

Contract Routing Form

CONTRACT: IFB 2017.11.MS - SPEED LIMIT SIGNS, FURNISH AND INSTALL



Route for Review and Approval (Signature and Date):

1. Procurement Officer: [Signature] Date: 2/14/18
2. Department Director: [Signature] Date: 2/14/18
3. Risk Management: [Signature] Date: 2/16/18
4. Management & Budget: [Signature] Date: 2/16/18
5. Finance Director: [Signature] Date: 2/16/18
6. City Attorney: [Signature] Date: 2/20/18
7. Asst. City Manager: [Signature] Date: 2/21/18
8. City Manager: _____ Date: _____
9. City Clerk: [Signature] Date: 3/6/18

Please contact the Procurement Division at extension 5102 if you have any questions about this contract.

City of Coral Gables, FL

Finance Department / Procurement Division
2800 SW 72nd Avenue – Miami, FL 33155



Interdepartmental Cover Sheet

Department and Date of Origin: Public Works /February 14, 2018

Title of Document: IFB 2017.11.MS Speed Limit Signs, Furnish and Install

Executive Summary:

The attached is an Construction Agreement with A.U.M. Construction, Inc. to Furnish and Install Speed Limit Signs and removal existing signs, throughout the City. This Item was approved by City Commission on February 13, 2018. Resolution No. 2018-67.

Requested Action:

Execution

Route to:

City Clerk's Office

2018 MAR -5 PM 6:44

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into this 6th day of March, 2018 between the City of Coral Gables (hereinafter referred to as "CITY"), having its principal address at: City of Coral Gables Finance Department/ Procurement Division, 405 Biltmore Way, Coral Gables, Florida 33134, and A.U.M. Construction, Inc., (hereinafter referred to as "CONTRACTOR") (License # CGC1521373), having its principal office at: 8950 NW 119 Street, Hialeah Gardens, FL 33018 for the Furnishing and Installation of Speed Limits Signs at various locations throughout the City (hereinafter the "Property"), in accordance with the Contract Documents, as hereinafter defined.

RECITALS

WHEREAS, Contractor is interested in providing the following services; and

WHEREAS, the City is interested in engaging Contractor to provide the following services; and

WHEREAS, the City solicited bids from qualified Contractors pursuant to City IFB No. 2017.11.MS, which IFB is incorporated into this Agreement by reference and made a part hereof (the "IFB"), and the Contractor submitted a response to the IFB dated December 5, 2017, which Response is incorporated into this Agreement as part of Exhibit "A" and made a part hereof.

WITNESSETH

That the City and Contractor for the consideration hereinafter named, agree as follows:

ARTICLE 1 **THE CONTRACT DOCUMENTS**

1.1 The following documents shall comprise the Contract Documents ("Contract Documents"):

- 1.) This Agreement;
- 2.) The Project Manual (if any), Bid Specifications and Supplementary Conditions attached as IFB 2017.11.MS, dated November 2, 2017, and the Contractor's Response to the IFB, attached hereto as composite Exhibit "A" and A-1, respectively;
- 3.) The Project Plans, attached hereto as Exhibit "B;"
- 4.) The Contractor's Certificates of Insurance and Additional Insured Endorsements, attached hereto as Exhibit "C;"
- 5.) The Contractor's Payment and Performance Bonds, attached hereto as Exhibit "D;"

- 6.) The Certificate of Substantial Completion, attached hereto as Exhibit "E;" and
- 7.) The Certificate of Final Completion, attached hereto as Exhibit "F."

1.2 Any of the Contract Documents listed above but not attached hereto are hereby incorporated by reference and shall be deemed to be of the same force and effect as if actually attached hereto. This Agreement incorporates all prior negotiations, agreements, and understandings applicable to the matters contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. The Contract Documents shall be interpreted together and in harmony with one another. However, in the case of conflict between this Agreement and the other Contract Documents, this Agreement shall control. The Contractor must call any known conflict or discrepancy to the City's attention, in writing, prior to executing this Agreement. In the case of any conflict between the Contract Documents regarding the obligations or responsibilities of Contractor, whichever document imposes the greater obligation on the Contractor shall be controlling.

1.3 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the City, or the Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Agreement. The City has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.

1.4 By the execution of this Agreement, the Contractor acknowledges and represents that it has received, reviewed and carefully examined the Contract Documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such Contract Documents as no such representation or warranties have been or are hereby made. The Contractor further acknowledges and represents that it has made a thorough and careful examination and inspection of existing conditions on the Project site, both surface and subsurface, and the Contractor expressly acknowledges and agrees that it shall make no claim for additional compensation due to existing site conditions including, but not limited to, rock, surface and subsurface water, existing structures, and deficient soil, provided said conditions could be determined or ascertained from a thorough and careful examination and inspection of the site.

ARTICLE 2 **SCOPE OF WORK**

2.1 The Contractor will provide all materials, supervision, labor, tools and equipment necessary to complete the work to be performed pursuant to this Agreement (the "Work") in strict accordance with the Contract Documents, and perform all Work that is reasonably inferable therefrom as being necessary to accomplish the intent of the Contract Documents, and as required by all applicable laws, ordinances and rules and regulations of any governing authority including but not limited to the provisions of the Florida Building Code, and any amendments thereto, including all Applicable Laws as defined in this Agreement.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Agreement, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, administration, management, supervision, testing, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Agreement. The Work to be performed by the Contractor is generally described as follows:

The project consists of furnishing and installing 158 new 25 mph speed limit signs and removing and delivering of 114 existing speed limit signs. Each installation will include a 3.5" O.D.* Schedule 40 powder coated RAL 6454 Aluminum Pole with the following three sign panels: R2-5cP, R2-1 and R2-5P, as shown in the standard detail. Contractor will be responsible for all utility locations.

2.3 Unless expressly permitted or allowed by the Contract Documents, substitutions of materials, articles, systems, equipment, or other components of the Work will not be considered. Where substitutions are expressly permitted or allowed by the Contract Documents, the Contractor must demonstrate to both the Engineer and the City that a proposed substitution is equal in substance, quality and function to the material, article, or piece of equipment identified in the Contract Documents. The City shall have no obligation to accept a proposed substitution and no substitution shall be allowed without the prior written approval from both the Engineer and the City. If the substitution results in a savings to the Contractor, the City shall be entitled to a credit for the amount saved as a result of the substitution.

ARTICLE 3 **TIME OF COMMENCEMENT AND COMPLETION**

3.1 The Work to be performed under this Agreement shall be commenced upon the execution of this Agreement or the issuance by the City of a Notice to Proceed,

whichever occurs later, and Substantial Completion shall be achieved within the stipulated time shown in the work order. ("Contract Time") and the Contractor shall achieve Final Completion no later than 30 calendar days after the delivery of the Punch List as outlined in Paragraph 6.2, subject to any authorized extensions of time as set forth in Article 8.6 of this Agreement. All Work shall be performed in an expeditious manner. After receiving award of the Agreement, the Contractor shall secure all necessary permits within thirty (30) days. If the Contractor is unable to secure permits within this time period, the Contractor shall notify the City in writing detailing the reason for the delay and request a time extension to secure permits. The Contractor shall spare no expense and spend all necessary efforts in expeditiously pursuing the satisfaction of all necessary governmental entities' requests in obtaining information relevant to securing all necessary permits. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

ARTICLE 4 **CONTRACT SUM**

4.1 The City shall pay the Contractor for the performance of the Work the lump sum of \$149,999.60, inclusive of all permits, taxes, licenses, fees, bonds, governmental inspection fees and performance tests (the "Contract Sum"). Before the first Application for Payment, the Contractor shall submit to the Engineer designated by the City, at the City's sole discretion, and the Project Manager, 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 Engineer or City may require. This Schedule of Values, unless objected to by the Engineer or Project Manager shall be used as a basis for reviewing the Contractor's Application for Payment.

4.2 For Unit Price Work, if any, listed in Exhibit "A", the Contractor shall not be entitled to payment for the performance of Unit Price Work listed unless prior to performing same it is approved and the quantities are verified by the Engineer and Project Manager. The City has the right to delete any of the items of the Unit Price Work and shall have no liability for payment for any items deleted. In addition, Contractor shall not be entitled to payment for the performance of any Unit Price Work exceeding the quantities estimated in the Contractor's bid for any unit price item unless prior to performing such excess Unit Price Work it is approved by the Engineer and Project Manager and a change order is executed by the City in accordance with Article 17 of this Agreement. If the Contractor proceeds with any Unit Price Work exceeding an estimated quantity without first obtaining the prior approval of the City and by a written change order, the Contractor shall not be entitled to any payment for the performance of such Unit Price Work.

ARTICLE 5 **PAYMENTS OF THE CONTRACT SUM**

5.1. **Schedule of Values**. Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the City and to the Engineer and Project Manager a Schedule of Values allocating the Contract Sum to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the City may require to substantiate its

accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Any violation of this provision by the Contractor shall constitute a material breach of this Agreement. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Engineer and the Project Manager.

5.2 Payments shall be made in accordance with the provisions of this Article 5 and Article 6. The Contractor must provide a Payment and Performance Bond in accordance with Section 255.05, Florida Statutes, and Article 14 of this Agreement, unless the Contractor is exempt from providing such bonds pursuant to the IFB.

5.2.1 **Progress Payments.** Every month after commencement, on the tenth (10th) day of the following month, the Contractor shall submit an itemized Application for Payment to the Engineer and the City for the amounts due for the preceding month, using AIA Document G-702 and G-703 based on the approved Payment Schedule. Such Application for Payment shall be sworn to by the Contractor and notarized and supported by such data substantiating the Contractor's right to payment as the City may require, with Waivers of Right to Claim Against Bond from each Subcontractor, sub-subcontractor, materialman, supplier and all others performing Work for Contractor with each Application for Payment in accordance with section 255.05, Florida Statutes, and copies of Subcontractor requisitions reflecting retainage as set forth in this Agreement. The Application for Payment shall be stamped as "received" upon receipt and shall commence the time periods hereunder. The Contractor's compliance with Applicable Laws, as set forth in Paragraph 9.9 of this Agreement, shall include, without limitation, attesting that during the period covered by the Application for Payment, all claimants as defined in Section 255.05 F.S. and laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by the Davis Bacon Act (if applicable to the Project) and the applicable conditions of the Agreement. Such Application for Payment shall also constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Agreement, and that the Contractor knows of no reason why payment should not be made as requested. The Contractor shall execute all Consents and Statements of Compliance required by the City to show compliance with Applicable Laws at any time requested by the Project Manager prior to any payment. The Contractor shall also submit with its Application for Payment evidence of proof of payment of any indebtedness incurred with respect to the Work of Contractor as may be required by Project Manager, including any original release of lien forms and Contractor's Affidavit forms, evidence that all Work has been fully performed and inspected as required pursuant to the Contract Documents up to the time of the request for payment, and the Work has been inspected by the Engineer and any governmental authorities required to inspect the Work. Thereafter, the Engineer will review the Application for

Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Agreement. The Project Manager, in its sole discretion, may review the Work and the Application for Payment prior to any certification by the Engineer and the Project Manager may, in its sole discretion, require the Engineer and the Contractor to meet and confer with the Project Manager with respect to said Application for Payment prior to any certification of same. If fully satisfied with the documentation submitted, the Engineer shall issue a certificate of authorization of payment to the City for the amount approved, less ten percent retainage, and payment shall be due twenty-five (25) business days after approved by the City the date on which the Application for Payment is stamped. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by paragraph 5.4 below. If an Application for Payment does not meet the requirements of this Agreement, the Engineer or the City shall reject the payment request within twenty (20) business days after the date on which the Application for Payment is stamped as received. The rejection shall be written and shall specify the deficiency and the action necessary to make the Application for Payment proper. If the Contractor then submits an Application for Payment request that corrects the deficiency, as certified by the Engineer, the corrected and certified Application for Payment shall be paid or rejected on the later of: (a) ten (10) business days after the date the corrected payment request is stamped as received; or (b) if the City is required by ordinance, charter, or other law to approve or reject the corrected payment request, the first business day after the next regularly scheduled meeting of the City held after the corrected payment request is stamped as received. The Engineer's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in this Agreement.

5.2.2 **Prompt Pay Laws**. The provisions of Florida's prompt payment laws and the provisions of Section 218.74(4), Florida Statutes, as such relates to the payment of interest, shall apply to proper and valid invoices, and shall govern in the event of any inconsistencies with this Agreement. The Contractor shall promptly pay each Subcontractor and Material Supplier out of the amount previously paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled.

5.3 **Retainage**. The City shall retain 10% of all sums due in any pay period as Retainage. If applicable under Section 218.735, Florida Statutes, after 50% completion of the Work under this Agreement, the City shall reduce to 5% the amount of retainage withheld from each subsequent progress payment made to the Contractor. The City is not obligated to reduce the retainage for any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to section 218.735, Florida Statutes,

section 255.05, Florida Statutes, or for any amounts that are otherwise the subject of a claim or demand by the City against the Contractor under this Agreement. After 50% completion of the Work, the Contractor may submit to the City a payment application for up to 50% of the retainage withheld by the City through the date of the application for payment. The City shall promptly make such payment to the Contractor unless the City has grounds to withhold payment for amounts that are the subject of a good faith dispute, the subject of a claim pursuant to section 218.735, Florida Statutes, section 255.05, Florida Statutes, or are otherwise the subject of a claim or demand by the City against the Contractor. If the City makes payment of retainage to the Contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

5.3.1 The City may, but shall not be obligated to, upon the issuance of a notice of non-payment by a subcontractor, supplier or materialmen, or any other lienor, or claimant as defined by §255.05, Florida Statutes, make all or any portion of any progress payment by check payable jointly to the order of Contractor and any lienor giving timely notice, or may make such payment directly to such lienor and deduct said sum from the balance then due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In making such payments to lienors or claimant, the City shall require such lienor or claimant to execute the applicable release of lien or the Waiver of Right to Claim Against Bond form in accordance with §255.05, Florida Statutes.

5.4 Payments may be withheld on account of (1) defective Work not remedied; (2) claims or liens filed; (3) failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien or Waivers of Right to Claim Against Bond for all lienors giving notices; (5) damage to the City's property, in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected; (6) failure of the Work to progress satisfactorily in a manner which would ensure that the Contractor completes the Work within the time stipulated or according to schedule; or (7) failure to carry out the Work in accordance with the Contract Documents; (8) failure of Contractor to maintain a 100% performance and payment bond.

5.5 No payments made under this Agreement shall be evidence of performance of this Agreement, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor interpreted to constitute an acceptance of any Work not in strict accordance with this Agreement, nor shall use of the Work by the City constitute acceptance of the Work hereunder or any part thereof, or a waiver of any of City's rights or claims.

ARTICLE 6 **SUBSTANTIAL COMPLETION AND FINAL PAYMENT**

6.1 **Substantial Completion and Punch List.** Substantial Completion is the stage in the progress of the Work, as determined by the Engineer and the City, when the Work or designated portion thereof is sufficiently complete in accordance with the

Agreement Documents so that the City can occupy or use the Work or a portion thereof for its intended use and that the following minimum requirements are all met:

- 6.1.1 The Work is complete, ready for occupancy, and all persons or entities having jurisdiction over the Project have issued the appropriate permits, authorizations, and temporary certificates of occupancy or certificate of completion for the Project, as applicable, the Work has passed all necessary inspections;
- 6.1.2 The exterior elements, such as landscaping, site cleanup and restoration (including without limitation removal of all excess materials, rock, sand, paving, debris, supplies, equipment, temporary structures, and trailers) the interior spaces and finishes of the Work, and all mechanical, electrical, plumbing and technical systems required by the Agreement Documents, are complete and fully operational and are ready for occupancy, the Contractor has submitted its Punch List with respect to such items and they have been inspected and approved by the Engineer and the City as to scope, number, and content; such that where the Punch List is limited to minor omissions and defects, the Engineer shall indicate that the Work is substantially complete subject to completion of the Punch List and the requirements of this Paragraph;
- 6.1.3 The Engineer has issued the "Certificate of Substantial Completion," attached as Exhibit "E". The Certificate of Substantial Completion shall set forth (1) the date of Substantial Completion of the Work, (2) responsibilities of the Contractor for security, maintenance, heat, utilities, and insurance, and (3) the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate. The Certificate shall be submitted to the Project Manager and Contractor through the Engineer. The Contractor shall achieve final completion within thirty (30) or Sixty (60) days after the delivery of the Punch List as set forth below, subject to extensions of time in accordance with the Contract Documents. In addition to the requirements of Paragraphs 6.1.2 and 6.1.3 above, as a condition precedent to the certification of Substantial Completion, the Contractor shall provide to the City three (3) bound hard-cover books and one (1) electronic copy of same containing the following information: (a) All three year Subcontractor and Sub-sub-Contractor warranties and supplier warranties fully executed in the form approved by the Project Manager; (b) All Extended Warranties from equipment or material manufacturers, as such Extended Warranties are defined in Article 15 ("Correction of Work and Warranty"); (c) A list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities; and (d) All other close out documentation required by Project Manager or City including, but not limited to, As-Built Drawings in print format and electronic PDF format, warranties and manuals.
- 6.1.4 For the purposes of this Agreement, 50-percent completion is defined as the point in which all pumps for the station have been installed and have passed the 100 hour test as certified by the Engineer.

6.2 **Punch List.** The Contractor must request issuance of the Certificate of Substantial Completion at least 60 days prior to submitting its application for Final Payment. The Contractor, Engineer in conjunction with the Project Manager shall develop the Punch List, a single list of items limited to minor omissions and defects which are required to render the Work complete and satisfactory in accordance with this Agreement, and the Project Manager shall submit the Punch List in accordance with the time frames set forth herein. If the Contract Sum is less than \$10 million, the Contractor, Engineer, in conjunction with the Project Manager, shall develop the Punch List within 30 calendar days after reaching Substantial Completion. If the Contract Sum is \$10 million or more, the Contractor, Engineer, in conjunction with the Project Manager shall develop the Punch List within 30 calendar days, or, if extended by Change Order, up to 60 calendar days after reaching Substantial Completion, and the Project Manager shall deliver the Punch List within five (5) days of the date of the development of the Punch List. The Final Completion date shall be thirty (30) days after the delivery of the Punch List. The failure to include any corrective work or pending items not yet completed on the Punch List does not alter the responsibility of the Contractor to complete all of the Work in accordance with this Agreement. Upon completion of all items on the Punch List, the Contractor may submit a payment request for all remaining retainage withheld by the City. If a good faith dispute exists as to whether one or more items identified on the Punch List have been completed pursuant to the Agreement, the City shall continue to withhold up to 150 percent of the total costs to complete such items. Within ten (10) days of written notification to the Engineer and City that all punch list items have been completed, the Engineer shall inspect the punch list items. If the punch list items have not been completed to the reasonable satisfaction of the Engineer and the City, and if it is necessary for the Engineer to reinspect the completion of any punch list items, the Contractor shall be responsible for all fees and costs charged by the Engineer for making any such reinspections. Once the Punch List has been fully completed to the reasonable satisfaction of the Engineer and the City, the Engineer shall issue a Certificate of Completion of Punch List.

