

## **ADDENDUM NO. 1**

This Addendum No. 1 dated this \_\_\_\_\_ day of May, 2010, is attached to, supplements, and is incorporated in the Professional Services Agreement (AGREEMENT) dated \_\_\_\_\_ day of May, 2010, between the City of Coral Gables (CITY) and Ashbritt, Inc. (PROFESSIONAL).

### **RECITALS**

**WHEREAS**, the CITY requires PROFESSIONAL to post a Performance Bond and a Labor & Material Payment Bond from a Corporate Surety satisfactory to the CITY as security for the performance of work and prompt payment to all persons supplying labor and material in the execution of work to be performed under the AGREEMENT.

**WHEREAS**, the CITY requires PROFESSIONAL obtain a Performance Bond and a Labor & Material Payment Bond on a per project basis and shall be in a sum equal to Fifteen Million Dollars (\$15,000,000.00) total per bond per project.

**WHEREAS**, the CITY, for further security, requires PROFESSIONAL maintain a Performance Bond and a Labor & Material Payment Bond from a Corporate Surety satisfactory to the CITY throughout the entire term of this AGREEMENT in a sum equal to One Million Dollars (\$1,000,000.00) total per bond.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the CITY and PROFESSIONAL agree as follows:

1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

2. The following language is required in any and all Performance Bonds for work to be performed under the terms of the AGREEMENT:

a. Whenever PROFESSIONAL shall be declared by the CITY to be in default under this Agreement, the surety shall promptly remedy the default or complete the contract or obtain a bid or bids for completing the terms and conditions of the Agreement and arrange for a contract, with the City's approval, with the lowest responsible bidder.

b. Any suit under these bonds must be instituted before the expiration of two (2) years from the date on which final payment under the Agreement falls.

c. Indemnify or hold harmless against any and all costs, expenses and damages, including litigation costs and attorney's fees arising out of, or in connection with the neglect, default or want of care or skill, on the part of the PROFESSIONAL, his agents, servants, or employees in the execution or performance of this Agreement.

d. Any increases in the total Contract amount as authorized by the CITY shall increase the Surety's obligations by the same increased dollar amount. PROFESSIONAL shall be responsible for notifying the Surety of all monetary changes to the contract.

e. PROFESSIONAL and the surety must expressly acknowledge their obligations and liabilities for liquidated damages suffered by the CITY under the provisions of all the Agreement and its supplemental documents.



f. PROFESSIONAL and the surety must covenant and agree that no change, extension of time, changes in the Agreement amount, alteration or additions to the terms of the Agreement or the work to be performed, including any and all specifications, shall in any way affect their obligation on the bond, and the surety must waive notice of any such change, extension of time, contract amount change, alteration or addition.

g. PROFESSIONAL and the surety must save the CITY harmless from any and all damages, expenses and costs which may arise by virtue of any defects in said work or materials within a period of one (1) year from the date of final completion of the services.

3. The following language is required in any and all Labor & Material Payment Bonds for work to be performed under the terms of the AGREEMENT:

a. This Agreement, the Request for Proposal and any and all provision contained in the scope of work, including, but not limited to, all appendices contained therein shall be attached hereto.

b. PROFESSIONAL shall promptly make payments to all claimants for any and all labor and material used or reasonably required for use or furnished in connection with the performance of the Agreement including, but not limited to, all persons supplying services, labor, material or supplies used directly or indirectly by Ashbritt, Inc. or any subcontractors or sub-subcontractors, in the prosecution of the work provided in the Contract.

c. Subject to the CITY'S priority, claimants covered under Florida Statutes, Chapter 714, Construction liens, shall have a direct right of action against PROFESSIONAL and the surety under this obligation, after written notice of the performance of labor or delivery of materials or supplies, and non-payment thereof. Any claimant must also satisfy the notice requirements and time limitations of Section 255.05, Florida Statutes.

d. Definition of a claimant to be one having a direct contract with PROFESSIONAL or with a subcontractor of PROFESSIONAL for labor, material, or both, used or reasonably required to for use in the performance of this Agreement, scope of work, or requirements of the Request for Proposal, including that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable hereto.

e. PROFESSIONAL and surety jointly and severally agree with the CITY that every claimant as herein defined, who has not been paid in full before the end of a period of ninety (90) days after the date on which the last of such claimant's work of labor was done or performed, or materials were furnished, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The CITY shall not be liable for the payment of any costs or expenses of any such suit.

**(THIS SECTION INTENTIONALLY LEFT BLANK)**

**IN WITNESS WHEREOF**, the Parties have duly executed this Addendum No. 1 as of the date and year first above written.


AS TO CITY:

  
\_\_\_\_\_  
Patrick Salerno  
City Manager

ATTEST:

\_\_\_\_\_  
Walter J. Foeman  
City Clerk


Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Lourdes Alfonsin Ruiz  
Assistant City Attorney


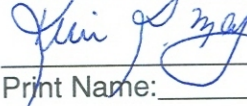
ATTEST:

  
\_\_\_\_\_  
Corporate Secretary  
Print Name: Randal Perkins  
(SEAL)

AS TO PROFESSIONAL

  
\_\_\_\_\_  
V. President / Owner  
Print Name: John W. Noble

(OR)  
WITNESSESS (2):

  
\_\_\_\_\_  
Print Name: Ronda Milner  
  
\_\_\_\_\_  
Print Name: Kevin L. May