

# EXHIBIT D

CITY OF CORAL GABLES  
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2015 MAR 10 AM 8:59



# Miracle Mile/Giralda Avenue Streetscape

Construction Management At-Risk (CMAR) | RFQ No. 2014.12.05



Evaluation Committee Meeting



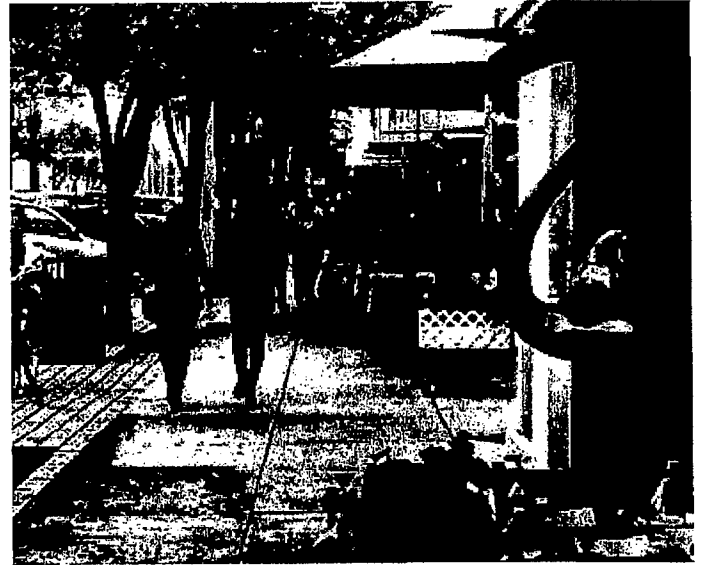
February 26th, 2015

2015 MAR 10 AM 9:00

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CORAL  
GABLES  
THE CITY BEAUTIFUL

