any tier or their employees in the performance of the Contract or Work.

12.6 Builder's Risk Insurance

12.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Florida, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form for the entire Work. The insurance shall apply on a replacement cost basis.

12.6.2 The insurance as required herein shall name as insured the City, Contractor and all Sub-Contractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to City.

12.6.3 The insurance as required herein shall cover the entire Work, including reasonable compensation for A/E's services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit, including ocean transit. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, Ordinance or regulation.

12.6.4 The insurance required herein shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightning, earthquake, flood, frost, water damage, windstorm and freezing.

12.6.5 If there are any deductibles applicable to the insurance required herein, Contractor shall pay any part of any loss not covered because of the operation of such deductibles. Deductible

shall not be more than Five Thousand Dollars (\$5,000.00) each claim. Deductible shall not be more than 5% of building value for wind damage.

12.6.6 The insurance as required herein shall be maintained in effect until the earliest of the following dates:

.1 the date which all persons and organization who are insured under the policy agree in writing that it

shall be terminated;

.2 the date on which final payment of this Contract has been made by City to Contractor; or

.3 the date on which the insurable interests in the property of all insured other than the City have ceased.

12.6.7 The City and Contractor waive all rights against (1) each other and any of their Sub-Contractors of any tier, suppliers, agents and employees, each of the other, (2) the A/E and A/E's consultants, and (3) separate Contractors described in Article 6, if any, and any of their subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 12.8 or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The City or Contractor, as appropriate, shall require of the A/E, A/E's consultants, separate contractors described in Article 6, if any, and the Sub-Contractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.

12.6.8 A loss insured under Contractor's property insurance shall be adjusted by the City in good faith and made payable to the City for the insured, subject to requirements of the Contract Documents. The Contractor shall pay Sub-Contractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Sub-Contractors of any tier to make payments to their sub-Sub-Contractors in similar manner.

12.7 Products and Completed Operations Liability Insurance

12.7.1 Contractor shall maintain the Products and completed Operations Liability Insurance for a period of at least two (2) years after final payment for the Work and furnish City with evidence of the continued insurance coverage at the time of final payment.

12.8 Bonds: Bid Bonds, when required, shall be submitted with the Bid in the amount specified in Invitation to Bidders. After acceptance of Bid, the City will notify the successful Bidder to submit a performance bond and certificate of insurance in the amount specified herein.

12.8.1 The Contractor shall procure, furnish and record in the public records in Miami-Dade County a Performance Bond and a Payment Bond in the form prepared by the City, and as provided by state law, each in an amount equal to one hundred percent (100%) of the Contract Sum, as well as adjustments to the Contract Sum. The Performance Bond shall secure and guarantee Contractor's faithful performance of this Contract, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. These Bonds shall be in effect through the duration of the Contract plus the Guaranty Period as required by the Contract Documents.

12.7.2 Each bond shall be written by a corporate 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 bonds required hereunder shall be executed by a responsible surety licensed in the State of Florida, and have at least the following minimum qualification in accordance with

the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

12.7.3 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Contractor shall within three (3) days substitute another bond and surety, both of which must be acceptable to City. If Contractor fails to make such substitution, City may procure such required bonds on behalf of Contractor at Contractor's expense.

12.7.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds to such person or entity.

12.7.5 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to or waiver of: (1) notice of changes in the Work; (2) request for final payment; and (3) any other material required by the surety. The City shall be notified by the Contractor, in writing, of all communications with the surety. The City may, in the City's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Contractor under the Contract Documents and obtain consents as necessary to protect the City's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

12.7.6 Contractor shall indemnify and hold harmless the City and any agents, employees, representative from and against any claims, expenses, losses, costs, including reasonable attorneys' fees, as a result of any failure of Contractor to procure the bonds required herein.

ARTICLE 13 UNCOVERING AND CORRECTION OF THE WORK

13.1 Uncovering of the Work

13.1.1 If a portion of the Work is covered contrary to the A/E's request or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the A/E or the City's Representative, be uncovered for the A/E's observation and be replaced at the Contractor's expense without change in the Contract Time.

13.1.2 If a portion of the Work has been covered which the A/E or the City's Representative has not specifically requested to observe, prior to its being covered, the A/E or the City's Representative may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the City or a separate contractor in which event the City will be responsible for payment of such costs.