6.3 **Delays in Achieving Substantial Completion** When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable as liquidated damage if any.

6.4 Final Payment and release of retainage shall be due twenty-five (25) business days after the date the Contractor achieves Final Completion. As used in the Contract Documents, "Final Completion" shall mean such time after Substantial Completion as: (1) a Certificate of Final Payment has been issued by the Engineer; (ii) all "punchlist" items have been fully completed to the reasonable satisfaction of the Project Manager and the Engineer has issued a Certificate of Completion of Punch List; (iii) the final certificate of occupancy or completion, and all final governmental and utility authority permits have been issued; (iv) Contractor has delivered to City all previously undelivered manufacturer and subcontractor guarantees and warranties, instruction manuals for

appliances and equipment, any and all operating manuals required by the Contract Documents, certification that all personal instruction or training required by the Contract Documents for the operation of any Project systems has been completed; and any and all manuals relating to Project materials or Project maintenance; (v) Contractor has delivered to City the Contractor's final Waiver of Right to Claim Against Bond complying with Florida Statutes, and such other affidavits, waivers and releases as the City may reasonably require in order to assure payment by Contractor to all of its Subcontractors, sub-subcontractors, materialmen and suppliers; (vi) the Contractor has delivered to City and Engineer all shop drawings, revised plans and final "as built" drawings for the Work detailing all changes or deviations from the original Contract Documents; (vii) Contractor has fully cleaned and restored the site with respect to all of the final Punch List work; (viii) all temporary utilities are disconnected; (ix) consent of Surety has been made to final payment; (x) Contractor has provided a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 45 days' prior written notice has been given to the City; and (xi) Contractor has complied with all other requirements of the Contract Documents and all requirements of the City

6.5 If a Subcontractor refuses to furnish a release or waiver required by the City, the Contractor must furnish a bond satisfactory to the City to indemnify the City against such claim. The City may, upon the issuance of a notice of non-payment by a subcontractor, supplier or materialman, or any other lienor or claimant as defined by section 255.05, make all or any portion of any of the final payment by check payable jointly to the order of Contractor and any lienor or claimant giving timely notice, or may make such payment directly to such lienor and deduct said payment from the sum due Contractor. However, such payment, if made, shall not create any third party beneficiary or other rights in such lienor or claimant. In the event there are claims which exceed the final payment amount, no payment shall be made until Contractor deposits the amount of any such deficiency with the City.

6.6 Final payment may be withheld on account of (1) defective Work not remedied; (2) claims or liens filed; (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment; (4) failure to provide waivers of lien for all claimants or lienors serving Notices; (5) damage to the real or personal property of City, in which case a reasonable estimated amount of such damages shall be withheld from Contractor's payment until such damages are satisfactorily corrected; (6) failure of the Contractor to comply with Article 6 of this Agreement; or (7) failure to carry out the Work in accordance with the Contract Documents.

6.7 **Delay in Achieving Final Completion.** When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to any and all delays. If and when the Contractor overcomes the delay in achieving substantial or final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

6.8 The acceptance of final payment by the Contractor shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, and which are pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

6.9 The making of final payment or retention shall not constitute a waiver of any claims by the City.

ARTICLE 7 **INSPECTIONS AND ADMINISTRATION OF THE AGREEMENT**

7.1 No inspector, including but not limited to, the Engineer and the Project Manager, shall have authority to waive any requirements of the Agreement and the Contract Documents. Any failure or omission on the part of any inspector, the Engineer or Project Manager, to reject any defective work or material shall not release the Contractor from its obligations to install the Work free from faults and defects and to promptly remove and repair any defective or deficient work. The Contractor hereby acknowledges and agrees that only the Public Works Director or designee shall have authority to:

- (a) Authorize any deviation from the Contract Documents;
- (b) Undertake any of the responsibilities of the Contractor, subcontractors or Contractor's superintendent;
- (c) Expedite the Work for the Contractor;
- (d) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (e) Advise on or issue directions as to safety precautions and programs in connection with the Work. Provided however, this shall not preclude the City inspector from notifying the Contractor of any hazardous or dangerous condition;
- (f) Participate in specialized field or laboratory tests.

7.2 The Engineer

7.2.1 The Engineer for this project shall be the Project Manager. In the event the City should find it necessary or convenient to replace the Engineer the City shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

7.2.2 **Engineer's Administration.** The Engineer, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Agreement. The authority of the Engineer shall commence on the effective date of this Agreement until final

payment has been made. The Engineer shall be authorized to act on behalf of the City only to the extent provided in this Agreement. In the event the project has been delayed beyond the contractual final completion date, by no act of the City, the Contractor may be required to pay for additional engineering services until such time the project has been finalized.

- 7.2.3 The City and the Contractor shall communicate with each other in the first instance through the Engineer. The Contractor and the Engineer, however, shall copy the City's Project Manager with any and all written communications by and between the parties.
- 7.2.4 The Engineer of record shall be the initial interpreter of the requirements of the drawings and specifications and the initial judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 7.2.5 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Agreement.
- 7.2.6 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Agreement. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspections or testing of the Work for compliance with the Agreement. The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.
- 7.2.7 The Engineer or Project Manager will prepare Change Orders and may authorize minor changes in the Work upon written approval from the Project Manager by Field Order.
- 7.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Agreement and will certify to the City the final Certificate for Payment upon compliance with the requirements of this Agreement.
- 7.2.9 The Contractor agrees, acknowledges, and warrants that it has no third party beneficiary rights, or other rights, arising out of any Agreement by and between the City and the Engineer and, in the event of any conflict between the terms and provisions of the Agreement by and between the City and the Engineer and this Agreement, the terms of this Agreement shall control with respect to the Contractor.

7.2.10 If the Contractor fails any inspection or submittals and shop drawings are rejected due to form or omissions, which requires a re-inspection or additional review by the Engineer or any of its design consultants, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the City from any sums otherwise due the Contractor.

7.3 **Project Manager.** The City of Coral Gables Director of Public Works or designee may be designated by the City, at the City's sole discretion, to be the "Project Manager" and City's Representative during performance of the Work and until issuance of the final Certificate for Payment and Certificate of Completion of Punch List Work, and shall hereinafter be referred to as the "Project Manager".

7.3.1 The Project Manager shall at all times have access to the Work.

7.3.2 The Project Manager shall have authority to reject Work which does not conform to the Contract Documents. In such event Contractor shall have forty-eight (48) hours to commence to correct and to diligently proceed to complete such Work to the reasonable satisfaction of Project Manager.

7.3.3 To the extent permitted by the City Code, the Project Manager shall have authority to issue Change Orders as provided in Article 17.

ARTICLE 8 **CLAIMS BY THE CONTRACTOR**

8.1 Except as prohibited in Paragraph 8.7 herein below, all Contractor claims shall be initiated by written notice and claim to the Project Manager and the Engineer. Such written notice and claim must be furnished within three (3) days after occurrence of the event or the first appearance of the condition giving rise to the claim.

8.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Agreement any work which is the subject of a claim and the City shall continue to make payments to the Contractor in accordance with this Agreement. The resolution of any claim under this Article 8 shall be reflected by a Change Order executed by the City, the Engineer and the Contractor.

8.3 **Claims for Concealed and Unknown Conditions.** Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground, or (b) in an existing structure be at variance with the conditions indicated by this Agreement, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon the written notice and claim by Contractor made within three (3) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Project Manager and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim within three days as

provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.4 **Claims for Additional Costs.** Except as prohibited in Paragraph 8.7 herein below, if the Contractor wishes to make a claim for an increase in the Contract Sum, as a condition precedent to any liability of the City therefore, the Contractor shall give the Engineer and the Project Manager written notice of such claim within three (3) days after the occurrence of the event or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work unless a Work Directive is issued by the City. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.5 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Sum, any liability of the City for the Contractor's cost shall be strictly limited to direct costs incurred by the Contractor. Direct costs do not include the Contractor's home office overhead, loss of efficiency, consequential damages or lost profits of the Contractor, or equipment costs in excess of actual equipment rental paid by the Contractor to a third party. All such damages are hereby waived by the Contractor.

8.6 **Claims for Additional Time.** If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Engineer for such reasonable time as the Engineer and the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than three (3) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Contractor's future performance. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.7 In no event, and under no circumstances, shall the Contract Sum be increased for, nor shall the Contractor claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-critical, and whether caused in whole or in part by the City. The Contractor shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, lost profits, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. The Contractor's sole and exclusive remedy for delay, hindrance, and disruption shall be

an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 8.6 hereinabove. All such damages for delay are hereby waived.

8.8 Field Orders

8.8.1 The Engineer after first obtaining approval from the Project Manager, shall have authority to order minor changes in the Work not involving a change in the Contract Sum or in Contract Time and not inconsistent with the intent of the Agreement. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.9 **Sovereign Immunity**. The Contractor acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Contractor against the City other than claims arising out of this Agreement. Specifically, the Contractor acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. The Contractor acknowledges that this Agreement in no way estops or affects the City's exercise of its regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The Contractor acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the City, its appointed or elected officials, attorneys, administrators, consultants, agents, or any City employee;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Contractor. The Contractor affirms that the provisions regarding notice to claims, and the requirement for a written change order cannot be waived and further, without timely notice of a claim or a written change order as required in this Agreement, the Contractor shall not be entitled to additional compensation or an extension of the Contract Time. Such claims for additional compensation or extensions of the Contract Time are waived if the Contractor has not given all required notices and obtained a written a change order when required.

ARTICLE 9 **CONTRACTOR**

9.1 The Contractor represents that it is a properly qualified and licensed Contractor in good standing with the State of Florida and is a corporation in good

standing, organized and existing under the laws of the State of Florida. Prior to commencement of the Work, Contractor shall provide the City with copies of its current licenses. Contractor further represents that it has read, examined and understands the pertinent Contract Documents and that it is well qualified and able to perform this Work; that it has a sufficient number of qualified and skilled men to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and is financially capable of performing this Agreement.

9.2 Contractor warrants and represents to the City that it has visited the site of the Work, examined the actual job conditions and that Contractor is familiar with local conditions and all things required that will have a bearing on performance of Contractor's Work and Contractor's costs, including but not limited to traffic (vehicular and pedestrian), maintenance, disposal, handling and storage of the materials, access and restrictions to the units, access roads to the site, the conditions of the Work area, and the character of the Work. Contractor, at his sole expense, shall be responsible to perform any reasonable inspections and conduct any reasonable tests as may be required to determine the suitability of the site conditions. Failure on the part of Contractor to completely or properly evaluate any factors of costs prior to signing this Agreement shall not form a basis for additional compensation. Execution of this Agreement shall be conclusive evidence that Contractor has investigated and is satisfied as to the site conditions to be encountered, as to the character, quality, and quantities of Work to be performed and materials to be furnished, and as to the requirements of the Contract Documents. Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from the Engineer, Project Manager, and/or City as part of the Contract Documents, and shall notify the Project Manager and City of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery.

9.3 **Superintendence and Supervision.** The Contractor shall supervise and direct the Work using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement. All Work shall be performed by craftsmen skilled in the trades and application of materials involved. Contractor shall employ and maintain on the Project only competent personnel including during the progress of the Work a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to the Engineer, Project Manager, and City. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Project Manager and the Engineer. The superintendent shall not be changed except with the written consent of the Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ. The superintendent shall represent the Contractor and all directions given to the superintendent shall be as binding as if given to Contractor. The Project Manager and City shall be provided telephone number(s) for the superintendent where the superintendent can be contacted during normal working hours as well as after hours for emergencies. The Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and

Subcontractors at the Project site(s); visitors to the Project, including representatives of the City, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log. The daily log shall be kept on the Project(s) site(s) and shall be available at all times for inspection and copying by the City and Project Manager.

9.4 Unless otherwise specifically noted, the Contractor shall provide and pay for all licenses, permits, governmental charges, labor, materials, equipment, tools, construction, equipment, machinery, transportation, other facilities and services necessary for the proper execution and completion of the Work. The Contractor shall supply water and sanitary facilities, and electrical outlets to run equipment necessary to perform the Work. The City shall designate an area in which Contractor may store a reasonable supply of materials and equipment. It shall be the Contractor's responsibility to maintain such storage area in a safe and orderly fashion. In no event shall City be liable or responsible for any damages to such materials or equipment, including but not limited to any damages arising from theft or vandalism of such materials or equipment.

9.5 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ any unfit person or anyone not skilled in the task assigned to him.

9.6 The Contractor warrants to the City, the Engineer, and the Project Manager that all materials incorporated in the Work will be new, unless otherwise specified, and that all Work and materials will be of first and highest grade and quality, free from faults and defects and in conformance with the Contract Documents. All Work and materials not so conforming to these standards may be considered defective. Contractor shall not substitute any materials for those materials specified by the Contract Documents without the prior written consent of City.

9.7 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Work.

9.8 The Contractor shall give all notices, and warrants and represents that the Work when completed will comply with all laws, ordinances, rules, regulations, and orders of any public authority, including but not limited to the Florida Building Code and all amendments thereto, and all other authorities having jurisdiction over the Work. The Contractor shall comply with all applicable State and Federal, municipal, county, and administrative laws, regulations, ordinances and codes, including without limitation the Davis Bacon Act, the Americans with Disabilities Act, the Occupational Health and Safety Act and Workers' Compensation Laws applicable to the Work (the "Applicable Laws"). The Contractor shall execute any and all Statements of Compliance and Certificates required by the City to show compliance with Applicable Laws. The Contractor acknowledges that it is responsible for the performance of all duties, obligations and responsibilities as an employer of individuals hired or retained by Contractor to provide services to the City including, but not limited to, completion and maintenance of Immigration and Naturalization verifications, payment of wages and supervising and coordinating services of the employees. With respect to the Work under this Agreement, Contractor shall be

liable for any deviation from any Applicable Laws even if in strict compliance with the Contract Documents. Contractor shall bear sole responsibility for and bear all costs necessary to insure full compliance with the representations contained herein, including, but not limited to, the cost of removing existing Work, the cost of replacing any Work with Work conforming to the applicable requirements and any attorney's fees or other expenses incurred by City in responding to any complaints, citations, court orders, administrative orders or similar governmental edicts or process. The provisions of this paragraph shall survive the termination of this Agreement.

9.9 The Contractor shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the Work under an agreement with the Contractor.

9.10 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work it shall remove, at Contractor's sole cost and expense, all his waste materials and rubbish from and about as well as his tools, materials, and equipment, shall clean all surfaces, and shall leave the Work "broom clean" or its equivalent, except as otherwise specified. Contractor agrees to immediately repair at its sole cost and expense all damages arising from or relating to Contractor's performance of the Work to the reasonable satisfaction of the City.

9.11 If the Contractor is found to be in default under any provision of this Agreement and fails within three (3) working days of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other rights and remedies the City may have, complete Contractor's work, add manpower or correct deficiencies. The Contractor and Surety will be liable to the City for all damages, expenses, costs, and legal fees incurred as a result of such default.

9.12 **Indemnification and Hold Harmless.** To the fullest extent permitted by laws and regulations, the Contractor shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, 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 and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by (i) the negligent performance of the Work (ii) any willful, intentional, reckless, or negligent act or omission of Contractor, any subcontractor, supplier, subconsultant, or 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 parties expressly agree that this provision shall be construed broadly, and Contractor's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Contractor (or any subconsultant or any person or organization directly or indirectly employed by Contractor) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of Contractor to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Contractor to debarment from consideration for future award of city contracts pursuant to Section 2-912(4) of the City of Coral Gables Code of Ordinances. Nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise

waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law. This provision shall survive termination of this Agreement.

In any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, consultants, agents, and employees by any employee of Contractor, any subconsultant, 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 subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

9.13 For any and all claims against the CITY or any of its consultants, agents, or employees by any employee of CONTRACTOR, and subconsultant, 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 subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

9.13.1 The indemnification and hold harmless provision shall include, but not be limited to all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The CITY may use the attorney or law firm of its choice in which event the CONTRACTOR will pay such firm the fees it charges the CITY, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that CITY pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, CONTRACTOR will reimburse the CITY at the prevailing market rate for similar legal services.
- c. Attorney's fees and cost of any party that a court orders the CITY to pay.
- d. Lost time that results from the CITY or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the CITY spends in responding to document requests or public records requests relating to such claims whether from CONTRACTOR or any other party, CONTRACTOR will reimburse CITY \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, CONTRACTOR will reimburse CITY on a per hour basis as follows:

- Mayor or City Commissioner: \$300.00 per hour
 - City Manager: \$250.00 per hour
 - An Assistant City Manager or Department Director: \$250.00 per hour
 - An Assistant Department Director: \$100.00 per hour
 - City Attorney or Deputy City Attorney: Prevailing market rates
 - Other City employees: \$50.00 per hour
- e. The expenses incurred by CITY in complying with any administrative or court order that may arise from such claims.
- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that CITY would not have incurred but for a claim that arises out of this agreement.

9.13.2 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

9.14 **Schedule.** The Contractor, promptly after being awarded the Agreement, shall prepare and submit for the City's and Project Manager's review a construction schedule for the Work, which Schedule shall meet all dates set forth and required by the IFB. The Contractor shall coordinate and provide the schedule in a manner to complete the project in the most expeditious and economical manner possible. The construction schedule shall be in a detailed precedence style critical path management ("CPM") format satisfactory to the City that shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). 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 accepted construction schedule shall be updated to reflect actual conditions and as requested by the City. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. Any overtime and/or additional labor to correct the delay, including working additional shifts or overtime or adding additional manpower, equipment and facilities to accelerate the Work, shall be at the Contractor's sole cost and expense if the delay is caused in whole or in part by the Contractor, its subcontractors, or anyone for whom the Contractor is responsible. By incorporating the Agreement into the Bond the Surety acknowledges the City's right to require the Contractor to accelerate the Work and the Surety's liability to the City for any resulting costs, expenses, fees and legal fees incurred by the City, and not compensated by the Contractor, for the Contractor's failure to correct the delay, which shall be a Contractor default hereunder, without any requirement of the City to terminate the Contractor. The Surety's responsibility under this Section is further governed by Article 13 ("Payment and Performance Bonds") of this Agreement. In no event shall any progress report approval constitute an adjustment in the Contract Time, Milestone Dates, or the Contract Sum unless any such adjustment is

agreed to by the City and authorized pursuant to written Change Order. The Contractor shall maintain such progress schedule on a current basis in accordance with the provisions of this paragraph and shall keep proper records to substantiate actual activity, duration and completion dates.