WALK  
SHOP  
DINE

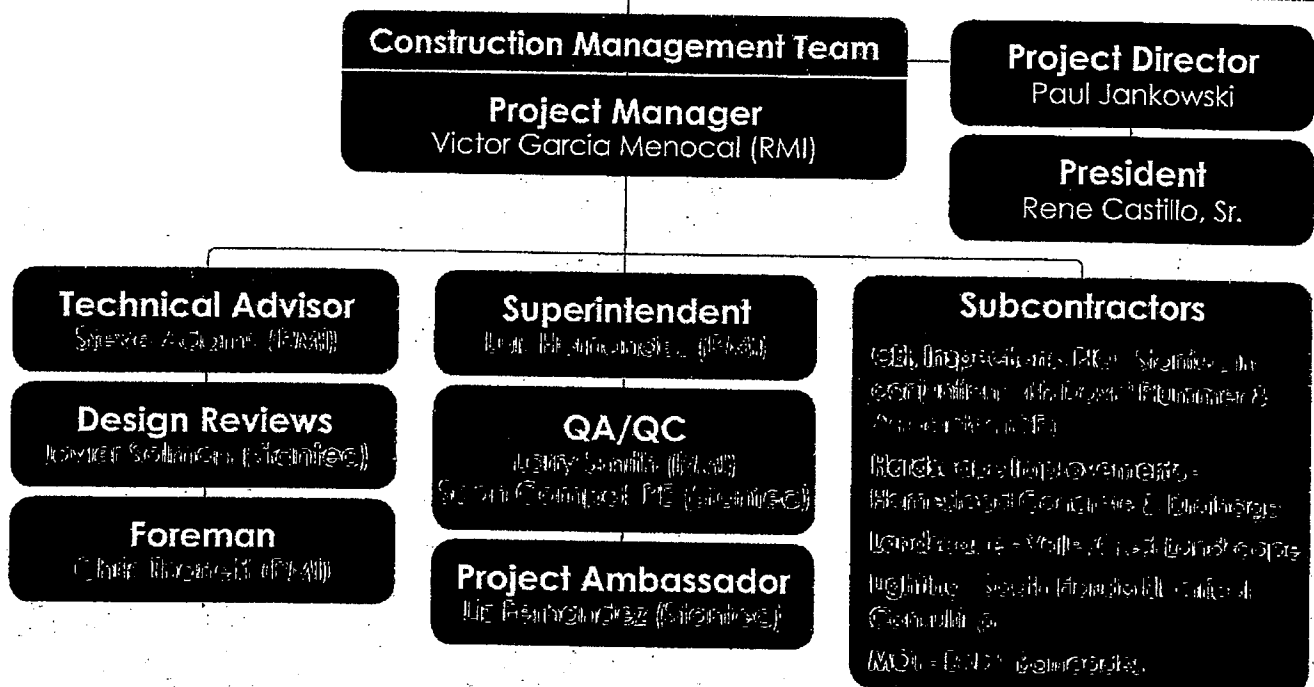




## ORGANIZATIONAL CHART



### City of Coral Gables



Slide 3

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## FIRM EXPERIENCE

### Ric-Man International, Inc.

- **32 Years of Experience in South Florida** - Est. in 1983
- RMI has completed **over \$348 Million** in Construction Projects
- RMI has completed **over \$171 Million in Streetscape Projects** in over 46 Projects specializing in drainage, water, sewer, sidewalks, curbs, paver crosswalks, stamped crosswalks, paving, irrigation, signage, pavement markings, decorative street lighting and landscaping.
- RMI has completed **over \$105 Million** in CM at Risk Projects in over 17 Projects





## FIRM EXPERIENCE

### Ric-Man International, Inc.

- RMI has completed **over \$71 Million in Design/Build Streetscape Projects** in 5 Projects (4 of which are in downtown Miami Beach)
- **Bonding Capacity** - Received new bonding letter with **\$70 Million Single & \$125 Million Aggregate**.
- **Project Delivery Experience:** General Contractor, CM at Risk and Design/Build Projects with a proven track record of successfully working with design teams.

**Letter of Recommendation**  
 February 22, 2015  
 Miami-Dade County  
 City of Miami  
 1300 Biscayne Blvd.  
 Miami Beach, FL 33132

RE: Ric-Man International, Inc.  
 Project: Design-Build Services for the City of Miami, including the design and construction of the new City of Miami Police Station, located at 1300 Biscayne Blvd.

To Whom It May Concern:

For your request for evidence of bond (RMI), this letter is to inform you that Ric-Man International, Inc. is set up for bonding with Arch Insurance Company, Arch Insurance Company has an A.M. Best Rating of A++ (Superior) in the category of SR.

Based on their past experience, we can estimate a high level of \$1,000,000.00 with an aggregate program of \$125,000,000.00 but this should not be considered as a maximum program amount. We have found Ric-Man International, Inc. to be an outstanding contractor, with a good reputation in the construction industry.

If Ric-Man International, Inc. has a low bid and is a public or a private entity, it is a good practice to conduct a pre-qualification and if all other normal requirements are met, with letters approved, we will forward to providing bond.

As this is a letter of recommendation, and not a bid bond, Ric-Man International, Inc., Arch Insurance Company, their agents and owners accept no liability for its content. The Surety reserves the right to review such submission and give their final decision upon conditions that refer to the City of Miami.

If we can be of additional assistance, please feel free to give us a call.

Sincerely,  
 Michael A. Palmer  
 Managing Agent for Arch Insurance Company

Slide 5

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## FIRM EXPERIENCE

### Ric-Man International, Inc.

- **3 Professional Engineers on Staff**
- RMI has worked with the most qualified subcontractors in the business and we are also capable of self-performing up to 50% of the work as indicated in the RFQ.
- Construction Experience with the following clients:



MIAMI BEACH



US Army Corps of Engineers.





## FIRM EXPERIENCE

### Ric-Man International, Inc.

- ▶ Current Team has the ability for **emergency response** for most utility breaks:



- **Potential Damages to Existing Water, Sewer and Drainage Utilities Caused by Construction or Failures** - RMI is 1 of 5 Pre-Approved Emergency WASD Contractors to Repair Any Damages to Water Main and/or Sanitary Sewer. RMI is capable of restoring water & sewer service immediately to any damage inadvertently caused by construction or utility failures.
- **Potential Flooding Caused by Rain Event** - RMI has vacuum trucks to assist in mitigating flooding.
- **Traffic Lights & Street Lights** - South Florida Electrical Consulting is Miami-Dade County Approved Contractor to Repair Any County Street lighting and Traffic Signal. Furthermore, they will be on 24-Hour on-call service to ensure that all traffic and street lighting is working properly.

Slide 7

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## PROJECT TEAM

### Proposed Subcontractors

We have a proven track record for **delivering projects on time and within budget** with the team assembled below



Stantec



DAVID PLUMMER & ASSOCIATES  
DESIGNER FOR THE PROJECT



SOUTH FLORIDA  
ELECTRICAL CONSULTING



ValleyCrest  
Landscape Maintenance



Bob's  
BARRICADES, INC.