13.2 Correction of the Work

13.2.1 The A/E or City's Representative shall have the right to reject Work not in strict compliance with the requirements of the Contract Documents. The Contractor shall promptly correct Work rejected by the A/E or the City's Representative for failing to conform to the requirements of the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed, or completed. If Work has been rejected by A/E or City's Representative, the A/E or City's Representative shall have the right to require the Contractor to remove it from the Project site and replace it with Work that strictly conforms to the requirements of the Contract Documents regardless if such removal and replacement results in "economic waste." Contractor shall pay all claims, costs, losses and damages caused by or resulting from the correction, removal or replacement of defective Work, including, but not limited to, all costs of repair or replacement of Work of others. The Contractor shall bear costs of correcting, removing and replacing such rejected Work, including additional testing and inspections and compensation for

the A/E's services and expenses made necessary thereby. If prior to the date of final payment, the Contractor, a Sub-Contractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the City.

13.2.2 If, within twelve (12) months after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found not to be in strict accordance with the requirements of the Contract Documents, the Contractor shall correct or remove and replace such defective Work, at the City's discretion. Such twelve (12) month period is referred to as the "Guarantee Period." The obligations under this Section 13.2.2 shall cover any repairs, removal and replacement to any part of the Work or other property caused by the defective Work.

13.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the City.

13.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the City may correct or remove it and replace such nonconforming Work. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the City, the City may take action to correct or remove the nonconforming work at the Contractor's expense.

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

13.2.6 Nothing contained in Article 13 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the twelve (12) month Guarantee Period as described in Article 13 relates only to the specific obligation of the Contractor to correct, remove or replace the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents. The requirements of Article 13 are in addition to and not in limitation of any of the other requirements of the Contract for warranties or conformance of the Work to the requirements of the Contract Documents.

13.3 Acceptance of Nonconforming Work

13.3.1 The City may accept Work which is not in accordance with the Contract Documents, instead of requiring its removal and correction, in its sole discretion. In such case the Contract Sum will be adjusted as appropriate and equitable. Such adjustment shall be made whether or not final payment has been made. Nothing contained herein shall impose any obligation upon the City to accept nonconforming or defective Work.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Written Notice

14.1.1 All notices required to be given by the Contractor under the terms of this Contract shall be made in writing. Written notice when served by the City will be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an office of the corporation for which it was intended, or if delivered at or sent to the last business address known to the party giving notice.

14.2 Rights and Remedies

14.2.1 Duties and obligations imposed by the Contract Documents, and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

14.2.2 No action or failure to act by the City, the A/E, or the City's Representative will constitute a waiver of a right or duty afforded to the City under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

14.2.3 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as the City is entitled to protection of its rights under applicable law.

14.2.4 Contractor shall carry out the Work and adhere to the current construction schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the City and Contractor may otherwise agree to in writing.

14.3 Tests and Inspections

14.3.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules or regulations shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with a testing laboratory or entity which the City has designated for testing. The City shall bear related costs of tests, inspections, and approvals. The Contractor shall give the A/E and the City's Representative timely notice of when and where tests and inspections are to be made so the A/E and/or the City's Representative may observe procedures.

14.3.2 If the A/E or the City's Representative determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, or required by law, the A/E, or the City's Representative will instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the City's Representative and the Contractor shall give timely notice to the A/E, and the City's Representative, of when and where tests and inspections are to be made so the A/E and/or the City's Representative may observe such procedures. The City will bear such costs except as provided elsewhere in the Contract Documents.

14.3.3 If such procedures for testing, inspection, or approval under Article 14 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the A/E's services and expenses. Contractor shall bear all costs made necessary for not being prepared for inspections including but not limited to A/E's services and expenses.

14.3.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the City's Representative and A/E.