9.15 Contractor shall perform the Work between 7:30 a.m. to 6:00 p.m. (Monday – Friday); 9:00 a.m. to 5:00 p.m. (Saturday), and in conformity with the scheduling requirements of the City and applicable City Ordinance(s). Contractor shall have a permanent crew performing the Work at all times. Any changes in the working hours or days shall be subject to the prior written approval of the City. The Contractor shall perform the Work in the order directed by the Project Manager. The Work to be performed shall be done in such a manner so as not to interfere with the normal City operations of the Project site or facility. There shall be no obstruction of City services without the prior written approval of the City. All requests for such interruption or obstruction must be given in writing to the City and Project Manager 24 hours in advance of the interruption of City operations. A staging plan must be submitted to and approved by the Engineer and Project Manager prior to the start of construction and issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

9.16 **Records/Audits.** The Contractor shall maintain and require subcontractors and suppliers to maintain complete and correct records, books, documents, papers and accounts pertaining to Work performed in connection with this Agreement including, without limitation, reasonable substantiation of all expenses incurred. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Such records and books shall be available at reasonable times for examination and audit by the City or any authorized City representative with reasonable notice and, subject to Public Records Request pursuant to statute unless otherwise provided by Chapter 119, shall be kept for a period of four (4) years after the completion of the Work to be performed pursuant to this Agreement. Contractor acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Contractor also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Contractor agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein. Incomplete or incorrect entries in such records and books shall be grounds for disallowance by or reimbursement to the City of any fees or expenses based upon such entries. The Contractor shall remit promptly to the City the amount of any adjustment resulting from such audit.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO RED SPEED'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

9.17 **Project Meetings**. The Contractor shall conduct a periodic project meeting which shall include the Contractor's administrative, managerial and supervisory personnel and representatives of each subcontractor working on the Project site. The meeting shall address, but shall not be limited to, the current status of the Work, including the current Project schedule and the existence of any defective or deficient work as well as the appropriate action required to correct or replace such work. The City and the Engineer shall have the right, but not the duty, to attend such weekly meetings. The Contractor shall maintain detailed minutes of all such meetings and shall distribute typewritten copies of such minutes to the City and the Engineer no later than the close of the next workday following completion of such meeting. The Contractor shall further require its General Superintendent to maintain a daily job diary, which shall include for each work day the daily weather conditions, the identity of each subcontractor working on the site, the manpower of each subcontractor and any other relevant information regarding the progress of the Work.

- (a) Contractor shall maintain an updated Request for Information (RFI), Proposed Change Order (PCO), and Submittal log for the City's use during the life of the project.

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

9.19 **Record Project Documents**. Contractor shall maintain in a safe place at the Project(s) site(s) a copy of the Agreement, one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, accepted shop drawings, amendments, Change Orders, RFIs, and Field Directives, field and performance test records, construction progress schedules, and as-built drawings, as well as all written interpretations and clarifications issued by the Engineer and/or Project Manager, in good order and annotated to show all changes made during construction. The Record Project Documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated Record Project Documents. As a condition precedent to City's obligation to pay Contractor, the Contractor shall provide evidence, satisfactory to the Engineer and Project Manager, that Contractor is fulfilling its obligation to continuously update all Record Project Documents.

9.20 Requests for Information. In addition to the Contractor's obligations under Article 16 ("Shop Drawings"), should the Contractor request information, interpretations of Contract Documents, use of alternates, approval of samples (but not Shop Drawings) or make other similar requests (hereinafter "RFI" or "RFIs"), it shall do so in good faith, in writing, and in a reasonable time and fashion, by submitting Contractor's RFIs to the Engineer and Project Manager. The Engineer and Project Manager's response to RFIs will be made in writing and within five (5) business days or as quickly as possible so as not to delay the Contractor or Construction Schedule. Contractor cannot abuse this provision by submitting repeated RFIs which, in the cumulative, cause a burden and render the Engineer and Project Manager's response within such five days difficult. Additionally, the period shall be extended if the Project Manager is not able to respond due to the failure of Contractor to provide adequate and accurate information to the Project Manager. Furthermore, should the Engineer and Project Manager require compensation to review any Contractor requests which are abusive or unreasonable in number or timing, the Engineer and Project Manager shall expedite its review of the RFIs provided Contractor agrees in writing to reimburse the City for any fees, including project management, or engineering fees, necessitated in responding to such RFIs. Contractor agrees that the City may deduct any such fees from any sums otherwise due Contractor.

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

- a. Cancel the Stop Work Order; or
- b. Terminate the Work covered by such order as provided in Article 18.2 ("Termination for Convenience").

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

9.22 Direct Purchase of Materials and Equipment by the City. The Contractor shall comply with any direct purchase program of the City set forth in the IFB, such that the City may issue its purchase orders directly to the supplier(s); payment may be made directly to the supplier(s); and the Contractor and its supplier(s) shall comply with all requirements of the City as to such direct purchase(s) as set forth in the IFB, this Article and Section 212.08, Florida Statutes.

- 9.22.1 The City reserves the right to require the Contractor to assign to the City any of the Contractor's subcontracts, purchase orders or other agreements for the procurement of material or equipment. Any material or equipment purchased by the City pursuant to such an assignment is hereinafter referred to as "City Furnished Materials" and the responsibilities of the City and the Contractor relating to such City Furnished Materials shall be governed and controlled by the terms and conditions of this Agreement.
- 9.22.2 Material and equipment suppliers shall be selected by the Contractor using competitive bids, and material and equipment Agreements shall be awarded by the Contractor to the supplier whose bid is more advantageous to the City, price and all other relevant factors considered. The Contractor shall include the price of all construction materials and equipment in its bid unless the Contract Documents specifically state otherwise, and in the event the City elects to furnish any such material or equipment, an appropriate deductive change order will be issued.
- 9.22.3 The Contractor shall provide the City a list of all intended suppliers, vendors, and materialmen for consideration with respect to City Furnished Materials. This list shall be submitted within ten (10) days after execution of this Agreement. The Contractor shall include price quotations from such suppliers, vendors, and materialmen as well as a specific description of the materials to be supplied and the estimated quantities of same.
- 9.22.4 Upon request by the City, and in a timely manner, the Contractor shall prepare Purchasing Requisition Request Forms which shall, in a form acceptable to the City, specifically identify the materials and equipment which the City may, in its discretion, elect to purchase directly. The Purchasing Requisition Request Form shall include the following:
- (a) The name, address, telephone number and contact person for the material supplier.
 - (b) Manufacturer or brand, model or specification number of the item.
 - (c) Quantity needed as estimated by the Contractor.
 - (d) Any sales taxes associated with such quote.
 - (e) Shipping and handling insurance cost.
 - (f) 100% Performance Bond cost.
 - (g) Delivery dates as established by the Contractor.
 - (h) Any reduction in the Contractor's cost for both the Payment Bond and the Performance Bond.
 - (i) Detail concerning bonds or letters of credit provided by the supplier if included in their bid.

The Contractor shall include copies of vendors' quotations, and specifically reference any terms and conditions which have been negotiated with the vendors concerning letter of credit, terms, discounts, or special payments.

- 9.22.5 After receipt of the Purchasing Requisition Request Form, the City shall prepare a Purchase Order for each item of material which the City chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Contractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Contractor shall implement its procedure for the purchase of the items in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of items. The City's Procurement Officer shall be the approving authority for the City on Purchase Orders in conjunction with City Furnished Materials. The Purchase Order shall also provide for reimbursement of the cost to the supplier for providing required shipping and handling insurance and for providing a Performance Bond from the supplier to the City for full value of the Purchase Order, unless such insurance and bonding requirements were included in the quote provided by the supplier to the Contractor. The Purchase Order shall also require the delivery of the City Furnished Materials on the delivery dates provided by the Contractor in the Purchasing Requisition Request Form.
- 9.22.6 In conjunction with the execution of the Purchase Orders by the suppliers, the Contractor shall execute and deliver to the City one or more deductive Change Orders, referencing the full value of all City Furnished Materials to be provided by each supplier from whom the City elected to purchase material directly, plus all sales taxes associated with such materials in the Contractor's bid to the City, plus any savings to the Contractor in the cost of Payment and Performance Bonds associated with such City Furnished Materials. The Agreement Administrator shall be the approving authority for the City on any deductive Change Order in conjunction with City Furnished Materials.
- 9.22.7 All shop drawings and submittals shall be made in accordance with Paragraph 7.2.6 and Article 16 of this Agreement.
- 9.22.8 The Contractor shall be fully responsible for all matters relating to the procurement of materials furnished by the City in accordance with this Paragraph 9.23 including, but not limited to, assuring the correct quantities, placing the order in a timely manner, and assuring coordination of purchases, providing and obtaining all warranties and guarantees required by the Agreement Documents, inspection and acceptance of the goods at the time of delivery, risk of loss, and damage of any other loss following acceptance of the items. The Contractor shall coordinate delivery schedules, sequence of delivery, loading, orientation,

and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold harmless the City from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions of the Contractor.

- 9.22.9 As City Furnished Materials are delivered to the job site, the Contractor shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Contractor shall assure that each delivery of City Furnished Materials is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the City may require. The Contractor will then forward the invoice to the City for payment.
- 9.22.10 The Contractor shall insure that City Furnished Materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defects or non-conformities in City Furnished Materials upon such visual inspection, the Contractor shall not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the City of the defective or nonconforming condition so that repair or replacement of those materials can occur without any undue delay or interruption to the Project. If the Contractor fails to perform such inspection and otherwise incorporates into the Work such defective or non-conforming City Furnished Materials, the condition of which it either knew or should have known by performance of an inspection, the Contractor shall be responsible for all damages to the City resulting from the Contractor's incorporation of such materials into the Project, including liquidated or delay damages.
- 9.22.11 The Contractor shall maintain records of all City Furnished Materials it incorporates into the Work from the stock of City Furnished Materials in its possession. The Contractor shall account monthly to the City for any City Furnished Materials delivered into the Contractor's possession, indicating portions of all such materials which have been incorporated into the Work.
- 9.22.12 Notwithstanding the transfer of City Furnished Materials by the City to the Contractor's possession, the City shall retain legal and equitable title to any and all City Furnished Materials.
- 9.22.13 The transfer of possession of City Furnished Materials from the City to the Contractor shall constitute a bailment for the mutual benefit of the City and the Contractor. The City shall be considered the bailor and the

Contractor the bailee of the City Furnished Materials. The City Furnished Materials shall be considered returned to the City for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.

- 9.22.14 The Contractor shall purchase and maintain insurance sufficient to protect against any loss of or damage to the City Furnished Materials. Such insurance shall cover the full value of any City Furnished Materials not yet incorporated into the Project during the period between the time the City first takes title to any of such City Furnished Materials and the time when the last of such City Furnished Materials is incorporated into the Project or consumed in the process of completing the Project.
- 9.22.15 The City shall in no way be liable for any interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs resulting from any delay in the delivery of, or defects in, the City Furnished Materials. The Contractor's sole or exclusive remedy shall be an extension of the Contract Time for such reasonable time as determined by the City.
- 9.22.16 On a monthly basis, the Contractor shall be required to review invoices submitted by all suppliers of City Furnished Materials delivered to the Project sites during that month and either concur or object to the City's issuance of payment to the suppliers, based upon the Contractor's records of materials delivered to the site and any defects detected in such materials.
- 9.22.17 In order to arrange for the prompt payment to the supplier of City Furnished Materials, the Contractor shall provide to the City a Requisition for Payment within fifteen (15) days from receipt and acceptance of the goods or materials. The requisition shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the City. Upon receipt of the appropriate documentation, the City shall prepare a check drawn to the supplier based upon the requisition data provided. This check will be released, delivered and remitted directly to the supplier within forty-five (45) days from receipt by the City of the Requisition for Payment. The Contractor agrees to assist the City to immediately obtain partial or final release of waivers as appropriate.
- 9.22.18 At the end of the Project, the Contractor will be provided with a deductive Change Order for the cost plus applicable sales taxes of any City Furnished Material overruns and will be provided with an additive change order representing the unspent value plus applicable sales taxes of any City Furnished Material underruns. Excess City Furnished Material shall be removed from the site and disposed of by the Contractor as directed by the City.

9.23 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repair, maintenance or damage-repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier, vendor, or subcontractor.

9.24 **Contractor Default.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within three (3) working days of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other rights and remedies the City may have, complete Contractor's work, add manpower or correct deficiencies. The Surety, by incorporating this Agreement into its Performance Bond, specifically agrees that the City may complete Contractor's work, add manpower or correct deficiencies and make claim against Contractor and Surety for all costs expenses and damages it may incur. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such defects, deficiencies or incomplete work, including City's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or the Surety shall pay the difference to the City.

9.24.1 If the Contractor defaults or neglects to carry out Work in accordance with the Contract Documents, and fails within a three (3) 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 to the Contractor for the cost of correcting such deficiencies, including compensation for the Engineer's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

ARTICLE 10 **SUBCONTRACTS**

10.1 Contractor may subcontract portions of the Work contemplated under this Agreement upon submission and approval of the City of its proposed subcontractor. Contractor hereby assigns to City, upon termination of the Contractor, all its Agreement rights with respect to subcontractors and material and equipment suppliers that provided work, materials and equipment to this Project in accordance with the Contract Documents, including but not limited to all Contractor's rights to make claims regarding quality of the work, merchantability of the materials and equipment, feasibility and fitness for the particular purpose of materials, equipment and workmanship described in this Agreement. It is further agreed that all sub-contracts and material and equipment purchase Agreements entered into by Contractor or its subcontractors or material suppliers, shall contain a provision or shall incorporate this Article 10 by reference to allow the City to bring a claim directly against any subcontractor of Contractor and its surety for breach of Agreement, warranty rights, quality of workmanship, merchantability of equipment, feasibility and fitness for the particular purpose of materials and equipment and workmanship, and create third party

beneficiary rights of City in said agreements, or such sub-contracts shall incorporate this Article 10 by reference. It is further agreed and understood that such assignment(s) and third party beneficiary rights are part of the consideration to City for entering into this Agreement with Contractor and may not be withdrawn, and subcontractor or equipment and material suppliers shall be notified of the City's rights. The City shall be furnished with a copy of all subcontracts and purchase Agreements upon the City's request. The Contractor shall ensure that all subcontractors shall purchase and maintain insurance in the amounts and coverages set forth in Article 13 ("Contractor's Liability Insurance") for claims under Worker's Compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to the City's property which may arise out of or result from the subcontractors' operations under this Agreement. Contractor hereby agrees that Contractor shall be responsible for, and shall indemnify City against, all losses, costs, claims, and damages resulting from the Contractor's failure to require its subcontractors to obtain such insurance. The City shall be named as an additional insured in all policies required to be maintained under this Article with the exception of the Worker's compensation insurance, and the subcontractors' Certificates of Insurance shall be provided to the City. Additionally, nothing contained in this Agreement shall constitute an assignment of Contractor's rights against City or create any third party beneficiary rights in any subcontractors or material and equipment suppliers of Contractor. The purpose of this provision is to allow the City, in addition to Contractor, to make claims for damages or indemnification against any subcontractors or material and equipment suppliers that may be ultimately responsible for defects or deficiencies in the Work or materials and equipment.

ARTICLE 11 **TIME & DELAYS**

11.1 Substantial Completion shall be achieved within one hundred fifty (150) successive days from the commencement date stated in the Notice to Proceed. Final Completion shall be achieved within one hundred eighty (180) successive days from the commencement date stated in the Notice to Proceed.

11.2 All time limits stated in the Contract Documents are of the essence in this Agreement. The Contractor shall be responsible for the timely and successful inspection of the Work and shall endeavor in providing the Project Manager, Engineer and Building Official and the Inspectors, and other agencies having jurisdiction with all the required documentation needed to successfully and timely continue the projects of the Work.

11.3 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which Engineer and Project Manager may determine justifies the delay, then the Contract Time shall be extended by written change order for such reasonable time as the Engineer and Project Manager may determine. All requests for extensions of time other than those associated with changes in the Work, must be submitted in writing to Engineer and Project Manager within three (3) business days of the event giving rise to the delay. Failure to so request an extension shall constitute a waiver of any right for an extension of time.

11.4 In the event that Contractor is delayed in the progress of the Work, and is granted an extension of time in which to perform the Work, except as provided in Article 17 ("Changes in the Work"), in no instance will Contractor be entitled to increased costs, compensation or damages as a result of delay. All damages that may occur by reason of delay are hereby waived by the Contractor, and the Contractor waives all claims for consequential damages arising out of this Agreement or its performance. The Contractor will not be entitled to, and expressly waives, an increase in the Contract Sum or payment or compensation of any kind from the City for direct, indirect, consequential, impact or other costs, expenses, or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays to the critical path of the construction schedule due solely to fraud, bad faith, or active interference on the part of the City or the Engineer and Project Manager.

11.5 The parties agree that time is of the essence in the performance of this Agreement. Substantial Completion of the Work under this Agreement shall be no later than the Completion Date set forth in the "Time of Completion and Liquidated Damages" Section set forth in the IFB attached as part of Exhibit "A" (the "Completion Date"), subject to authorized extensions of time as indicated by a written change order pursuant to Article 8. In the event the Work is not substantially completed by the Completion Date and has not been extended by change order, the City shall be entitled to collect liquidated damages. Contractor and City agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Contractor shall pay the City the sum of five hundred dollars (\$500.00) per calendar day for delays in achieving Substantial Completion. Further, Contractor and City agree that, because of the nature of the Work, the inability of the parties to precisely calculate actual damages for delay and the difficulty of determining these damages, the Contractor shall pay the City the sum of 25% of the per diem rate set forth in the preceding sentence as liquidated damages for each and every calendar day of unexcused delay for failure to achieve final completion thirty (30) days after the delivery of the Punch List as described in 6.2. It is hereby agreed that the amount of the per diem assessment for liquidated damages for the Contractor's failure to achieve Substantial Completion and Final Completion within the time specified in this Agreement is not a penalty and not excessive in light of the circumstances known to the parties at the time this Agreement is executed. The City's exercise of its right to terminate this Agreement shall not release the Contractor from its obligation to pay liquidated damages in the amount set forth herein. Such assessments shall be immediately due and payable to the City or, at the City's option, may be deducted from future payments that may be due and owing to Contractor. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Agreement.

ARTICLE 12 **PROTECTION OF PERSONS AND PROPERTY**

12.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The

Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby; (2) all the Work and all materials and equipment to be incorporated therein. Contractor shall comply with all OSHA regulations regarding job safety and all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or to protect them from damage, injury or loss. All damage or loss to any the City's property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at his sole cost and expense.