- **Stantec in conjunction with David Plummer & Associates (CEI)** | Design Reviews, PIO, Community Outreach, Construction Inspections
- **Homestead Concrete and Drainage, Inc.**  
Hardscapes
- **South Florida Electrical Consulting, Inc.**  
Street Lighting
- **ValleyCrest Landscape Development, Inc.**  
Landscape
- **Reliable Property Services** | Irrigation
- **Bob's Barricades** | MOT & Signage



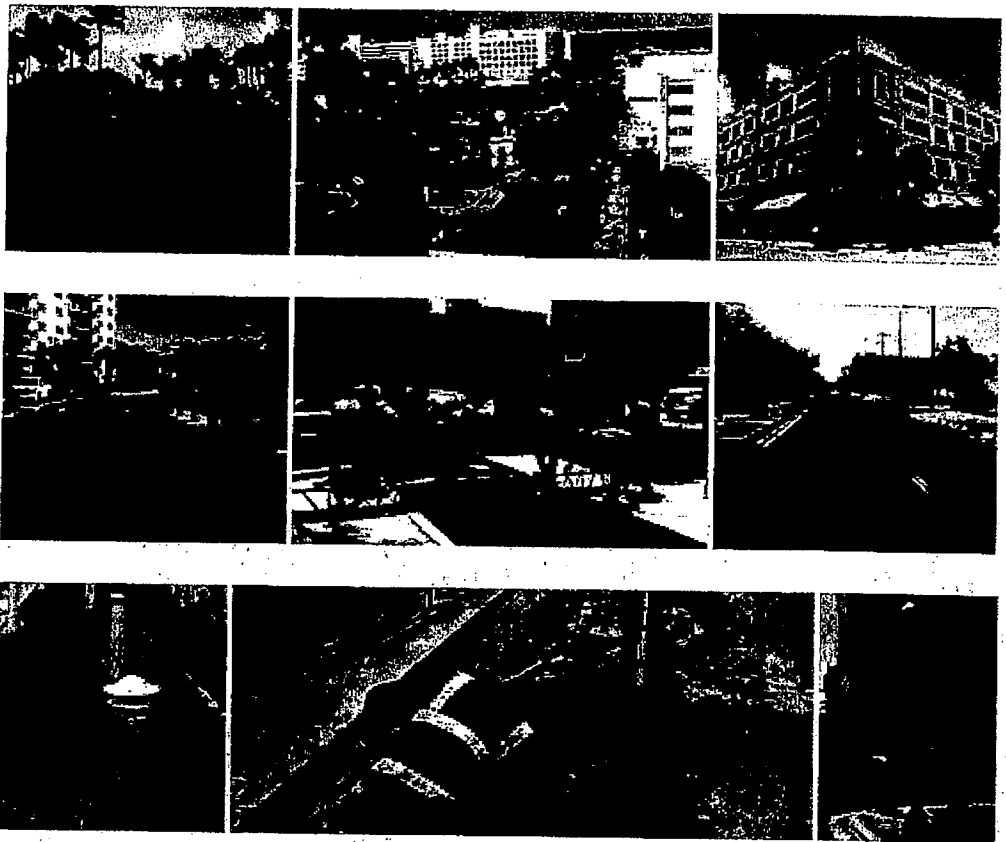
## PROJECT TEAM



DAVID PLUMMER & ASSOCIATES  