14.3.5 Contractor shall take all necessary actions to ensure that all tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

14.3.6 Contractor shall arrange for and pay for all costs, except as provided elsewhere in the Contract Documents, of all testing required by the Contract Documents or any applicable regulations for materials to be tested or certified at or on the place or premises of the source of the material to be supplied. The City shall have the right to require testing of all materials at the place of the source of the material to be supplied if not required by the Contract Documents or any applicable regulations. The City shall bear the costs of such tests and inspections not required by the Contract Documents or by applicable regulations unless prior defective Work provides A/E or City with a reasonable belief that additional defective Work may be found, in which case Contractor shall be responsible for all costs of tests and inspections ordered by the City or A/E, whether or not such tests or inspection reveals that Work is in compliance with the Contract Documents.

14.4 Records

14.4.1 The City, or any parties it deems necessary, shall have access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for five (5) years after final payment or five (5) years after the final resolution of any on going disputes at the time of final payment. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Sub-Contractors of any tier shall be required by Contractor to maintain records and to permit audits as required of Contractor herein.

14.5 Codes and Standards

14.5.1 The Work shall be performed to comply with the Florida Building Codes, and all pertinent standards, rules and/or regulations. The latest editions and supplements of Federal, State, local Codes and Standards in effect on the date of the execution of the Contract shall be applicable unless otherwise designated in the Contract Documents.

14.6 General Provisions

14.6.1 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Sub-Contractor is added for emphasis and is also hereby deemed to include a Sub-Contractor of any tier. The omission of a reference to a Sub-Contractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Sub-Contractor of any tier under the Contract Documents or the applicable subcontract.

14.6.2 This Contract shall be interpreted, construed, enforced and regulated under and by the laws of the State of Florida. Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable. Contractor and City further agree that in the event any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, this Contract shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

14.6.3 Contractor and City each agree that the State of Florida Circuit Court, Miami-Dade County shall have exclusive jurisdiction to resolve all Claims and any issue and disputes between Contractor and City. Contractor agrees that it shall not file any petition, complaint, lawsuit or legal proceeding against City in any other court other than the State of Florida Circuit Court , Miami-Dade County.

14.6.4 City's total liability to Contractor and anyone claiming by, through, or under Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of City and in part by the fault of Contractor or any other entity or individual shall not exceed the percentage share that City's fault bears to the total fault of City, Contractor and all other entities and individuals as determined on the basis of comparative fault principles.

14.6.5 Contractor agrees that City shall not be liable to Contractor for any special, indirect, incidental, or consequential damage whatsoever, whether caused by City's negligence, fault, errors or omissions, strict liability, breach of Contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.

14.6.6 Nothing contained in this Contract or the Contract Documents shall create any Contractual relationship with or cause of action in favor of a third party against the City.

14.7 Anti-Discrimination

14.7.1 The Contractor certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

14.8 Non-Collusion

14.8.1 By executing this Contract, Contractor certifies that its offer is made without prior understanding, agreement, or connection with any corporation, firm or person submitting an offer for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

No premiums, rebates or gratuities are permitted, either with, prior to or after any delivery of material or provision of services. Any violation of this provision may result in the Contract cancellation, return of materials or discontinuation of services and the possible removal from the vendor bid list(s).

**ARTICLE 15
TERMINATION OR SUSPENSION OF THE
CONTRACT**

15.1 Termination by City for Cause

15.1.1 The City shall be the sole judge of nonperformance, which shall include any failure on the part of the successful Bidder to accept the award, to furnish required documents, and/or to fulfill any portion of this Contract within the time stipulated.

15.1.2 Upon default by the successful Bidder to meet any terms of this Contract, the City will notify the Bidder three (3) business days to remedy the default. Failure on the Contractor's part to correct the default within the required three (3) days shall result in the Contract being terminated and upon the City notifying in writing the Contractor of its intentions and the effective date of the termination.

15.1.3 The following shall constitute default:

- .1 refusal or Failure to perform the work required under the Contract and/or within the time required or failing to use the Sub-Contractors, entities and personnel as identified and set forth, and to the degree specified in the Contract;
- .2 refusal or Failure to begin the work under this Contract within the time specified.
- .3 refusal or Failure to perform the Work with sufficient properly skilled workers, superintendents, managers and equipment to ensure timely completion;
- .4 refuses or fails to supply sufficient or proper materials;
- .5 neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the Contract;
- .6 becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the Contractor incapable of performing the Work in accordance with and as required by the Contract;
- .7 failure to comply with any of the terms of the Contract in any material respect or disregards laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction;
- .8 fails to make payment to Sub-Contractors for materials or labor in accordance with the respective agreements between the Contractor and the Sub-Contractors;
- .9 fails to maintain a satisfactory rate of progress with the Work or fails to comply with approved progress schedules; or
- .10 fails to furnish the City with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

In the event of default or termination of a Contract, the Contractor shall pay all attorney's fees and court costs incurred in collecting any damages. The Contractor shall pay the City for any and all costs incurred in ensuing the completion of the project.