12.2 All damage or loss to any the City's property or the property of any third party, caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor at his sole cost and expense

ARTICLE 13 **CONTRACTOR'S INSURANCE REQUIREMENTS**

13.1 The Contractor, shall provide, maintain and pay for the following insurance which shall be placed with such insurance company or companies and in such form and in such coverages as are acceptable to City, including all coverages required in Exhibit "A" (the Insurance Provisions set forth in the IFB), which insurance includes but is not limited to the following minimum liability coverages:

- 13.1.1 **Commercial General Liability Insurance** protecting the Contractor, the City, and their respective servants, agents or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise directly or indirectly out of the operations of the Contractor, its subcontractors, servants, agents or employees under this Agreement. Contractor shall maintain completed operations coverage for at least ten (10) years after completion of the Work. Such insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars inclusive of any one Occurrence and Two Million (\$2,000,000.) Dollars in the Aggregate and also in the aggregate for Products & Completed Operations and shall include a standard form of cross liability clause. The Contractor may combine a Commercial General Liability Policy with a Commercial Umbrella /Excess Liability policy (as described in 13.1.2) to meet the requirements of 13.1.1. This coverage shall be endorsed to include the "City of Coral Gables" as an Additional Insured on a primary and non-contributory basis as well as a Waiver of Subrogation.

13.1.2 **Automobile Liability Insurance** on the Contractor's owned, non-owned and hired vehicles, protecting the Contractor against damages arising from bodily injury (including death) and from claims for property damage arising out of their use or the operations of the Contractor, its subcontractors or of agents under this Agreement. This insurance shall be for an amount acceptable to the City and shall in any event be not less than One Million (\$1,000,000) Dollars Combined Single Limit per accident. This coverage shall be endorsed to include the "City of Coral Gables" as an Additional Insured on a primary and non-contributory basis as well as a Waiver of Subrogation.

13.2 **Workers Compensation and Employers Liability Insurance** Prior to commencing the Work and prior to receiving payment, the Contractor shall provide evidence of compliance with the requirements of the State of Florida with respect to workers' compensation insurance including payments due thereunder and including Employers Liability with minimum Limits of \$1,000,000.00 per each accident, per disease each employee and per disease policy limit. This coverage shall be endorsed to include a Waiver of Subrogation for the "City of Coral Gables".

13.3 The City (and such other parties designated by City) is to be evidenced as Additional Insured on the Commercial General Liability Policy and Excess/Umbrella Policy. The additional insured status shall be evidenced by the ISO form CG20101185 or via both of the following ISO forms: CG2010 and CG2037 (07/04 Editions), or broader. Contractor is to provide forty five (45) days notice of cancellation or non-renewal of coverage and/or changes in limits of coverage on any policy. All policies of Contractor shall contain an endorsement whereby the insurance carriers agree that its insurance is primary and not contributory with or in excess of any coverage which the City has purchased. The Contractor shall be responsible for all deductibles under the Contractor's insurance policies. The Contractor shall be responsible for all loss or damage to the Work, including the Contractor's materials delivered to site for incorporation therein and all property issued to the Contractor by the City for use or incorporation in the Work. The Contractor shall waive all rights against the City for recovery of damages to the extent that these damages are covered by insurance maintained pursuant to the above requirements, and the Contractor shall provide all waivers of subrogation in the endorsements and forms required by the City.

13.5 **Additional Insured Endorsements.** The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability coverage with the following, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors or the CG2010 07 04 Additional Insured - Owners, Lessees, or Contractors - Scheduled Person or Organization endorsement, including the additional endorsement of GC2037 10 01 Additional Insured - Owners, Lessees, or Contractors -Completed Operations shall be required to provide back coverage for the Contractor's "your work" as defined in the policy and liability arising out of the products-completed operations hazard. Additional Insured Endorsements on a Primary and Non-Contributory basis shall be required for: general,

pollution and auto liability. The name of the organization endorsed as Additional Insured for all endorsement shall read "City of Coral Gables."

13.6 Notwithstanding the availability of any insurance listed hereunder, the Contractor shall bear the risk of loss for its acts or omissions pursuant to this Agreement. The Contractor bears all liability for losses and damages arising from any acts, errors, omissions, or negligence on the part of the Contractor and its subcontractors, including without limitation damages for defective and nonconforming work, and the Contractor and all applicable Subcontractors shall bear the risk and pay for such losses regardless of whether the Contractor should be covered for such losses by the Contractor's general liability or other insurance policies stated in this Article 13. In the event Contractor should fail to pay the insurance premiums, the City, at its option, may pay the premiums and deduct said amount from the Contract Sum. The Contractor's failure to maintain the insurance required by this Article 13 shall be grounds for the termination of this Agreement, and Contractor shall be liable for all losses, damages, costs and expenses of every nature and kind associated with the failure to maintain the required insurance.

13.7 **Waiver of Subrogation**. The Contractor agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the City, Contractor, sub-Contractor, Engineers, or engineers for each required policy providing coverage during the life of this Agreement. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis. Waiver of Subrogation endorsements shall be provided for all applicable coverages: general, pollution, and auto liability as well as workers compensation.

13.8 **Right to Revise or Reject**. The Contractor agrees the City reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operating legally in the State of Florida. In such events, City shall provide Contractor written notice of such revisions or rejections.

13.9 **No Representation of Coverage Adequacy**. The coverages, limits or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits or endorsements that are required be entirely relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

13.10 **Certificate of Insurance**. The Contractor agrees to provide City with Certificate(s) of Insurance that clearly evidence the Contractor's insurance contains the minimum coverages, limits, and endorsements set forth herein. A minimum thirty (30) day notice of cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance.

13.11 In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the Contractor agrees to furnish City prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by City, the Contractor agrees not continue work pursuant to this Agreement, unless all required insurance remains in effect.

13.12 The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

13.13 The Contractor agrees the Certificate(s) of Insurance shall include but is not limited to:

1. Clearly indicate the City has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, or similar endorsement providing equal or greater Additional Insured coverage. (Attach an actual copy of the endorsement, contact your insurance agent).
2. Clearly indicate the City is endorsed as an Additional Insured on the Commercial Umbrella/Excess Liability.
3. Clearly indicate the City is endorsed as an Additional Insured on the Auto Liability.
4. Clearly indicate the City is endorsed as an Additional Insured on the Pollution Liability.
5. Clearly indicate the project name and project number.
6. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
7. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
8. Clearly indicated Certificate Holder(s) as follows:

Original to:
City of Coral Gables
Procurement Division
Attn: Procurement Officer
405 Biltmore Way
Coral Gables, FL 33134

Copy to:
City of Coral Gables
Risk Management Division
Attn: Risk Manager
405 Biltmore Way
Coral Gables, FL 33134

9. Clearly indicate a Waiver of Subrogation for Commercial General Liability, Commercial Umbrella/Excess Liability, Pollution Liability and Auto Liability.
10. Clearly indicate that the following coverages are Primary and Non-contributory: Commercial General Liability, Pollution Liability and Auto Liability.

ARTICLE 14 **PAYMENT AND PERFORMANCE BONDS**

14.1 Unless the Contractor is exempt in the IFB from complying with the bond provisions set forth herein, the Contractor shall provide Payment and Performance Bonds in compliance with Florida Statute §255.05 in the full amount of the Contract Sum, plus adjustments thereto, which bonds shall guarantee to the City the full completion and performance of the Work as well as full payment of all suppliers, laborers, and subcontractors pursuant to this Agreement. It is specifically understood and agreed that the Contractor will properly and promptly pay all claimants and other parties, as specified in the Florida Statute §255.05. Each Bond shall be with a surety company that is qualified pursuant to the requirements set forth in Exhibit "A", authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years (the "Surety"). Both Payment and Performance Bonds will be active for the duration of this Agreement; actions must be instituted by claimants under the Payment Bond in accordance with the notice and time limitations of Section 255.02, Florida Statutes; and the Performance Bond shall remain in effect during the warranty period(s) covered by this Agreement. The Contractor has incorporated all costs for complying with the Payment and Performance Bond requirements of this Agreement in the Contract Sum. The City must be listed as an Obligee. Pursuant to the requirements of Section 255.05, Florida Statutes, as may be amended from time to time, the Contractor shall ensure that the bonds referenced above shall be recorded in the public records of Miami-Dade County and shall provide the City with evidence of such recording.

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

14.3 Surety responsibility for Warranty and Other Contractor Obligations Pursuant to This Agreement. The Surety has incorporated this Agreement into its performance bond. By doing so, the Surety consents to the provisions of this Agreement wherein the Surety's obligations are mentioned and further agrees that if the Contractor or any party for whom the Contractor is responsible fails to perform any of its obligations pursuant to this Agreement, then the Surety will be liable to the City for all damages, expenses, costs, and legal fees for which Contractor is liable to City pursuant to this Agreement regarding any default by the Contractor of the provisions of its Agreement. The City shall give the Surety the same notices that City is required to give to Contractor pursuant to this Agreement. Notwithstanding any provision in the performance bond to the contrary, Surety will be liable to City for all damages and remedies against the Contractor that the City is entitled to pursuant to this Agreement and by law, including, but not limited to, all damages to correct defects or deficiencies in Contractor's Work, to cure other defaults and breaches of the Agreement, to pay for the cost to carry out the Contractor's Work, to add manpower, and liability for all delay damages including Liquidated Damages and any other damages that the City may be entitled to. The provisions in this Paragraph 14.3 shall apply with the same force and effect to all Paragraphs addressing the Surety's responsibility and the City's rights in the event of Contractor's default, including without limitation the Contractor's neglect to carry out the Work in accordance with the Contract Documents, failure to promptly make payment due the City, failure to correct defective or nonconforming Work, failure to honor the Contractor's Warranty obligations or failure to fulfill any of the Contractor's obligations under the Agreement.

ARTICLE 15 **CORRECTION OF WORK AND WARRANTY**

15.1 The Contractor shall, within three (3) working days of written notice from City, proceed to commence and diligently proceed to complete the correction of any Work that fails to conform to the requirements of the Contract Documents, including defects or damage from whatever cause, and unconditionally guarantees and warrants that it shall correct any defects due to faulty materials, equipment, and/or workmanship and provide warranties of merchantability and fitness of all of the materials for the particular purpose for a period of three (3) years from Substantial Completion of the Work, or such longer time required by the Contract Documents for particular items (the "Extended Warranties"). Contractor and Subcontractor warranties expressly also include all statutory warranties, all of which are specifically and expressly incorporated herein by reference. The Contractor shall also provide warranties from manufacturers for the specified items and systems within the Contract Documents (the "Manufacturers' Warranties"), which Manufacturers' Warranties shall be attached as Exhibit "E" to this Agreement and which Manufacturers' Warranties may include Extended Warranties. Those items covered by the Manufacturer's Warranties shall in no way be deemed to limit Contractor's responsibility to do all things necessary to obtain and keep the Manufacturer's Warranties in full force and effect. The Manufacturer's Warranties, and the Subcontractors' and suppliers' warranties, shall in no way limit the Contractor's Warranty herein and are in addition to and not in lieu of the Contractor's Warranty. This warranty provision is not in lieu of any other warranties, express or implied, which may be provided by law.

15.2 The Contractor shall bear all costs of correcting such defective Work, or if Contractor shall fail in its obligation, then the Surety shall be liable for such costs. This obligation shall survive termination of this Agreement. If the Contractor fails to commence to correct defective or nonconforming Work within three (3) business days from written Notice to Contractor and Surety, the City may correct such defective or nonconforming Work. The City may deduct such costs from any monies due, or if the defective or nonconforming Work is discovered after final payment, then Contractor shall pay such cost and expense, including attorney's fees incurred, within fourteen (14) days of receipt of a written demand from the City for reimbursement. Should the Contractor fail in its obligation and the Surety fails to respond promptly to the City's notice of defective Work, then the Surety shall be responsible for all damages, costs, and fees, whether direct, indirect, or consequential, resulting from its failure to timely respond and correct such defective Work. The Surety's responsibility under this Section is further governed by Paragraph 14.3 of this Agreement.

15.3 Nothing contained in this Article 15 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents or law. The establishment of the time periods set forth in Paragraph 15.1 above relates only to the specific obligation of the Contractor and the Surety to correct the Work, and has no relationship to the time within which his 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 his obligations and any damages caused by the Contractor, including but not limited to any action commenced by the City for negligence, strict liability, breach of Agreement or warranties.

ARTICLE 16 **SHOP DRAWINGS, PRODUCT DATA, SAMPLES**

16.1 The Contractor shall review, approve and submit to Engineer and Project Manager, who may work in coordination with another consultant of the City, such as an Engineer or engineer, for review and approval drawings, product data, samples and similar submittals, with reasonable promptness and in such sequence as to cause no delay in the Work.

- (a) The Contractor shall schedule submittal of Shop Drawings and Product Data to the Architect/Engineer so that no delays will result in delivery of materials and equipment, advising the Architect/Engineer of priority for checking Shop Drawings and Product Data, but a minimum of two weeks shall be provided for this purpose. All Shop Drawings and Product Data shall be submitted prior to the Contractor's third partial payment request. After the second payment has been made, no further payments will be made until all required Shop Drawings and Product Data have been submitted. If Shop Drawings and Product Data are not approved by the fourth progress payment request, the City may withhold further payments.
- (b) 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 Architect/Engineer on previous Submittals.

- (c) The Contractor represent 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 Architect/Engineer or applicable Laws, by a licensed engineer or other design professional.

16.2 By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that he has determined and verified materials, estimated field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

16.3 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer and Project Manager's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and the City's Engineer or Project Manager has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

16.4 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 Project Manager. Such Work shall be in accordance with approved submittals.

16.5 The Contractor shall ensure that all Submittals and Shop Drawings are complete and submitted properly to the Architect/Engineer and the City's representative. If Shop Drawings or Submittals are reviewed by the Architect/Engineer on more than one occasion as result of missing information, inadequate information, misleading information, or Shop Drawings or Submittals are incomplete in any way, the Contractor shall pay the Architect's/Engineer's expense for reviews. The City may withhold payment or reduce the Contract sum by an amount equal to the cost of the Architect's/Engineer's review.

ARTICLE 17 **CHANGES IN THE WORK**

17.1 **Change Orders**. Any changes in the Work or any adjustment in the Contract Sum or the Contract Time shall only be made upon written change order executed by the City, the City's Project Manager and the Contractor. For Change Orders the value of which do not exceed the contingency amount, the Project Manager may sign the Change Order without the additional signature of the City Manager or his designee. The Contractor's Change Order proposal must be submitted with detailed backup documentation, as reasonably required by the City, setting forth the price breakdown, time impact, if any, and basis for the proposed change in the Work. In furtherance of this obligation, the City may

require that the Contractor submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Contractor's Change Proposal Request. The Contractor's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the extra work on the Project. The Contractor agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of ten (10%) percent of the direct labor and material costs for work performed with own forces and 5% over the direct labor and materials cost of subcontractors and suppliers, unless the Project Manager determines that the complexity and risk of the extra work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Contractor and the City. In no event shall Contractor be entitled to a change order for price increases because the cost or pricing information submitted by Contractor was inaccurate, incomplete or not current. If the Contractor proceeds with such Work without obtaining a written change order it shall be assumed that Contractor has performed such Work at no additional charge. The requirement for written change orders under this Article cannot be waived.

17.2 **Extra Work Directives.** An "Extra Work Directive" is a written order prepared by the Engineer and signed by the Project Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The City may by Extra Work Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. An Extra Work Directive shall be used in the absence of total agreement on the terms of a Change Order. Immediately upon receipt of the Extra Work Directive, the Contractor shall be obligated to proceed with the Work set forth in that directive and shall advise the Project Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Extra Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

17.2.1 An Extra Work Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

17.2.2 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Project Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, as calculated below in subparagraph 17.2.3.

17.2.3 Compensation for the proposed changed work (the "Extra Work") in the Extra Work Directive in the event of the parties' inability to agree upon a mutually satisfactory price shall be as follows:

17.2.3.1 No payment will be made to the Contractor for Extra Work in excess of "Actual and Necessary Cost" which is to say labor and materials as set forth in Paragraph 17.2.3.2 below plus a mark-up not to exceed 10%. This will not vary, whether the Extra Work is performed by

the Contractor or his Subcontractor. Any exceptions must be approved by the Project Manager.

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

17.2.4 In case any Extra Work shall be required to be done or furnished under the provisions of this Article 17.2, the Contractor shall at the end of each day furnish to the City such documentation as the City may require to support all the costs of the Extra Work. If payments on account are desired as the Extra Work progresses, the Contractor shall render an itemized statement showing the total amount expended for each class of labor and for each kind of material on account of each item of Work as a condition precedent to the inclusion of such payment in a partial estimate. Upon the request of the City, the Contractor shall produce for audit by the City, books, vouchers, collective bargaining labor agreements, records or other documents showing the actual cost for labor and materials. Such documents shall not be binding on the City. The Project Manager shall determine any questions or dispute as to the correct cost of such labor or materials or equipment. Payment of any amount under this Article shall be subject to subsequent audit and approval, disapproval, modification or revision by representatives of the City.

17.2.5 Pending final determination of the total cost of an Extra Work Directive to the City, the Contractor may request payment for Extra Work completed under the Extra Work Directive in Applications for Payment. The Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified. The Engineer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 20 ("Resolution of Disputes").

ARTICLE 18
TERMINATION BY THE CITY

18.1 **Termination for Cause.** If the Contractor breaches the conditions and obligations imposed by the Contract Documents, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to supply properly skilled workmen, or proper materials in accordance with the Contract Documents, or if he fails to make prompt payment to subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of the Contract Documents, then the City may, without prejudice to any right or remedy and after giving the Contractor five calendar days' written notice, terminate this Agreement and take possession of the site and all of Contractor's equipment, tools and materials and finish the Work by whatever method the City deems expedient. In such case, if applicable, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work (which costs of finishing the Work include compensation for the Project Manager's services and expenses made necessary thereby and all other damages incurred by the City), such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor and/or Surety shall promptly pay the difference to the City. This provision shall in no way limit City's right to claims for any additional damages, including but not limited to, liquidated damages, damages for defective or nonconforming Work, and all damages and setoffs allowable to the City in accordance with this Agreement, for which the Contractor, and the Surety under Paragraph 14.3, shall be liable. If, after notice of termination for cause, it is determined for any reason that the Contractor was not in default, the rights and obligations of the City and Contractor shall be the same as though the termination had been a Termination for Convenience, as set forth in Paragraph 18.2 below.

18.2 **Termination for Convenience.** The City may also terminate this Agreement for the City's convenience and without cause upon thirty (30) calendar days' written notice to the Contractor; except where the Contractor anticipatorily repudiates the Agreement, the City may immediately, without prior notice, terminate this Agreement for the City's convenience and without cause. If the Contractor is terminated for convenience, the Contractor shall be paid for actual and documented expenditures for labor, materials, subcontractors, equipment to the date of termination, and reasonable overhead and profit thereon not to exceed five (5%) percent plus reasonable and documented demobilization costs, less payments made and damages for any defective or non-conforming Work, and less any amounts that the City is entitled to withhold pursuant to the terms of this Agreement and by law. The City shall not be liable to the Contractor for lost profits on any Work not performed, home office overhead, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs must be fully supported by the Contractor's invoices and other documentation acceptable to the City, and shall be subject to the City's audit.

ARTICLE 19 **WAIVER OF CONSEQUENTIAL DAMAGES**

19.1 The Contractor waives claims against the City for consequential damages arising out of or related to this Agreement or its performance including but not limited to

damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed by Contractor.