MEMBERS OF THE SPINER GROUP



**SOUTH FLORIDA**  
ELECTRICAL CONSULTING



Slide 9

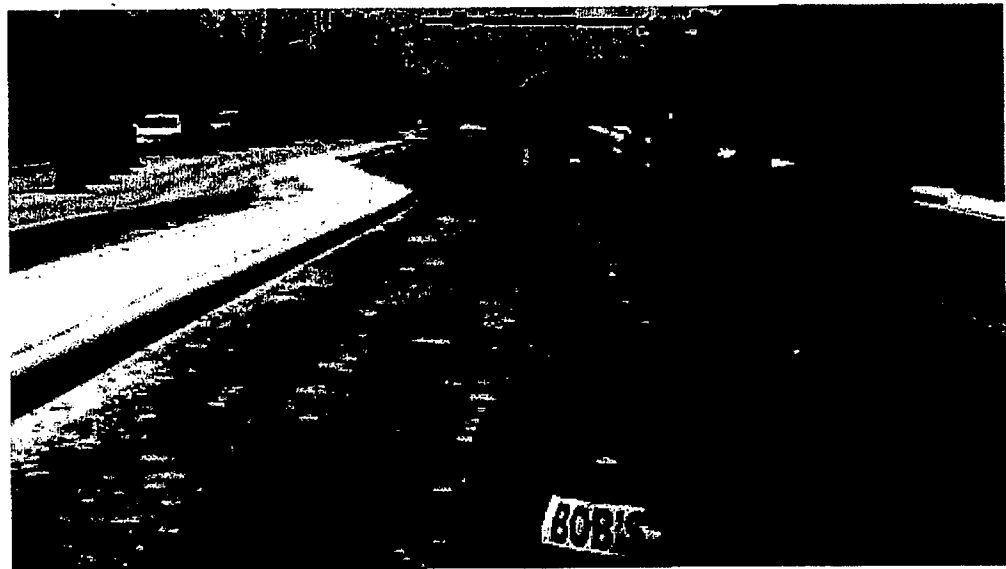
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## PROJECT TEAM



10/11/2011 10:00 AM





## PROJECT TEAM

### Proximity to Project

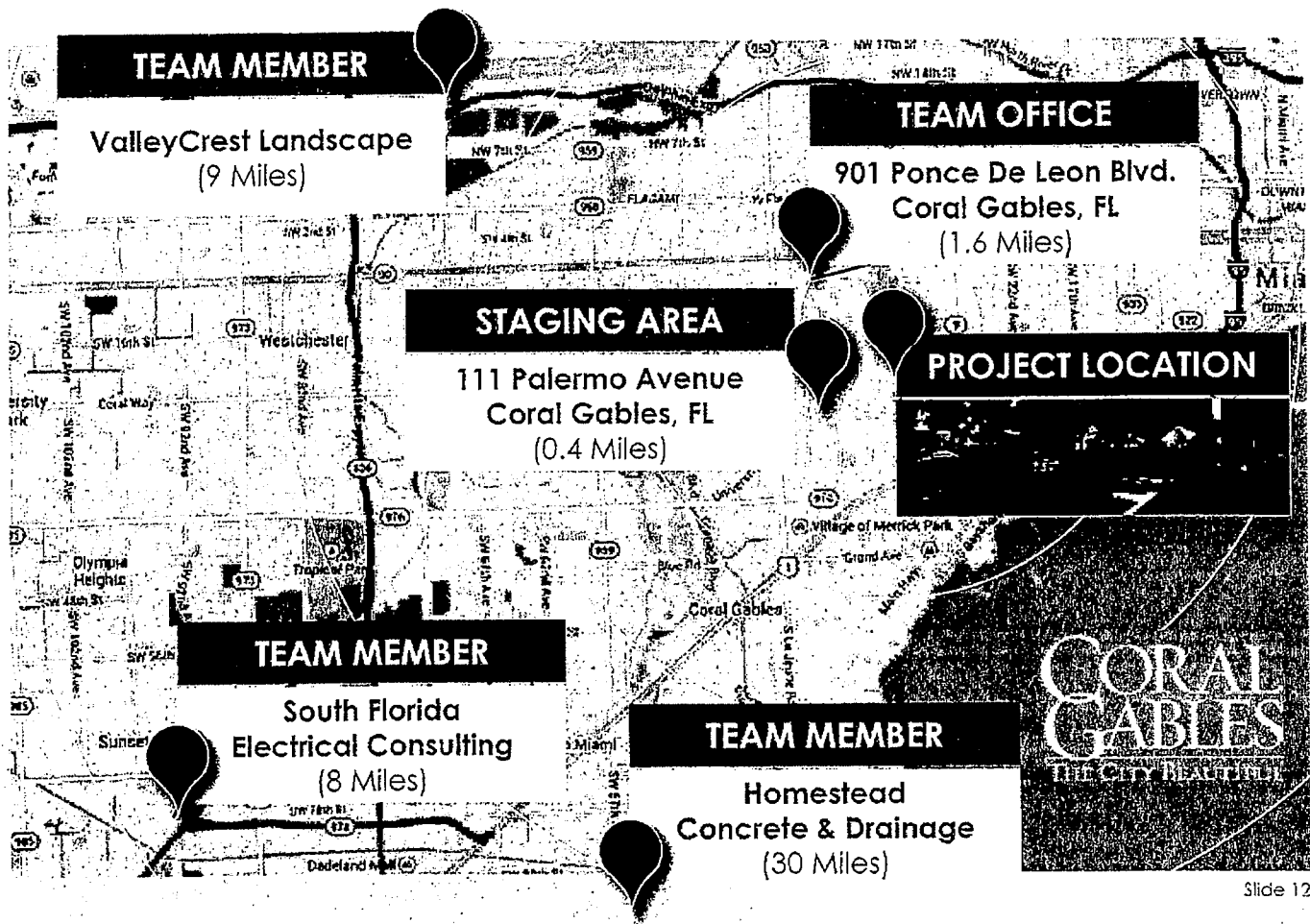
- Project Team office is located at 901 Ponce De Leon - Approximately 1 Mile away from Miracle Mile
- **Proposed Project Staging Area** (Old Spanish Village Site at 111 Palermo Avenue) - 0.4 Miles from Miracle Mile