15.1.3.1 When any of the above reasons exist, the City may, without prejudice to any other rights or remedies of the City, terminate this Contract by delivering a written notice of termination to Contractor and Contractor's surety, and may:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.3; and
- .3 finish the Work by whatever reasonable method the City may deem expedient, including turning the Work over to the surety.

15.1.4 The Contractor, in the event of a termination under Section 15.1, shall not be entitled to receive any further payments under the Contract until the Work is completed in its entirety. Then, if the unpaid balance under the Contract shall exceed all expenses of the City in finishing the Work, including additional compensation for the A/Es services and expenses made necessary thereby, such excess will be paid to the Contractor; but, if such expenses of City to finish the Work shall exceed the unpaid balance, the Contractor and its surety shall be liable for, and shall pay the difference and any damages to the City. The obligation of the Contractor and its surety for payment of said amounts shall survive termination of the Contract.

15.1.5 In exercising the City's right to secure completion of the Work under any of the provisions hereof, the City shall have the right to exercise the City's sole discretion as to the manner, methods, and reasonableness of costs of completing the Work.

15.1.6 The rights of the City to terminate pursuant to Article 15.1 will be cumulative and not exclusive and shall be in addition to any other remedy provided by law or the Contract Documents.

15.1.7 Should the Contractor fail to achieve Final Completion of the Work within thirty (30) calendar days following the date of Substantial Completion, the City may exercise its rights under Article 15.1.

15.2 Suspension by the City for Convenience

15.2.1 The City may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the City may determine.

15.2.2 An adjustment will be made to the Contract Sum for increases in the cost of performance of the Contract caused by suspension, delay or interruption. However, in the event of a suspension under this Article 15.2, Contractor hereby waives and forfeits any claims for payment of any special, indirect, incidental or consequential damages such as lost profits, loss of savings or revenue, loss of anticipated profits, idle labor or equipment, home office overhead, and similar type damages. No adjustment will be made to the extent:

- .1 that performance is, was, or would have been so suspended, delayed or interrupted by another cause for which the Contractor in whole or in part is responsible, or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

15.3 City's Right to Cancellation

15.3.1 The City of Miami Gardens reserves the right to cancel this Contract by written notice to the Contractor effective the date specified in the notice should any of the following apply:

- .1 the Contractor is determined by the City to be in breach of any of the terms and conditions of the Contract and/or to have failed to perform his/her services in a manner satisfactory to the City. In the event the Contractor is found to be in default, the Contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated loss of revenue or the canceled portions of the Contract, or
- .2 the City has determined that such cancellation will be in the best interest of the City to cancel the Contract for its own convenience, or
- .3 funds are not available to cover the cost of the services. The City's obligation is contingent upon the availability of appropriate funds.

15.3.2 Upon such cancellation, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the City's instructions and for all City approved claims, costs, losses and damages incurred in settlement of terminated contracts with Sub-Contractors and suppliers. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, consequential damages and other economic losses.

15.3.3 The City shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the City has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

15.3.4 Upon determination by a court that termination of Contractor or its successor in interest pursuant to Section 15.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 15.3, and Contractor's sole and exclusive remedy for wrongful termination is limited to recovery of the payments permitted for termination for convenience as set forth in Section 15.3.

ARTICLE 16 OVERSIGHT/SILENCE OF SPECIFICATIONS

16.1 Oversight of Specifications Any deletion, oversight or misstatement of the Specifications shall not release the Contractor from the responsibility of supplying a complete and fully operational unit, together with all appurtenances necessary for unrestricted operation as determined by the City at its sole discretion.

16.2 Silence of Specifications The apparent silence of the Specifications as to any details or the omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail and that materials of the first quality and correct type, size and design are to be used.