ARTICLE 20
RESOLUTION OF DISPUTES; GOVERNING LAW AND VENUE

20.1 Contractor understands and agrees that all claims by Contractor against the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner. Any claims by Contractor arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in Article 27 ("Written Notice") with a copy to the Project Manager. Upon receipt of said notification City Manager or designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim consistent with Section 2-913 of the City of Coral Gables Code of Ordinances, unless City Manager or designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, the Contractor, Project Manager, City Manager and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The decision of City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure, provided that the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein.

20.2 The Contract Documents shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Contract Documents shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

20.3 **Attorneys' Fees.** In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

ARTICLE 21
WAIVER OF TRIAL BY JURY

21.1 The parties to this Agreement hereby agree to exhaust all administrative remedies before filing a lawsuit in civil court to resolve the dispute. **CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT,**

COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.

ARTICLE 22
SUCCESSORS AND ASSIGNS

22.1 The City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder, without the prior written consent of the City.

ARTICLE 23
MODIFICATION

23.1 No change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

ARTICLE 24
RIGHTS AND REMEDIES

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

ARTICLE 25
SEVERABILITY AND WAIVER

25.1 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

ARTICLE 26
INDEPENDENT CONTRACTOR & COMPLIANCE WITH LAWS

26.1 The Contractor acknowledges entering into this Agreement as an independent contractor, and that as such, Contractor shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to Contractor's services, or those of employees of the Contractor. The City shall not withhold from sums payable to the Contractor, any amount whatsoever for Federal Income Taxes, FICA,

Unemployment Insurance Taxes or any similar fees or taxes. Contractor, its employees or agents, will not be considered an employee of the City or entitled to participate in plans, distributions, arrangements or other benefits extended to City employees.

26.2 Nothing herein shall imply or shall be deemed to imply an agency relationship between the City and Contractor. Contractor, moreover, warrants that it fully complies with all Federal statutes and regulations regarding the employment of undocumented workers and others and that all employees performing work under this Agreement meet the citizenship or immigration status requirements set forth in Federal statutes and regulations. Contractor shall indemnify, defend, and hold harmless City, its elected and appointed officials, officers, and employees from and against any sanctions and any other liability which may be assessed against Contractor or City in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

ARTICLE 27 **ENTIRETY OF AGREEMENT**

27.1 The City and Contractor agree that this Agreement (including the Contract Documents referenced herein) sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the City and Contractor pertaining to the Work, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 28 **WRITTEN NOTICE**

28.1 Written notice shall be deemed to have been duly served if delivered in person to the Contractor or the City or Project Manager, with a written receipt of acknowledgement of delivery, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any party may specify by notice to all other parties as aforesaid):

For City:
City of Coral Gables
Personnel:
Diana Gomez
Procurement Officer
2800 S.W. 72nd Ave.
Miami, Florida 33155

For Project Manager:
Eduardo Santamaria
Public Works Director
City of Coral Gables
2800 S.W. 72nd Ave.
Miami, Florida 33155

For Contractor:
Mr. Humberto Ortiz, President
A.U.M. Construction, Inc.
8950 NW 119 Street
Hialeah Gardens, FL 33018

WRITTEN NOTICE:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

With copies to:

City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

For Contractor;
(Company Qualifier)

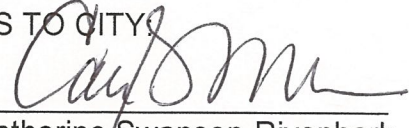
SIGNATURE LINES TO FOLLOW ON SEPARATE PAGE

This Agreement is executed the day and year first above written in four (4) counterparts, each of which shall be deemed an original Agreement.

Approved as to Insurance:

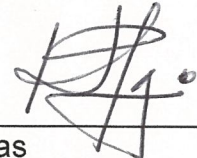

David J. Ruiz
Risk Management Division

AS TO CITY:

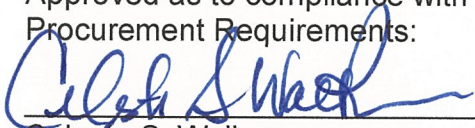

Catherine Swanson-Rivenbark
City Manager

Approved by Department Head
or head of negotiations team as to
the negotiated business terms:

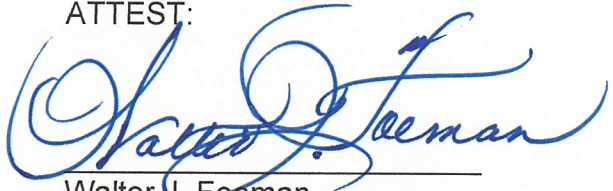

Eduardo Santamaria
Public Works Director


Peter Iglesias
Assistant City Manager

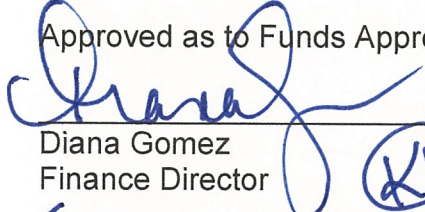
Approved as to compliance with applicable
Procurement Requirements:


Celeste S. Walker
Assistant Finance Director for Procurement

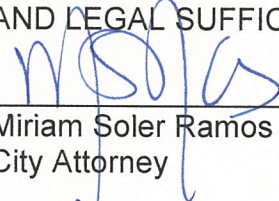
ATTEST:


Walter J. Foeman
City Clerk

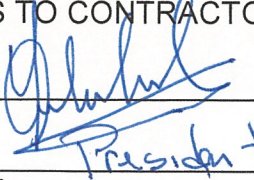
Approved as to Funds Appropriation:


Diana Gomez
Finance Director
KD 2/6/18
Fund 350 C-road-row.3-Const. Consroad

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

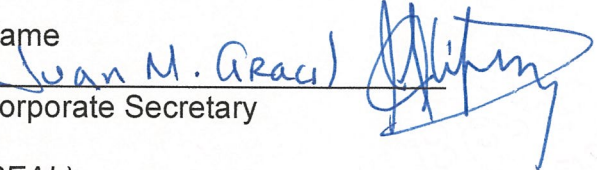

Miriam Soler Ramos
City Attorney

AS TO CONTRACTOR:



Title:

ATTEST:

Name 
Corporate Secretary

(SEAL)
(OR) WITNESSES (2):

Print Name: _____

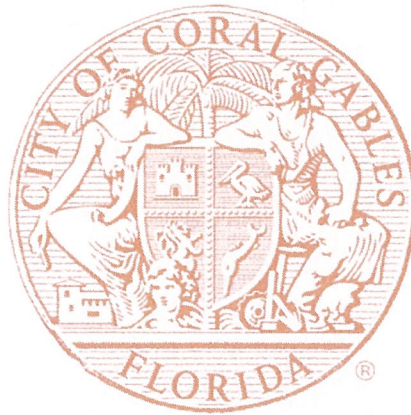
Print Name: _____

EXHIBIT "A"

PROJECT MANUAL, BID SPECIFICATIONS, AND SUPPLEMENTARY CONDITIONS
OF IFB. No. 2017.11.MS.

DATED _____

CITY OF CORAL GABLES, FL
FINANCE DEPARTMENT / PROCUREMENT DIVISION
405 Biltmore Way – Coral Gables, FL 33134



INVITATION FOR BIDS
IFB 2017.11.MS

SPEED LIMIT SIGNS, FURNISH & INSTALL

Submittal Deadline / Bid Opening: 1:00 p.m. Tuesday, December 5, 2017



CORAL GABLES, FL

City of Coral Gables, 2800 SW 72nd Avenue, Miami, FL 33155
FINANCE DEPARTMENT / PROCUREMENT DIVISION
Tel: 305-460-5102, Fax: 305-261-1601

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CITY OF CORAL GABLES, FL

2800 SW 72nd Avenue, Miami, FL 33155
 Finance Department / Procurement Division
 Tel: 305-460-5102/ Fax: 305-261-1601

BIDDER ACKNOWLEDGEMENT

<p>IFB No. 2017.11.MS</p> <p>SPEED LIMIT SIGNS, FURNISH & INSTALL</p> <hr style="width: 50%; margin-left: 0;"/> <p>A cone of silence is in effect with respect to this IFB. The Cone of Silence prohibits certain communication between potential vendors and the City. For further information, please refer to the City Code Section 2-1059 of the City of Coral Gables Procurement Code.</p>	<p>Sealed bid submittals must be received prior to 1:00 p.m., Tuesday, December 5, 2017, by the Procurement Division, located at 2800 SW 72nd Avenue, Miami, FL 33155 and are to remain valid for 90 calendar days. Submittals received after the specified date and time will be returned unopened.</p> <p>Contact: Maritza Suarez, CPPB Title: Procurement Specialist Telephone: 305-441-5745 Facsimile: 305-261-1601 Email: msuarez2@coralgables.com / contracts@coralgables.com</p>
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Bidder Name:	FEIN or SS Number:
Complete Mailing Address:	Telephone No.
	Cellular No.
Indicate type of organization below: Corporation: ___ Partnership: ___ Individual: ___ Other: ___	Fax No.:
Bid Bond / Security Bond (if applicable) _____%	Email:

ATTENTION: THIS FORM ALONG WITH ALL REQUIRED IFB FORMS MUST BE COMPLETED, SIGNED (PREFERABLY IN BLUE INK), AND SUBMITTED WITH THE BID RESPONSE PRIOR TO THE SUBMITTAL DEADLINE. FAILURE TO DO SO MAY DEEM YOUR BID NON-RESPONSIVE.

THE BIDDER CERTIFIES THAT THIS SUBMITTAL IS BASED UPON ALL CONDITIONS AS LISTED IN THE IFB DOCUMENTS AND THAT THE BIDDER HAS MADE NO CHANGES IN THE IFB DOCUMENT AS RECEIVED. THE BIDDER FURTHER AGREES, IF THE BID IS ACCEPTED, THE BIDDER WILL EXECUTE AN APPROPRIATE AGREEMENT FOR THE PURPOSE OF ESTABLISHING A FORMAL CONTRACTUAL RELATIONSHIP BETWEEN THE BIDDER AND THE CITY OF CORAL GABLES, FOR THE PERFORMANCE OF ALL REQUIREMENTS TO WHICH THIS IFB PERTAINS. FURTHER, BY SIGNING BELOW PREFERABLY IN **BLUE INK** ALL IFB PAGES ARE ACKNOWLEDGED AND ACCEPTED, AS WELL AS, ANY SPECIAL INSTRUCTION SHEET(S), IF APPLICABLE. THE UNDERSIGNED HEREBY DECLARES (OR CERTIFIES) ACKNOWLEDGEMENT OF THESE REQUIREMENTS AND THAT HE/SHE IS AUTHORIZED TO BIND PERFORMANCE OF THIS IFB FOR THE ABOVE BIDDER.

Agree (Please check box to acknowledge this solicitation)

Authorized Name and Signature Title Date

CORAL GABLES, FL

City of Coral Gables, 2800 SW 72nd Avenue, Miami, FL 33155
Finance Department / Procurement Division
Tel: 305-460-5102, Fax: 305-261-1601

PUBLIC NOTICE

Invitation for Bids (IFB) No. 2017.11.MS

The City of Coral Gables is seeking bids for **SPEED LIMIT SIGNS, FURNISH & INSTALL - IFB 2017.11.MS**. The project consists of furnishing and installing 158 new 25 mph speed limit signs and removing and delivering of 114 existing speed limit signs. Each installation will include a 4" O.D.* Schedule 40 powder coated RAL 6454 Aluminum Pole with the following three sign panels: R2-5cP, R2-1 and R2-5P, as shown in the standard detail. Contractor will be responsible for all utility locations.

Project Location: Various areas throughout the City of Coral Gables.

Estimated Budget: \$180,000 (Includes Allowance)

The Invitation for Bid (IFB) package may be downloaded by visiting PublicPurchase (www.publicpurchase.com). Prospective Bidders must register with PublicPurchase, free-of-charge, in order to download the solicitation. A detailed user guide for the registration process may be downloaded by visiting the Procurement Division Supplier Services webpage at: www.coralgables.com/index.aspx?page=1275.

Any prospective bidder who has received this solicitation by any means other than through PublicPurchase **must register** immediately with PublicPurchase to ensure it receives any addendum issued to this solicitation. Failure to acknowledge receipt of an addendum may result in disqualification of bid submitted.

A non-mandatory pre-bid meeting will be held at: Procurement Division Conference Room, 2800 S.W. 72nd Avenue, Miami, FL 33155 on **Thursday, November 9, 2017 at 10:00 a.m.** Attendance (in person or via telephone) is encouraged and recommended as a source of information, but is not mandatory. Bidders who are interested in participating via telephone should send an e-mail to the contact person listed in this IFB expressing their intent to participate via telephone.

Any request for additional information or clarification must be received in PublicPurchase no later than Thursday, November 16, 2017 at 4:00 p.m. Bidders should not rely on any representations, statements or explanations other than those made in this IFB or in any written addendum to this IFB.

Bids for IFB NO. 2017.11.MS will be received until 1:00 p.m., Tuesday, December 5, 2017. Bids submitted by mail or hand delivered should be sent to the City of Coral Gables, Procurement Division, 2800 SW 72nd Avenue, Miami FL 33155. The City of Coral Gables will not accept and will in no way be responsible for any bids received after the submittal deadline. The responsibility for submitting bids before the stated time and date is solely the responsibility of the Bidder. Verbal or electronic (e-mailed) bids are not acceptable.

One (1) original bid, two (2) copies and one (1) digital copy on a CD or flash drive (PDF format) must be signed and submitted in a sealed envelope and clearly marked: (1) SPEED LIMIT SIGNS, FURNISH & INSTALL - IFB 2017.11.MS and (2) Bidder Name, Address, Contact Name, and Telephone Number.

Certified minority business enterprises (as defined in Florida Statutes §287.0943 and §288.703) and other minority or woman-owned enterprises are encouraged to respond to this solicitation.

Anticipated Schedule of Events:

Solicitation Advertisement	Thursday, November 2, 2017
Non-Mandatory Pre-Bid Meeting	10:00 am, Thursday, November 9, 2017
Deadline for Questions	4:00 pm, Thursday, November 16, 2017
Deadline for Answers	4:00 pm, Tuesday, November 28, 2017
Submittal Deadline / Bid Opening	1:00 pm, Tuesday, December 5, 2017

Award of bid will be made to the lowest responsive responsible bidder, within a reasonable time after opening of bids. However, the City reserves the right to consider other conditions which may be in the best interests of the City. **Bids must be firm for ninety (90) calendar days.** The City reserves the right to cancel this solicitation at any time, reject any and/or all submittals, and waive any technicalities, irregularities or any other minor variations.

ESCALATION CLAUSES OF ANY KIND CONTAINED IN YOUR BID ARE NOT ACCEPTABLE.

This solicitation is subject to the following Ordinances/Resolutions which may be found on the City of Coral Gables Website: <http://www.coralgables.com>, click on Government, City Departments, Procurement, Procurement Code (City Code, Chapter 2, Article VIII).

- Code of Silence – Sec. 2-1059
- Ethics – Sec. 2-1054 to 2-1060
- Debarment Proceedings – Sec. 2-952
- Protest Procedures – Sec. 2-950
- Polystyrene – Sec. 2-801
- Buy American – Sec. 2-780
- Sustainability (Green) – Sec. 2-778
- Local Preference – Sec. 2-777

Conflict of Interest and Code of Ethics

- Coral Gables, FL, Code of Ordinances, Chapter 2 – Administration, Article V

City Clerk, Lobbyist Registration, Applications and Forms

- Lobbyist Registration & Disclosure of Fees – Ordinance No. 2006-11

Sincerely,

Procurement Officer

CONE OF SILENCE

Invitation for Bids (IFB) No. 2017.11.MS

NOTICE TO ALL BIDDERS AND PROPOSERS

Definition:

Cone of Silence is defined to mean a prohibition on:

Any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB) or any other advertised solicitation between a potential offeror, vendor, service provider, bidder, lobbyist, or consultant and city department heads, their staff, selection committee or evaluation committee members.

Any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB) or any other advertised solicitation between the city commissioners and city department heads, the city departments' staff, selection committee or evaluation committee members.

Imposition:

A cone of silence shall be imposed upon each Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB) and any other solicitation when advertised.

Termination:

The cone of silence shall terminate at:

- (1) the time of the City Manager's approval of the award, or
- (2) the time of the City Manager's written recommendation to the City Commission is received by the City Clerk, or
- (3) at such time that bids or proposals are rejected by the City Commission or the City Manager.

Violations:

Violation of the cone of silence by a particular bidder or offeror shall render any award to said person voidable by the city commission.

A violation of this section by a particular bidder, offeror, lobbyist or consultant shall subject such person or persons to potential debarment pursuant to the provisions of this chapter.

SOLICITATION SUBMISSION CHECKLIST

Invitation for Bids (IFB) No. 2017.11.MS

COMPANY NAME: (Please Print): _____

Phone: _____

Email: _____

-- NOTICE --

BEFORE SUBMITTING YOUR BID RESPONSE, MAKE SURE YOU...

IFB General Requirements

- 1. Have read and have a clear understanding of the IFB, including TECHNICAL SPECIFICATIONS, SUMMARY OF WORK AND OTHER DOCUMENTS.
- 2. Submit ONE (1) ORIGINAL RESPONSE and TWO (2) PHOTOCOPIES with ONE (1) disk(s) or memory stick of your IFB. (Please insert TABS on the following sections in the ORIGINAL copy – Bid Bond, Schedule of Values and Addendum Acknowledgement.)
- 3. Clearly mark the IFB NUMBER, IFB TITLE AND BIDDER'S NAME on the outside of your envelope.
- 4. Make sure your bid is submitted prior to the submittal deadline. **Late bids will not be accepted.**

Bid Submittal Format

- 5. Title Page, refer to Section 1.5(a), Bid Format
- 6. Table of Contents, refer to Section 1.5(b), Bid Format
- 7. Bidders Acknowledgement Form, refer to Section 1.5(c), Bid Format
- 8. Solicitation Submission Checklist, fill out and submit this form
- 9. Business Experience, refer to Section 1.5(e), Bid Format
- 10. Licenses, refer to Section 1.5(f), Bid Format
- 11. Key Personnel Experience, refer to Section 1.5(g), Bid Format
- 12. Experience Modification Rating (EMR) Score, refer to Section 1.5(i), Bid Format
- 13. Submit the following Forms:
 - Bid Bond
 - Notarized Contractor's Affidavit including Schedules A through H (as applicable)
- 14. Carefully review the Construction Documents; however completion of these documents is not required with bid submittal:
 - Construction Agreement (draft)
 - Construction Forms
- 15. Complete, verify and submit SCHEDULE OF VALUES, Section 6.

FAILURE TO SUBMIT CHECKLIST AND THE REQUESTED DOCUMENTATION MAY RENDER YOUR IFB RESPONSE NON-RESPONSIVE AND CONSTITUTE GROUNDS FOR REJECTION.

THIS PAGE IS TO BE RETURNED WITH YOUR RESPONSE PACKAGE.

SECTION 1

Invitation for Bids (IFB) No. 2017.11.MS

1.0: INTRODUCTION TO INVITATION FOR BIDS

1.1. Invitation

Thank you for your interest in this Invitation for Bids ("IFB"). The City of Coral Gables (the "City"), through its Procurement Division invites responses ("Responses") from Firms ("Bidder") which offer to provide the goods and/or services described in Section 2.0 "Summary of Work".

1.2. Contract Terms and Conditions

The Bidder(s) selected to provide the goods (s) and/or service(s) requested herein (the "Successful Bidder") shall be required to execute a Contract or a Professional Services Agreement ("Agreement") with the City in substantially the same form as the Agreement included as part of this IFB, if applicable.

The work will be substantially completed within **one hundred fifty (150) successive days** from the commencement date stated in the Notice to Proceed and final completion **one hundred eighty (180) successive days** from the commencement date stated in the Notice to Proceed.

Throughout this IFB, the phrases "must", "shall" and "will" denote mandatory requirements. Any bid that does not meet the mandatory requirements is subject to immediate disqualification.

1.3. Submission of Responses

To receive consideration, bids must be submitted on Bid Response Forms as provided by the City. This Invitation for Bids must be resubmitted with all forms executed, each section signed as read and understood, and the response form completely filled out. Bids must be typed or printed in ink. Use of erasable ink is not permitted. Any additional information to be submitted as part of the Invitation for Bid may be attached behind the Bid Response Forms. Upon request, copies may be obtained from the Procurement Division, 2800 S.W. 72nd Avenue, Miami, FL 33155. The Bid shall be signed by a representative who is authorized to contractually bind the Bidder. Bids by corporations must be executed in the corporate name by the President or other corporate officer accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

The **original Bid, two (2) copies and one (1) digital copy (in PDF format)** must be submitted to the Procurement Division, 2800 S.W. 72nd Avenue, Miami, FL 33155 at or prior to the time noted on the proposal opening date. The IFB Response Forms are comprised of **Procurement Forms** and **Construction Documents**. **Procurement Forms** are the Bid Bond and Contractor's Affidavit including Schedules A-H; only one (1) original is required. **Construction Agreement** is a draft for your review (completion of this agreement is not required) and Forms. Bids received after that time will not be accepted. It will be the sole responsibility of the Bidder to deliver their bids to the Procurement Office on or before the closing hour and date indicated.

Bids shall be submitted in a sealed envelope clearly marked on the exterior as follows:

IFB No. 2017.11.MS

SPEED LIMIT SIGNS, FURNISH & INSTALL

Bidder Name and Address: _____

Submittal Deadline: _____

Addressed to:

1:00 p.m., Tuesday, December 5, 2017

City of Coral Gables
Procurement Division
2800 S.W. 72ND Avenue
Miami, FL 33155

The Procurement Division will not be held responsible for the premature opening of a Bid not properly addressed and identified. **All Bids submitted become the exclusive property of the City of Coral Gables.**

Each bid shall be prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of the IFB. The emphasis in each Bid must be on completeness and clarity of content. In order to expedite the evaluation of Bids, it is essential that Bidders follow the format and instructions contained herein. Bid Submission Requirements as listed herein must be followed. Any attachments must be clearly identified.

The Bid shall be considered an offer on the part of the Bidder, which shall be deemed, accepted upon approval of the City, and in case of default, the City reserves the right to accept or reject any and all Bids, to waive irregularities and technicalities, and request new Bids. The City also reserves the right to award any resulting agreement as it deems will best serve the interest of the City.

1.4. Additional Information or Clarification

The Bidder must thoroughly examine the entire solicitation. If there is any doubt or obscurity as to the meaning of any part of the IFB, the Bidder may request clarification at the pre-bid conference or by **WRITTEN REQUEST** to PublicPurchase (www.publicpurchase.com) prior to the deadline for written questions. E-mails must include the Bidder's name, IFB number and title.

Interpretations or clarifications in response to such questions will be issued in the form of a **WRITTEN ADDENDUM**, which shall be released through PublicPurchase. **Bidders must register via PublicPurchase to ensure receipt of any addendum issued to the solicitation.** Failure to acknowledge receipt of an addendum may result in disqualification of bid submitted.

No person is authorized to give oral interpretations of, or make oral changes to the IFB. The issuance of a written addendum shall be the only official method whereby such an interpretation or clarification will be made. Where there appears to be conflict between the IFB and any addenda issued, the last addendum issued shall prevail.

Bidders should not rely on any representations, statements or explanations other than those made in this IFB or in any written addendum to this IFB.

1.5. Bid Format

Careful attention must be given to all requested items contained in this IFB. **PLEASE READ THE ENTIRE SOLICITATION BEFORE SUBMITTING A RESPONSE.** Bidders shall make the necessary entry in all blanks and forms provided for the Response. Bids must be organized and tabbed in accordance with the sections and manner specified below:

- (a) **Title Page:** Show the IFB Number and Title, the name of your firm, address, telephone number, name of contact person, email address and date.
- (b) **Table of Contents:** Clearly identify each section below by name and page number. Please insert *additional TABS* on the following sections in the Original Bid Copy: Bid Bond, Schedule of Values and Addendum Acknowledgement.
- (c) **Bidders Acknowledgement Form** – Complete, sign and submit with bid.
- (d) **Solicitation Submission Checklist:** Complete and submit with bid.
- (e) **Business Experience:** Bidder must have a minimum of three (3) years' documented experience as a prime contractor in similar projects involving General Construction. Bidder shall provide a list and description of a minimum of three (3) references of similar municipal engagements satisfactorily performed in the past three (3) years.

Note: Do not include work performed for the City of Coral Gables or City employees as references.

Include the following information for each project listed:

- 1) Title of project;
- 2) Location of project;

- 3) Client name/owner's representative name, address, phone, and email, who can verify performance;
- 4) Date project started and completed or is anticipated to be completed.

(f) **Licenses:**

- a. Bidder shall be licensed to do business in the State of Florida. Submit a copy of the active status Sunbiz.org registration
- b. **Bidder must be a Certified General Contractor in the State of Florida. A copy of the license must be submitted.**

(g) **Key Personnel Experience:** Provide a summary of the qualifications and experience of all key personnel (i.e. Project Superintendent and Supervisors) that will have oversight responsibilities related to the services requested. Provide a List of Subcontractors, and include all relevant information as required in Section 3.11. of the IFB. Provide copies of all applicable licenses / certifications for all key personnel, including sub-contractors that will be utilized under the trades applicable to the project. Applicable trades include, but are not limited to: asphalt, concrete, drainage, signs and markings, and landscaping.

(h) **Financial Stability:** After receipt of bids, Bidder may be required to submit financial statements for each of their last two (2) complete fiscal years within five (5) calendar days, upon written request. Such statements should include, at a minimum, Balance Sheets (Statements of Financial Position) and Statements of Profit and Loss (Statement of Net Income). Statements shall be certified by an independent Certified Public Accountant.

(i) **Experience Modification Rating (EMR) Score:** Provide the firm's Experience Modification Rate (EMR) data for the previous three (3) full calendar years on a firm-wide basis, which shall be documented by a signed letter with contact information from the firm's insurance carrier, or the insurance carrier's agency representative.

(j) **IFB Response Forms (Section 5)** – Bidder shall complete, sign, notarize, as applicable, and submit the forms and schedules listed below. Mark "N/A" (*not applicable*) on any document that does not pertain to you.

a. **Bid Bond** – one (1) original

b. **Contractor's Affidavit** - along with one (1) original of **Schedules A through H** as follows:

- | | |
|-------------------------------------|---|
| A - Certificate of Bidder | E - Code of Ethics, Conflict of Interest, Cone of Silence |
| B - Non Collusion Affidavit | F - Americans with Disabilities Act (ADA) |
| C - Drug Free Statement | G - Public Entity Crimes |
| D - Bidders Qualification Statement | H- Acknowledgement of Addenda |

c. **Construction Documents** (review only; do not include in your bid submittal)

- A. Construction Agreement (draft)
- B. Construction Forms

(k) **Schedule of Values (Section 6)** – Complete, verify and submit.

Any and all Responses that do not follow the prescribed format may be deemed non-responsive.

1.6. Award of an Agreement

Agreements may be awarded to the Successful Bidder(s) by the City Commission or City Manager, as applicable, to one or more bidders deemed the most responsible, responsive Bidder, complying with all the provisions of this Invitation for Bids. In addition to price, other factors when determining the lowest responsive and responsible bidder, include but are not limited to:

- 1. The ability, capacity, equipment and skill of the bidder to perform the contract.
- 2. Whether the bidder can perform the contract within the time specified, without delay or interference.

3. The character, integrity, reputation, judgment, experience, efficiency and litigation history of the bidder.
4. The quality of performance on previous contract(s).
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
6. The sufficiency of the bidder's financial resources to perform the contract or to provide the service.
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
8. The ability of the bidder to provide future maintenance and service and the financial impact upon the City to receive such future maintenance and service.
9. The number and scope of conditions attached to the bid

The Bidder shall not be permitted rate increases as a result of a low bid. Non-performance shall result in cancellation of the contract with the Bidder. The City reserves the right to execute or not execute an Agreement with the Successful Bidder(s) if it is determined to be in the best interest of the City.

1.7. Agreement Execution

By submitting a Response, the Bidder agrees to be bound to and execute the Agreement for this solicitation. Without diminishing the foregoing, the Bidder may request clarification and submit comments concerning the Agreement for the City's consideration. Only comments and proposed revisions included within the Response will be considered by the City. Any comments identified after the Response has been received may not be considered by the City. Furthermore, any requests to negotiate provisions of the Agreement not identified in the response after the Response has been received, may be grounds for removal from further consideration for award. None of the foregoing shall preclude the City from seeking to negotiate changes to the Agreement during the negotiations process.

Failure of the Successful Bidder to execute a contract within thirty (30) days after the notification of award may, at the City's sole discretion, constitute a default. However, the Agreement must be executed no later than one hundred twenty (120) days, based upon the requirements set forth in the IFB through action taken by the City Commission at a duly authorized meeting. If the Bidder first awarded the Agreement fails to enter into the contract as herein provided, the award may be declared null and void, and the Agreement awarded to the next most responsible, responsive Bidder, or re-advertised, as determined by the City.

1.8. Unauthorized Work

Any unauthorized work performed by the Successful Bidder(s) shall be deemed non-compensable by the City.

1.9. Changes/Alterations

Bidders may change or withdraw a Response at any time **prior to** the Response Submission Deadline. All changes or withdrawals shall be made in writing to the Procurement Division as specified in this IFB. Oral/Verbal modifications will not be allowed. Written modifications will not be accepted after the Submittal Deadline.

1.10. Discrepancies, Errors, and Omissions

Any discrepancies, errors, or ambiguities in the IFB or addenda (if any) should be reported in writing to the City's Procurement Division in the manner prescribed in the IFB. Should it be necessary, the City will issue a written addendum to the IFB clarifying such conflicts or ambiguities.

1.11. Disqualifications

The City reserves the right to disqualify Responses before or after the Submittal Deadline, upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder. It also reserves the right to waive any immaterial defect or informality in any Response; to reject any or all Responses in whole or in part, or to reissue an Invitation for Bids.

Any Responses submitted by a Bidder who is in arrears (money owed) to the City or where the City has an open claim against a Bidder for monies owed the City at the time of Bid submission, will be rejected as non-responsive and shall not be considered for award.

1.12. Bidders Expenditures

Bidder(s) understand and agree that any expenditure they make in preparation and submittal of Responses or in the performance of any services requested by the City in connection with the Responses to this IFB are exclusively at the expense of the Bidder(s). The City shall not pay or reimburse any expenditure or any other expense incurred by any Bidder in preparation of a Response or anticipation of a contract award or to maintain the approved status of the Successful Bidder(s) if an Agreement is awarded.

1.13. Financial Stability and Strength

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

In determining a Bidder's responsibility and ability to perform the Contract, the City has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder. The City reserves the right to consider third party information (e.g. Dun & Bradstreet's Supplier Reports or similar) in determination of capacity.

Bidders may be required to submit financial statements for each of their last two (2) complete fiscal years within five (5) calendar days, upon written request. Such statements should include, at a minimum, Balance Sheets (Statements of Financial Position) and Statements of Profit and Loss (Statement of Net Income). When the bid submittal is from a joint venture, each Bidder involved in the joint venture must submit financial statements as indicated above. Statements shall be certified by either an appropriate Corporate Officer or an independent Certified Public Accountant.

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

1.14. Contract Termination

The City, by written notice, may terminate in whole or part any Agreement resulting from this competitive solicitation, when such action is in the best interest of the City. If the Agreement is so terminated, the City shall be liable only for payment for services rendered prior to the effective date of termination. The City may, by written notice to the Successful Bidder, terminate the Agreement if the Successful Bidder has been found to have failed to perform his/her services in a manner satisfactory to the City. The City may terminate this Agreement for convenience at any time by providing thirty (30) days written notice to the contractor. In the event the Bidder is found to be in default, the Successful Bidder will be paid for all labor and materials provided as of the termination date only after City has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to City, from any contract balance otherwise due and owing to the Professional under this Agreement. No consideration will be given for anticipated loss of revenue on the canceled portion of the Contract.

1.15. Background Screening

A criminal background check may be performed by the Coral Gables Police Department at the expense of the Proposer for each person employed under this contract.

1.16. Bid Bond/Bid Security/Bid Deposit

A Bid Bond, a certified check, cashier's check, Treasurer's check or bank draft of any State or National Bank in the amount of five percent (5%) of the bid total amount will accompany the Bid. The bonding company must appear on the US Treasury List. The Bid Bond of the successful Proposer will be retained until receipt and acceptance of a performance bond and all other required documents. Bid Bonds of all other Bidders will be returned without interest upon Award of Contract. **Failure to provide the bid bond when required shall result in the Bidder being "non-responsive" and rejected.**

1.17. Performance and Payment Bond

The successful Bidder shall post a Performance and Payment Bond from a Corporate Surety, which is satisfactory to the City as security for the performance and prompt payment to all persons supplying labor and material in the execution of the work to be performed under this Contract and on any and/or all duly authorized modifications hereof. A bond will be posted on a per project basis and shall be a sum equal to one hundred percent (100%) of each project(s) total, unless otherwise specified. The bond may be in the form of a Cash Bond or Surety bond written through an approved, reputable, and responsible company authorized to do business in the State of Florida. Attorneys-in-fact who sign bid bonds or contract bonds must file with such bond a certified copy of power of attorney to sign said bond.

Performance Bond must be filed by the Contractor with the Procurement Division, in the full amount of the contract price, as set forth here within this section in form and with corporate surety satisfactory to the City Manager and City Attorney, conditioned upon the performance of the work in accordance with the Contract and the Plans and Specifications thereof, and for the payment of all persons performing labor and furnishing equipment or materials in connection with the Contract and indemnifying said City of Coral Gables from any expense, loss, or cost arising from and out of the improper performance of said Contract.

1.18. Bid Bond/Bid Security/Bid Deposit Forfeited Liquidated Damages

The following specification shall apply to bid/proposal, performance, payment, maintenance, and all other types of bonds:

All Bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Bests Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey.

<u>Bond Amount</u>	<u>Best Rating</u>
500,000 to 1,499,999	A VI
1,500,000 to 2,499,999	A VIII
2,500,000 to 4,999,999	A X
5,000,000 to 9,999,999	A XII
over 10,000,000	A XV

On bond amount of \$500,000 or less, the provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

1. Providing evidence that the surety company is licensed to do business in the State of Florida;
2. Providing evidence that the surety company holds a certificate of authority authorizing it to write surety bonds in this state;
3. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Invitation for Bids and/or Request for Proposals is issued.
4. Certifying that the surety is otherwise in compliance with the Florida Insurance Code.
5. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under 31 U.S.C. ss. 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of Treasury entitled A Surety Companies Acceptable to the Federal Bonds, published annually. The bond amount shall not exceed the underwriting limitations.

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SECTION 2

Invitation for Bids (IFB) No 2017.11.MS

2.0: SUMMARY OF WORK

The purpose of this IFB is to establish a contract, by means of sealed bids, with a qualified firm(s) to provide all materials, labor, applicable fees and permits to furnish and install 158 new 25 mph speed limit signs and remove and deliver (to 2800 SW 72 Avenue, Miami, FL 33155) 114 existing speed limit signs. Each installation will include a 4" O.D.* Schedule 40 powder coated RAL 6454 Aluminum Pole with the following three sign panels: R2-5cP, R2-1 and R2-5P, as shown in the standard detail, throughout the City of Coral Gables for the Department of Public Works, in accordance with the prescribed specifications and requirements.

Estimated Budget: \$180,000 (Includes Allowance)

Plans, Technical Specifications and other documentation can be found in Section 7 of this IFB.

2.1 MINIMUM QUALIFICATIONS

The following represent the minimum qualification requirements for a Bidder to be deemed responsive by the City. The Bidder must satisfy and address in detail in its submittal each of the following minimum requirements cited below to determine Bidder's responsiveness. Failure to meet each of the following qualification requirements, and/or failure to provide sufficient detail and/or documentation in its submittal to determine responsiveness by the City, will result in the submittal being deemed non-responsive.

2.1.1 BIDDER

- A. Bidder must have a minimum of three (3) years' documented experience as a prime contractor in similar projects involving General Construction. Bidder shall provide a list and description of a minimum of three (3) references of similar municipal engagements satisfactorily performed in the past three (3) years.
- B. Bidder shall be licensed to do business in the State of Florida. Submit a copy of the active status Sunbiz.org registration.
- C. Bidder must be a Certified General Contractor in the State of Florida. A copy of the license must be included.

2.1.2 KEY PERSONNEL

- A. Provide a summary of the qualifications and experience of all key personnel (i.e. Project Superintendent and Supervisors) that will have oversight responsibilities related to the services requested. Provide a List of Subcontractors, and include all relevant information as required in Section 3.11 of the IFB. Provide copies of all applicable licenses / certifications for all key personnel, including sub-contractors that will be utilized under the trades applicable to the project. Applicable trades include, but are not limited to: asphalt, concrete, drainage, signs and markings, and landscaping.

SECTION 3

Invitation for Bids (IFB) No 2017.11.MS

3.0 GENERAL CONDITIONS

3.1 Acceptance/Rejection

The City reserves the right to accept or reject any and/or all Bids or sections thereof, and waive any informalities or technicalities. As a matter of information, the City Commission does not bind itself to accept the minimum specifications stated herein, but reserves the right to accept any Bids which in the judgment of the City will best serve the needs and interest of the City. The City also reserves the right to reject any Bidder(s) who has previously failed to properly perform under the terms and conditions of a contract, to deliver on time any contracts with the City, and who is not in a position to perform the requirements defined in this IFB. This offering of IFB itself does not in any way constitute a contractual agreement between the City of Coral Gables and the Bidder.

3.2. Legal Requirements

The Bidder shall comply with all rules, regulations and laws of the City of Coral Gables, Miami-Dade County, the State of Florida and the Federal Government now in force or hereinafter to be adopted. Lack of knowledge by the Proposer shall in no way be cause for relief from responsibility.

3.3. Non-Appropriation of Funds

In the event that insufficient funds are appropriated and budgeted or funding is otherwise unavailable in any fiscal period for this Agreement, then the City, shall have the unqualified right to terminate the Work Order(s) or Agreement upon written notice to the Contractor, without any penalty or expenses to the City. No guarantee, warranty or representation is made that any particular work or any project(s) will be assigned to any Bidder(s).

3.4. Occupational License Requirements (Business Tax Receipt Requirements)

Any person, firm, corporation or joint venture, with a business location in the City of Coral Gables who is submitting a Bid response under this solicitation, shall meet the City's Occupational License Tax Requirements in accordance with Ordinance No O2005-15 of the City of Coral Gables Code and Chapter 205 of the Florida Statutes.

Others with a location outside the City of Coral Gables shall meet their local Occupational License Tax requirements. Copy of the license must be submitted with the Bid; however, the City may, at its sole option and in its best interest, allow the Bidder to supply the license to the City during the evaluation period, but prior to award.

3.5. Minimum Qualification Requirements

The City of Coral Gables intends to procure products or service as specified herein from sources of supply that will give prompt, professional and convenient service of acceptable quality. Each Bidder shall complete the applicable Qualifications Statement and submit it with the Bid. Failure to submit statement and documents required there under may constitute grounds for rejection. The Bidder must have a proven record of successfully completing projects. The City reserves the right to make pre-Award inspections of the Bidder's facilities and/or equipment prior to Contract Award.

Bids will be considered only from Bidders that meet the following criteria:

- (a) Bidders that are regularly engaged in the business of providing the goods and/or services described in the Invitation for Bids "Summary of Work".
- (b) Bidders that have a record of regular performance of similar scope and quality for a reasonable period of time as specified in the "Summary of Work".
- (c) Bidders that have sufficient financial support, as specified in Special Conditions, and equipment and organization to insure that the Bidder can satisfactorily execute the Contract under the terms and conditions stated herein.

The terms "equipment" and "organization" as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices of the industry as determined by the proper authorities of the City of Coral Gables.

At City's sole discretion, it may be determined that a Bidder is not "qualified", "non-responsive" and/or "not responsible". Bid may be rejected for any of, **but not limited to**, the following reasons:

- (a) Evidence of collusion with other Bidders. Participants in such collusion shall be disqualified for any further work from the City until such time as they are reinstated.
- (b) Submission of more than one Bid for the same Contract under the same or different names, in which case all such duplicated Bids shall be rejected.
- (c) Bidder lacks qualification or resources necessary to fulfill the intent of the Contract.
- (d) Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship, progress or standards of performance agreed upon in the Contract as substantiated by past or current work with the City.
- (e) Bidder has previously defaulted in the performance of a public service contract, or has been convicted of a crime arising from the performance of a previous or current public service contract.
- (f) Any other inability, financial or otherwise, to perform the work, based on any reasons deemed proper as determined from a prepared survey of Bidder's capability to perform the work.

3.6. Use of Polystyrene Prohibited

Contractor, vendor, lessee, concessionaire agrees to comply with Sec. 2-801 of the City of Coral Gables Code, which prohibits the sale or use of plates, bowls, cups, containers, lids, trays, coolers, ice chests, food containers and all similar articles made from expanded polystyrene within the city or in completing its duties to the city under this contract. (This prohibition does not apply to expanded polystyrene containers used for prepackaged goods that have been filled and sealed prior to receipt by the city contractor, vendor, lessee or concessionaire.) "Expanded polystyrene" is defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including but not limited to fusion of polymer spheres, infection molding, foam molding and extrusion-blown molding. Contractor, vendor, lessee or concessionaire understands that violation of this section shall be deemed a default under the terms of the contract, lease or agreement."

3.7. Public Entity Crimes

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 Proposal to provide any goods or services to a public entity, may not submit a Bid 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 in F.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendors list.

3.8. Resolution of Protests

Pursuant to Section 2-950 of the City of Coral Gables Code which may be found on the City of Coral Gables Website: <http://www.coralgables.com>. Click on Government, City Department, Procurement, Procurement Code (City code, Chapter 2, Article VII).

3.9. Determination of Responsiveness

Each Bid will be reviewed by the Procurement Division to determine if it is responsive to the submission requirements outlined in the IFB. A "responsive" Response is one which meets the requirements of the IFB, is submitted in the format outlined in the IFB, is a timely submission, and has the appropriate signature as required on each document.

3.10. Collusion

The Bidder, by submitting a Response, certifies that its Response is made without previous understanding, agreement or connection either with any person, firm, or corporation submitting a Response for the same services, or with any City Department. The Bidder certifies that its Response is fair, without control, collusion, fraud, or other illegal action. The Bidder certifies that it is in compliance with the conflict of interest and code of ethics laws. The City will investigate all situations where collusion may have occurred and the City reserves the right to reject any and all Responses where collusion may have occurred.

3.11. Sub-Contractor(s)

A Sub-Contractor is an individual or firm contracted by the Bidder(s) to assist in the performance of services required under this IFB. A Sub-Contractor shall be paid through Bidder(s) and not paid directly by the City. Sub-Contractors are allowed by the City in the performance of the services delineated within this IFB. Bidder(s) shall clearly reflect in its Response the major Sub-Contractor to be utilized in the performance of required services. The City retains the right to accept or reject any Sub-Contractor proposed prior to Agreement execution. Any and all liabilities regarding the use of a Sub-Contractor shall be borne solely by the Successful Bidder(s) and insurance for each Sub-Contractor must be maintained in good standing and approved by the City throughout the duration of the Agreement. Neither the Successful Bidder(s) nor any of its Sub-Contractors are considered to be employees or agents of the City. Failure to list all major Sub-Contractors and provide the required information may disqualify any proposed Sub-Contractor from performing work under this IFB.

Bidder(s) shall include in their Responses the requested Sub-Contractor information and include all relevant information required of the Bidder(s).

3.12. Substitutions for Assigned Personnel

The City reserves the right to approve substitutions for assigned personnel proposed for this project. Substitutions may be allowed for staff turnover, sickness or other emergency situations.

3.13. Purchasing Agreements with Other Government Agencies

Any Governmental, not-for-profit or quasi-governmental entity in the State of Florida, may avail itself of this contract and purchase any and all goods and/or services specified herein from the Successful bidder(s) at the contract prices(s) established herein, upon mutual agreement between the Successful bidder(s) and any of the above listed entities.

Each governmental, not-for-profit or quasi-governmental entity which uses a contract(s) resulting here from, will establish its own contract, place its own orders, issue its own purchase orders, be invoiced there from and make its own payments, determine shipping terms and issue its own exemption certificates as required by the Successful Bidder(s).

3.14. Florida Public Records Law

Sealed bids or proposals received by an agency pursuant to invitation for bids or requests for proposals are exempt from Florida Statutes Section 119.07(1) until such time as the agency provides **notice of a decision or intended decision or within 30 days after bid or proposal opening, whichever is earlier.**

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Bidder acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Supplier also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Supplier agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated herein.

3.15. Award of Contract

The contract will be awarded to the lowest responsive Bidder complying with all the provisions of this Invitation for Bids, provided the Bid price is reasonable and it is in the interest of the City to

accept it. All services provided to the City of Coral Gables shall be rendered pursuant to the terms of a "Contract". The City of Coral Gables will not sign any contracts submitted by a proposing Contractor awarded the Contract. The Contract provides that the Contractor will render the requested services to the Owner as provided for in this document pursuant to the issuance of a Purchase Order through the City's Procurement Division.

3.15.1 Purchase Order: The City of Coral Gables through the Finance Department/Procurement Division will issue a Purchase Order Number to the awarded Contractor, following approval by the city commission and executed Contract. **No Agreement shall be in effect until the Purchase Order Number has been issued to the Contractor.**

SUPPLEMENTARY CONDITIONS

3.16. Pre-Construction Conference

After the contract has been awarded and signed, but prior to commencement of work, a pre-construction conference shall be held. The conference shall be attended by authorized representatives of the City and Contractor. The purpose of this conference will be to review the Contractor's submitted progress schedule, clarify jurisdiction and to acquaint all parties present with the authorized representative to be notified. The Contractor will be notified in writing as to the date and place of the conference.

3.17. Time of Completion

3.17.1 Substantial Completion shall be achieved within **one hundred fifty (150) successive days** from the commencement date stated in the Notice to Proceed.

3.17.2 Final Completion shall be achieved within **one hundred eighty (180) successive days** from the commencement date stated in the Notice to Proceed.

3.18. Liquidated Damages

If the Contractor, or in the case of default, the Surety fails to fully complete the work within the time stipulated in the proposal plus the time for excusable delays-the sum of **five hundred dollars (\$500.00) per calendar day**, until the work is completed, may be deducted from any money due the Contractor not as a penalty but as a fixed, agreed upon amount as the recompense to the Owner for the loss of the facility, for additional costs incurred by the Owner for administration of the Contract during said period of time, and the disruption caused by the delayed construction activities.

3.19. Owner's Allowance Account for Unforeseen Conditions

3.19.1 The Total Bid Amount shall include an Owner's Contingency Allowance ("Allowance Account") totaling 15% of the Base Bid Amount. The Allowance Account shall be used to pay for all labor, materials, equipment and services requested by the City which are beyond the requirements of the Contract Documents and are necessary due to unforeseen conditions at the site.

3.19.2 The Contractor shall perform additional work only upon written direction by the City. The Contractor will be entitled to draw from the Allowance Account for the agreed lump sum amount established as compensation for such additional work.

3.19.3 At the completion of the project, the balance remaining in the Allowance Account will be deducted from the Contract Price.

3.20. Excusable Delays

The right of the contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays, when such delays are caused by reasons stated below:

3.20.1. Any acts of the government including controls or restrictions upon or requisitioning of materials, equipment, tools or labor by reasons of war, national defense, or any other national emergency.

3.20.2. To any acts of the City of Coral Gables.

3.20.3. To causes not reasonably foreseeable by the parties to the contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions, provided that the Contractor notifies the City within ten (10) days of the cause of the delay. Upon receipt of such notifications, the City shall ascertain the facts and the cause for the delay. If the delay is excusable, the City shall extend the time for completion of the work for a period of time commensurate with the period of excusable delay.

3.21. Hours of Work:

Monday to Friday: 7:30 a.m. to 6:00 p.m.

No work is permitted on Saturday and Sunday, unless it is approved by the Public Works Department.

3.22. Document of Requirements

This document is an outline of minimum requirements for all labor, materials, equipment, and supervision required to perform construction in the City of Coral Gables. The items listed in this document are only the minimum requirements, which the Contractor must meet in order to submit a Bid for construction services. For clarification on any of the listed items, please submit in writing to the Procurement Division.

3.23. Terminology

For the purpose of this document, the following terminology will be used:

1. Owner: City of Coral Gables
2. Contract Administrator: Public Works Director or Designee
3. Contractor: The Contracting Company submitting a Bid for construction services or the Company awarded the contract for construction service.
4. Sub-Contractor: Any Contracting Company providing services which are obtained by the company awarded the contract for service and who were not hired directly by the City.
5. Other Contractors: Any Contracting Company providing services which are obtained by the City in addition to or in place of those provided by the Contractor.

3.24. Authority

The authority for the City of Coral Gables shall be the Public Works Department. The Public Works Department authority shall be the Director of the Public Works or designated representative. Requests for service may be made by any persons listed on the document the Owner will supply the Contractor that will include the names and titles of those persons who are authorized for service requests. The Owner will not be responsible for charges incurred as a result of work performed that was not pre-approved by the authorized Owner representative.

Administration of Contract: The Public Works Department is the final authority of the Contract. The Contract administrator shall be the Assistant Director of the Public Works Department or designated representative.

3.25. Statement of Objection

Any objections to the specific requirements contained within this document may be brought to the attention of the Owner at the time of the Bid. Provided that the objection is stated "in writing", with an explanation as to what the objection is, and the alternative Bid which the Contractor wishes to make. Once the Contract is awarded, the Owner will assume that the Contractor awarded the Service Agreement has no further objections to the contents of this document.

3.26. Licenses/Qualifications

The Contractor must be fully licensed to perform the requested work. The licenses must be valid and meet all requirements for the State of Florida as well as any County or City requirements. The Contractor must furnish proof of valid Contractor license with the submitted Bid for services. The Contractor shall furnish the Owner with a copy of any license renewal, at the time the license is renewed.

3.27. Permits

It shall be the Contractor's responsibility to obtain any applicable permits. Any permits issued by the City of Coral Gables shall be at NO cost to the Contractor.

3.28. Codes/Regulations

It is the sole responsibility of the Contractor to comply with any and all Federal, State, County, and City Codes including any and all Environmental Codes and Regulations.

3.29. Contact Information

The Contractor shall provide the Owner with the names and phone numbers of those persons to contact for a response to a request. The Contractor shall maintain 24 hours per day, 365 days per year, and the ability to respond when requested by the Owner. The list shall also include the names and phone numbers of the Contractor's authorized representative. The Owner shall also provide the Contractor a list of names and phone numbers of their authorized representatives.

3.30. Guaranteed Work

The Contractor shall guarantee all work performed as to the quality of the work and the compliance with all applicable codes. The Contractor shall guarantee all work performed for a period not less than one year from the date of acceptance. This guarantee is not a warranty; guarantee applies to the workmanship and the proper methods of work. The guarantee will be that the Contractor at no cost to the Owner will perform inspections, testing and necessary corrective measures.

Product Warranty: The Contractor shall be responsible to follow and comply with all product manufactures instruction to meet the requirements for product warranties. This applies to all products furnished by the Contractor or the Owner. All product warranties shall be turned over to the Owner upon completion of the job.

3.31. Guaranteed Response Times

The Contractor shall guarantee a minimum response time as requested to correct errors and situations that may warrant immediate response.

3.32. Concurrent Work

Work may be performed concurrently by the utilities in the City or the City's Contractor in the right-of-way and it shall be the responsibility of the Contractor to coordinate his work with the utility companies, the City and the City's Contractors.

3.32.1 Utility Locations: The Contractor is responsible for all utility preservation and damage prevention and must comply with Florida Sunshine One Call Requirements.

3.32.2 White Line Requirement: The City of Coral Gables ordinances require white line procedures for utility locations, the Contractor must comply with all white line requirements.

3.32.3 Protection of Existing Structures: The Contractor shall take full responsibility for maintaining and restoring all existing structures encountered by his construction operations, including paving, catch basins, drains, electric light power, telephone poles, gas mains and other structures encountered above and below ground. Damage to utilities will be repaired by the respective utility. Where a catch basin is located within the area to be paved, the Contractor shall cover the opening to prevent introduction of asphalt into the structure. If deleterious material is introduced into the catch basin, the Contractor shall clean it to the satisfaction of the Engineer, at no additional cost.

3.33. Project Layout

The Contractor shall layout the proposed work and contact all utilities to verify utility locations. If changes are required, due to conflict or design, the Engineer/Architect will make the final determination.

3.34. Additions

Either the Owner or the bidding Contractor may add items, which are not covered or listed in this document, as follows:

3.34.1 Additional Request by Owner: Any additional requests may be made by the Owner and will be done in writing, and shall be considered an amendment to the documented requirement.

3.34.2 Additional Request by Contractor: The proposing Contractor may include additional items not specified or addressed within the documented requirements. The Contractor when doing so shall submit all additions to the proposed items in writing and identify that each item is an addition.

3.35. Parts and Materials

The Contractor shall furnish all supplies and materials. The Contractor shall be informed when each work order is issued as to if the Contractor or Owner is to furnish materials. In some cases both parties may supply items. When the Contractor supplies materials a list of all materials supplied must be included in the invoice documentation of each work order.

3.36. Trade Names

In cases where an item is identified by a manufacturer's name, trade name, catalogue number, or reference, it is understood that the Bidder proposes to furnish the item so identified and does not propose to furnish an "EQUAL" unless the proposed "EQUAL" is definitely indicated therein by the Bidder.

The reference to a name brand is intended to be descriptive, but not restrictive and only to indicate to the prospective Bidder articles that will be satisfactory. Bids on other makes and catalogs will be considered provided each Bidder clearly states in his Bid exactly what he proposes to furnish and forward with his Bid a cut illustration or other descriptive matter which will clearly indicate the character or the article covered by this Bid.

The City hereby reserves the right to approve as an equal, or reject as not being equal, any article the Bidder proposes to furnish which contains major or minor variations from the specification requirements but may comply substantially therewith.

If no particular brand, model, or make is specified and if no data is required to be submitted with the Bid, the successful contractor afterward and before manufacturer shipment may be required to submit working drawings or detailed descriptive data sufficient to enable the City to judge if such requirement of the specification is being complied with.

3.37. Site/Work Inspection by Owner

Inspection will be required during all phases of construction, and it shall be the Contractor's responsibility to contact the Engineer/Architect or his representative when any work is being performed. The Contractor shall also be responsible for coordinating all inspections of work performed by subcontractors. Failure to contact the Engineer/Architect or his representatives to obtain the required inspections shall be sufficient cause of rejection.

All work will be inspected by the Owner during the job, and for final approval of each job. In addition the work site will be inspected for cleanness, safety, and progress of the work schedule. The inspections will include evaluation of proper construction, installation or repair, as well as any requirements set by city standards or policy. All work will be inspected by the owner. Additional permitted work will be inspected by the permitting agency.

3.38. Project Change Orders

Any work that is estimated prior to commencement that exceeds or varies from the original and scope of work shall require an approved change order. The change order must be pre-approved in writing by the Owner's authorized representative.

3.39. Notice to Owner

The address that any and all Notice to Owner should be sent to is: **The City of Coral Gables, Public Works Department, 2800 SW 72 Avenue, Miami, Florida 33155.** The primary contractor, any subcontractor or any material supplier submitting a Notice to Owner must use the stated address. Each Notice to Owner must be satisfied prior to payment of

invoices to the contract. A signed partial release of lien must be submitted along with the invoice for each payment request. Final payments will not be made until all signed builder or material release of liens and a final release of lien has been submitted. The primary contractor must notify the Owner of any notice or lien received from any sub-contractor-equipment supplier or material supplier. The primary contractor is responsible to provide all release of liens from any contractor, sub-contract, equipment supplier, material supplier that have filed a Notice to Owner with the City.

3.40. Invoicing and Payment for Service

The Contractor shall invoice the Owner by providing an original invoice which shall include the following information:

1. Date of Invoice
2. Contract Description
3. Owner's Project Number
4. Summary of Contract Amounts
5. Location service was performed
6. Name/s of the Authorized Contractor's Representative
7. Release of lien or partial release of lien as applicable
8. Description of work performed
9. Units price, units installed and units cost
10. Invoice amount(s) per location(s) and type of work performed.
11. Invoice total amount
12. Copy of approved inspection/s, if required
13. As built drawings, if required
14. Manuals, schematics, warranty documents if required
15. Provide any/all documents as required

3.40.1 Payment Request Certification Form: The Contractor must complete and sign the Owner's payment request certification form that includes the contract amount, paid to date amount, payment request amount and remaining balance less retainage. The form must be complete when submitted for payment request. The contractor payment request certification form must be signed by the consultant if applicable. The Owners' project manager will sign to verify all requirements are met prior processing of any invoices (see sample at end of section).

3.40.2 Payment: Payment will be made in full compensation for all work performed, materials, labor, tools and equipment furnished, and incidental expenses necessary to complete the work. Payment shall be made on 90% of the monthly estimate and upon the presentation of partial releases of lien. Final payment shall be made upon presentation of a completion statement, receipt of the final release of lien, receipt of as-built and after final acceptance by the City.

3.40.3 Extras: Bills for extras will be allowed only when work is ordered in writing and approved by the Public Works Director.

3.41. Release of Lien

The Contractor is responsible to furnish all partial and full releases of liens to include the primary Contractor as well as any and all sub-contractors performing work or supplied materials or equipment. The Contractor shall furnish applicable partial or releases of liens for all work performed. Only City release forms will be acceptable.

Note: No invoice will be processed nor will any payment be made to the contractor if/when any required related releases of liens have not been furnished to the Owner.

3.41.1 Administrative Charges for Obtaining Release or Collection of Funds: The contractor is responsible for the payment of all monies owed sub-contractors and material/equipment suppliers including the material/equipment suppliers for the sub-contractors. The owner may charge the contractor or deduct a charge amount from the contract for administrative cost for collection for monies owed the sub-contractor or material/equipment suppliers. The contractor is responsible for and, must obtain all required release of lien both full and partial from all sub-contractors and

material/equipment suppliers. Should the contractor not obtain and furnish the required releases the owner may charge the contractor or deduct a charge amount from the contract for administrative cost for obtaining releases both full or partial from all sub-contractors and material/equipment suppliers. The administrative charge may be up to an amount of 10% of the total contract price per incident.

3.42. Owner's Approval of Invoices

The Owner shall inspect all work performed, verify all items required that are included in any submitted invoice, verify that the Contractor has met all compliance requirements. The responsible person requesting the work or supervising the work shall sign the request for payment and submit the invoices for processing. Invoices are to be submitted per approved request for services as authorized.

3.43. Right to Audit Records

The City shall be entitled to audit the books and records of the Contractor or any sub-contractor to the extent that such books and records relate to the performance of the Contract or any sub-contract of the Contract. Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under the sub-contract unless a shorter period is otherwise authorized in writing.

3.44. Cleaning Up

The Contractor will be required to leave the work and adjacent areas free of any accumulated rubbish or surplus materials on a daily basis, unless otherwise directed by the Public Works Director. In the event of failure or undue delay on the part of the Contractor, the City may employ such equipment and labor as may be necessary, and charge such costs against the Contractor and deduct the amount from the monies due the Contractor for work performed.

3.45. Line and Grade

Where required as determined by the Engineer/Architect, the City will establish a base line and reference elevations. All additional lines and grades required for completion of the work shall be furnished by the Contractor.

Contractor Employees:

3.45.1 All of the Contractor's employees shall be considered to be at all times the sole employees of the Contractor under its sole direction and not employees or agents of the Owner.

3.45.2 The Contractor shall supply competent and physically capable employees. All Contractor employees performing work under this contract shall keep minimum acceptable standards of cleanliness, conduct and decency as determined by the Owner.

3.45.3 The Owner may require the Contractor to remove immediately any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose employment on City property is not in the best interests of the Owner as deemed by the owner. Failure by the Contractor to immediately remove one of its employees under such circumstances may be sufficient grounds for immediate termination of Contract.

3.46. Storage Equipment

The Contractor is responsible for all tools and equipment as well as materials. Storage of these items on site must be requested and approved by the Owner. The Owner is not responsible for the loss of any tools, equipment, or materials stored by the Contractor at the Owners site, or in the possession of the Contractor.

3.47. Safety

The Contractor shall be responsible for the safety of the Contractors employees. The Contractor shall abide by all Federal, State, County, and City safety requirements and regulations. The Contractor is responsible to furnish the Contractors employees with all required safety equipment. The Contractor is required to comply with all OSHA regulations including but not limited to "Right to Know", "Confined Space Entry" and "Airborne Blood Pathogens".

The Contractor is fully responsible to furnish safety equipment to all of the Contractor's employees on the Owner's job site, including but not limited to safety glasses, gloves, hard

hats, braces or any other required safety item. The Contractor is required to make certain that each employee is wearing the proper safety clothing including shoes.

3.48. Use of Barricades and Work Site Safety:

The Contractor shall supply and use all pedestrian warning devices and any necessary barricade devices to keep the public or anyone other than the Contractors employees out of job sites. The Contractor shall furnish and post any required signs. The Contractor is responsible for the safety of the work site at all times.

3.48.1 Protection of Work: It shall be the Contractors' responsibility to protect the public and ongoing construction hazards.

3.49. Damages

The Contractor shall be liable for any and all damages to any City or private property, and the Contractor shall notify the Owner immediately of any damages.

3.50. Testing

The Engineer/Architect or other person designated by the Public Works Director to supervise the work shall have the right at any time to have tests made on any material used on the job. All expenses for tests shall be borne by the City of Coral Gables, except the cost of re-testing materials which failed to meet the specifications and waiting time due to Contractor failure to be ready for tests when scheduled. The cost and scheduling of such re-testing shall be the responsibility of the Contractor. All re-testing shall be done by the testing laboratory which tested the failed samples. The Contractor will inform the City of his source of materials with sufficient time to secure the necessary samples and perform the necessary tests. The Contractor shall request and receive inspections of specific phases of work as required elsewhere in these specifications.

3.51. Completion of Punch List Items

Punch list items must be completed within 30 days of completion of final work. Failure to complete punch list items shall result in a deduction from the Contractor's monthly invoice, an amount equal to the cost of incomplete punch list items. This amount shall be in addition to the 10% retainage.

3.52. Acceptance

The City will be deemed to have accepted the work after the Procurement Division is notified by the user department of its satisfaction of the work is completed. The work under this contract shall remain the property of the Contractor until the City accepts it. In the event the work furnished under this contract is found to be defective or does not conform to the specifications/scope of work, the City reserves the right to cancel the contract upon written notice to the Contractor.

3.53. As-Built Information

As work progresses, the Contractor must record all information pertaining to changes and deviations from the contract drawings with special attention to all underground installations. At completion of the job, the Contractor shall submit a complete set of reproducible and in electronic form as-built drawings to the City. Additionally the contractor shall maintain a field book with all deviations recorded. The completed as-built sketches and field books and electronic files shall become the property of the City. As-built information must be supplied with each pay request. Failure to provide as-built information is cause to reject pay request.

3.54. Existing Signs and Utility Castings

All existing signs and utility castings shall be preserved and shall remain the property of either (a) the City of Coral Gables, 2800 SW 72nd Avenue, Miami, Florida 33155; (b) Miami-Dade County, Traffic Signal and Signs, 7100 NW 36th Street, Miami, Florida 33166. Those not reused shall be delivered to the City of Coral Gables or Miami-Dade County on a weekly basis.

3.55. Existing Sidewalk

The Contractor shall preserve the existing sidewalk, if any, throughout the project unless otherwise directed by the Engineer/Architect.

3.56. Restoration of Survey Markers

When existing survey markers are removed or destroyed as a result of the construction, it shall be the responsibility of the contractor to replace them using a registered licensed surveyor.

3.57. Hand and Rolled Asphalt Adjacent to Curb and Catch Basins

Asphalt adjacent to curbs and asphalt aprons around catch basins shall be hand rolled using a steel roller with a minimum weight of 200 pounds.

3.58. Plans

The Contractor or designated representative shall supervise their employees when any work is being performed and it shall be the Contractor's responsibility to make sure the employees are following the plans. All plans' revision expenses caused by the Contractor's or his employees' fault are the sole responsibility of the Contractor.

3.59. Striping

3.59.1 Temporary striping shall be placed within 48-hours of completion of each course of asphalt unless another course is placed within 48-hours. The cost of temporary striping shall be included in the unit cost of permanent thermoplastic striping.

3.59.2 Permanent thermoplastic striping shall be place within 30 days of completing final paving unless otherwise approved by the Engineer.

3.60. Sod

3.60.1 The unit price for sod stated in the bid is for additional sod. It is not replacement of sod damaged during construction. Sod shall be place within 2-weeks of completion and final paving

3.60.2 The unit price in the bid for sod, other than Floratum or Palmetto varieties of St. Augustine sod is for matching any type existing sod such as Bermuda or Bahia not damaged as a result of construction work. Any sod, regardless of type damaged by construction shall be restored with matching sod at Contractor's expense.

3.61. Restoration of Pavement or Parkway

The cost of restoration of pavement or parkways shall be included in the unit cost of the item being constructed. No separate payment will be made for restoration.

3.62. Maintenance of Traffic

Unless otherwise specifically permitted by the proper authorities, the Contractor shall at all times maintain the streets passable on which work is being conducted. The contractor will maintain access to all houses, garages, etc., with the least possible interruption and shall conduct the work so that the inconvenience to all property owners adjacent to the work will be at a minimum. All property owners shall be notified in advance if access to their property is to be temporarily interrupted in case of any hardship resulting there from; the Contractor shall make suitable arrangements with the property owners to the satisfaction of the Director or Designee.

The Contractor shall provide all temporary signing, striping, detouring, barricading, signals, competent flagmen, and etc. required in accordance with the minimum requirements of the current Manual of Uniform Traffic Control Devices, whenever and wherever needed for pursuance of the project, and/or as directed by the owner or designated representative. The Contractor shall also coordinate these operations with the City of Coral Gables Public Works Department and Miami Dade County Department of Public Works. The Contractor shall supply the owner or designated representative with a traffic maintenance plan. Use of Police must be approved in advance by the City of Coral Gables. The Contractor may not submit additional charges for cost incurred for providing a Maintenance of Traffic plan.

3.63. Site Managements, Dust Controls, Etc.

The Contractor shall maintain the site of the work in a reasonable condition, shall avoid or promptly remove accumulation of dirt, debris, etc., from streets and storage areas, shall control the creation of a dust nuisance by sprinkling or chloride treatment, shall limit noise, and vibration and take such other measure as may be reasonable or proper to avoid undue

nuisance to surrounding property owners. The Contractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish caused by his employees or work, or the employees or work of any of his subcontractors. Contractor shall not stock pile materials at the project site unless approved in writing by the Engineer/Architect.

3.64. Certified Applicator

When materials are installed that requires applicator certification the contractor must provide the owner with documents verifying that the contractor is a current certified applicator certified by the manufacturer. The contractor must meet any and all requirements by material manufactures in order to apply the materials and to validate the application and qualify for all warranty/guarantee requirements.

3.65. Parking

The Contractor shall be instructed where the company vehicles are to be parked while work is performed. The Parking Department Director shall determine the approved locations for parking. Servicing the Owners facilities does not waive the requirement to pay for metered parking.

3.66. Bidder's Warranty

The Bidder warrants that no one was paid a fee, commission, gift, or other consideration contingent upon receipt of an award for the services and/or supplies specified herein.

3.67. Rights of Owner

The Owner reserves all rights either stated or implied and shall be the sole source of interpretation of any of the contents of this document.

The Owner reserves the right to cancel this Agreement at any time after providing the Contractor with thirty (30) days advance written notice of cancellation. The Owner further reserves the right to cancel this Agreement at any time without written notice subject to the contractor for the following reasons:

- a) The Contractor has failed to provide the service to the Owner as outlined herein.
- b) The Contractor has been found to be in violation of the law.
- c) The Contractor's licenses have been revoked for any reason.
- d) The Owner feels that the Contractor has not performed their duties pursuant to the Service Agreement, within the realms of good business practices.

3.68. Storm Water Erosion and Sedimentation Control

The Contractor shall comply with the State of Florida Administrative Code governing storm water erosion and sedimentation control best Management Practices.

3.69. Performance Evaluation

The Owner will evaluate in writing the Contractor's performance (sample at end of Section 3).

SAMPLE

CONTRACTOR PERFORMANCE EVALUATION

CONTRACTOR _____

PROJECT _____

DATE from _____ to _____

Write relevant comments in each field or write N/A.

CONTRACTOR'S PERFORMANCE

ABILITY TO MEET SCHEDULES

ABILITY TO ADJUST TO CIRCUMSTANCES

PROJECT MET BUDGET

CHANGE ORDERS

PROPER STAFFING

PROPER EQUIPMENT

SECTION 4

Invitation for Bids (IFB) No. 2017.11.MS

4.0: INDEMNIFY, DEFEND AND HOLD HARMLESS & INSURANCE REQUIREMENTS

- 4.1 To the fullest extent permitted by Laws and Regulations, the Proposer who is awarded this solicitation shall defend, indemnify, and hold harmless the City and its elected and appointed officials, attorneys, administrators, 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 and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by any willful, intentional, reckless, or negligent act or omission of Proposer, any sub-consultant, or 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.

In any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, consultants, agents, or employees by any employee of Proposer, any sub-consultant, 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 Professional or any such sub-consultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

- 4.2 For any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, consultants, agents, or employees by any employee of Proposer, and sub-consultant, 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 Successful Proposer or any such sub-consultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

- 4.3 The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The City may use the attorney or law firm of its choice in which event the Proposer awarded this contract will pay such firm the fees it charges the City, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that City pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, Proposer will reimburse the City at the prevailing market rate for similar legal services.
- c. Attorney's fees and cost of any party that a court orders the City to pay.
- d. Lost time that results from the City or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the City spends in responding to document requests or public records requests relating to such claims whether from Proposer or any other party, Proposer will reimburse City \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, Proposer will reimburse City on a per hour basis as follows:

• For the Mayor or City Commissioner:	\$300.00 per hour
• For the City Manager:	\$250.00 per hour
• For an Assistant City Manager or Department Director:	\$250.00 per hour
• For an Assistant Department Director:	\$100.00 per hour
• For City Attorney or Assistant City Attorney:	Prevailing market rates

- For other employees: \$50.00 per hour

- e. The expenses incurred by City in complying with any administrative or court order that may arise from such claims.
- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims; and
- g. Any other direct or indirect expense that City would not have incurred but for a claim that arises out of this agreement.

4.4 It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06 (Chapter 725), Florida Statutes.

4.5 The Bidder hereby expressly agrees and understands that the indemnification and hold harmless provisions contained in the Construction Agreement resulting from this IFB, will supersede and take precedence over any such provisions contained within the IFB documents.

4.6 **INSURANCE REQUIREMENTS**

4.6.1 **GENERAL CONDITIONS**

Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Office of Labor Relations and Risk Management has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public.

Consequently, prior to award and in any event prior to commencing work, the Contractor shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Contractor shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of the Office of Labor Relations and Risk Management for review and approval. All city solicitation and contract documents shall include insurance provisions approved by the Risk Management Division.

4.6.2 **INSURER REQUIREMENTS**

The Contractor shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

4.6.3 **TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT**

- a. **Workers' Compensation and Employers Liability Insurance** covering all employees, subcontractors, and/or volunteers of the Contractor and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

4.6.3.1 Workers' Compensation - Coverage A
-Statutory Limits (State or Federal Act)

4.6.3.2 Employers' Liability - Coverage B
- \$1,000,000 Limit - Each Accident
- \$1,000,000 Limit - Disease each Employee
- \$1,000,000 Limit - Disease Policy Limit

- b. Commercial General Liability Insurance** written on an occurrence basis including, but not limited to; Coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

- 4.6.3.3 Each Occurrence Limit - \$1,000,000
- 4.6.3.4 Fire Damage Limit (Damage to rented premises) - \$100,000
- 4.6.3.5 Personal & Advertising Injury Limit - \$1,000,000
- 4.6.3.6 General Aggregate Limit - \$2,000,000
- 4.6.3.7 Products & Completed Operations Aggregate Limit \$2,000,000

- c. Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

- 4.6.3.8 Any Auto (Symbol 1)
- 4.6.3.9 Combined Single Limit (Each Accident) - \$1,000,000
- 4.6.3.10 Hired Autos (Symbol 8)
- 4.6.3.11 Combined Single Limit (Each Accident) - \$1,000,000
- 4.6.3.12 Non-Owned Autos (Symbol 9)
- 4.6.3.13 Combined Single Limit (Each Accident) - \$1,000,000

4.6.4 MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):

4.6.4.1 Workers Compensation

The standard form approved by the State of Jurisdiction

4.6.4.2 Commercial General Liability

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

4.6.4.3 Commercial Auto Liability

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

4.6.5 REQUIRED ENDORSEMENTS

4.6.5.1 The following endorsements with City approved language

- 4.6.5.1.1 Additional insured status provided on a primary & non-contributory basis on all required coverages except workers compensation.
- 4.6.5.1.2 Waiver of Subrogation on all required coverages
- 4.6.5.1.3 Notices of Cancellation/Non-renewal/Material Changes must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
PO BOX 100085 – CE
DULUTH, GA 30096

- 4.6.5.2 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the City.**

4.6.6 HOW TO EVIDENCE COVERAGE TO THE CITY

4.6.6.1 **The following documents must be provided to the City;**

4.6.6.1.1 A Certificate of Insurance containing the following information:

- 4.6.6.1.1.1 Issued to entity contracting with the City
- 4.6.6.1.1.2 Evidencing the appropriate Coverage
- 4.6.6.1.1.3 Evidencing the required Limits of Liability required
- 4.6.6.1.1.4 Evidencing that coverage is currently in force
- 4.6.6.1.1.5 Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

4.6.6.2 **All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf**

4.6.6.3 **The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.**

4.6.6.4 The city reserves the right to require additional insurance requirements **at any time during the course of the agreement.**

4.6.7 **WAIVER OF INSURANCE REQUIREMENTS**

Should a Proposer not be able to comply with any insurance requirement, for any reason, the Proposer must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division. The Risk Management Division will approve or reject the requested waiver of insurance and will forward the waiver to the City Attorney's Office for further evaluation.

Proposers are encouraged review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

Upon contract award, all documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to cityofcoralgables@ebix.com and copy to druiz@coralgables.com. Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance
Phone: (951) 652-2883.
Fax: (770) 325-0417
Email: cityofcoralgables@ebix.com

When Professional, Contractor and/or Vendor evidence insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables
Insurance Compliance
PO Box 100085 – CE
Duluth, GA 30096

Should you require assistance, please reach out to **EBIX - "Contact Us"** found at the end of this section.

EVIDENCING INSURANCE CHECKLIST