Slide 11

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## PROJECT TEAM | Proximity to the project





## RELEVANT EXPERIENCE

### Key Staff Experience

	YEARS AT RIC-MAN INTERNATIONAL	TOTAL CONSTRUCTION EXPERIENCE (YEARS)	# OF DESIGN-BUILD PROJECTS	CONSTRUCTION MANAGEMENT AT RISK EXPERIENCE	CONSTRUCTION PROJECTS OVER \$10 MILLION	TOTAL URBAN PROJECTS	TOTAL STREETSCAPE PROJECTS	PUBLIC INFORMATION EXPERIENCE
<b>Paul C. Jankowski</b> Project Director	40+	40+	30+	17+	20+	40+	30+	✓
<b>Rene Castillo, Sr.</b> President	40+	40+	5+		20+	40+	30+	✓
<b>Steven Adams</b> Technical Advisor	1+	30+	10+	5+	20+	30+	15+	✓
<b>Victor G. Menocal</b> Project Manager	5+	15+	5+	3+	15+	15+	15+	✓
<b>Larry Smith</b> QA/QC Manager	30+	30+	5+		20+	40+	40+	✓
<b>Luis Hernandez</b> Superintendent	15+	20+	9+	3+	20+	30+	20+	✓

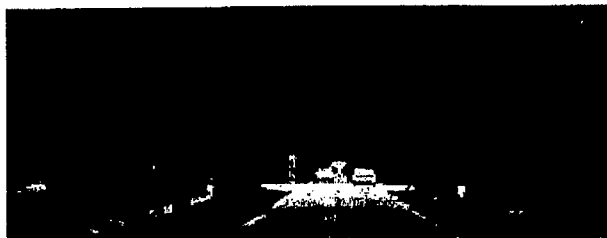
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## RELEVANT EXPERIENCE

### Project Experience



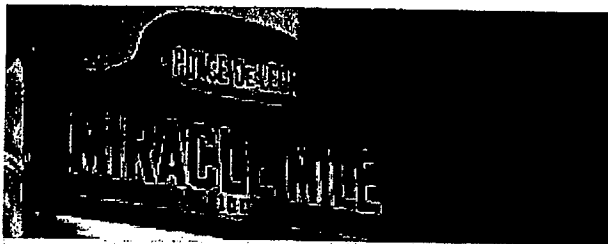
	Neighborhood Project	Urban Projects	Project > \$10 Million	Drainage Improvements	Hardscape Improvements: Sidewalk, Driveways, Curbs	Milling & Resurfacing	Roadway Reconstructing	Landscaping Incl. Sodding	In-House Public Information	On Schedule	Within Budget
Washington Avenue Streetscape Improvements, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Lummus BP10B ROW Neighborhood Improvements, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Flamingo/Lummus BP10E, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Oceanfront Streetscape Improvements, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Nautilus ROW Infrastructure Improvements Project, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Broadview BP 2 Neighborhood Improvements, Broward County					•	•		•		Yes	Yes
Surfside Utility Upgrade Project, Surfside, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Belvedere Homes Infrastructure Improvements, Palm Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
St. Georges East, Broward County	•	•	•	•	•	•	•	•	•	Yes	Yes
St. Georges West, Broward County	•	•	•	•	•	•	•	•	•	Yes	Yes
Englewood Streetscape Improvements, City of Miami	•	•	•	•	•	•	•	•	•	Yes	Yes
SW 152nd Street and 89th Ave. Streetscape Improvements, Palmetto Bay, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Prairie Avenue Phase I, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes





## RELEVANT EXPERIENCE

### Project Experience



	Neighborhood Project	Urban Projects	Project > \$10 Million	Drainage Improvements	Hardscape Improvements: Sidewalk, Driveways, Curbs	Milling & Resurfacing	Roadway Reconstructing	Landscaping Incl. Sodding	In-House Public Information	On Schedule	Within Budget
Nautilus ROW Infrastructure Improvements Project, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Broadview BP 2 Neighborhood Improvements, Broward County	•	•	•	•	•	•	•	•	•	Yes	Yes
Surfside Utility Upgrade Project, Surfside, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Belvedere Homes Infrastructure Improvements, Palm Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
St. Georges East, Broward County	•	•	•	•	•	•	•	•	•	Yes	Yes
St. Georges West, Broward County	•	•	•	•	•	•	•	•	•	Yes	Yes
Englewood Streetscape Improvements, City of Miami	•	•	•	•	•	•	•	•	•	Yes	Yes
SW 152nd Street and 89th Ave. Streetscape Improvements, Palmetto Bay, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Prairie Avenue Phase I, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Prairie Avenue Phase II, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Peters Road Streetscape Improvements, Plantation, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
12" Water Main on Collins Avenue, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
Indian Creek Water Main, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes
The Carlyle Hotel Lighting and Landscape Improvements, Miami Beach, FL	•	•	•	•	•	•	•	•	•	Yes	Yes

Slide 15

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## RELEVANT EXPERIENCE

### Project Experience



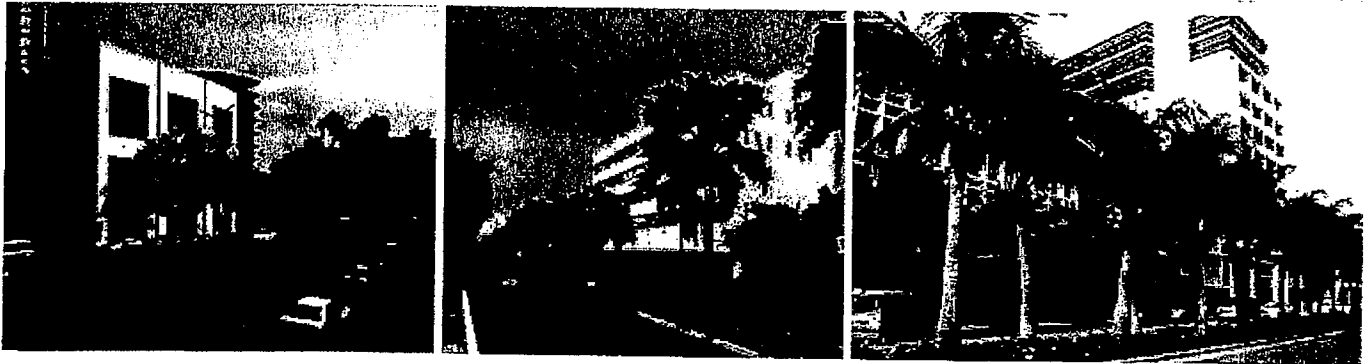
	Neighborhood Project	Urban Projects	Project > \$10 Million	Drainage Improvements	Hardscape Improvements: Sidewalk, Driveways, Curbs	Milling & Resurfacing	Roadway Reconstructing	Landscaping incl. Sodding	In-House Public Information	On Schedule	Within Budget
South 26th Street Area Improvements, St. Lucie County	•				•	•		•		Yes	Yes
8P2 South Shore Drive, Miami Beach, FL	•	•			•	•		•		Yes	Yes
City of Boca Raton Utility Drainage Improvements Area II, Boca Raton, FL	•	•			•	•		•		Yes	Yes
NW 56th Avenue Water & Sewer Improvements, Lauderhill, FL	•	•			•	•		•		Yes	Yes
Roosevelt Gardens North Central County Neighborhood Improvement Project, Broward County	•				•	•		•		Yes	Yes
Hagen Rand Drive Utility and Storm Sewer Installation, Palm Beach County	•		•		•	•		•		Yes	Yes
Washington Park Water Main & Storm Sewer Replacement, Broward County	•				•	•		•		Yes	Yes
Colorado Avenue Improvements, Martin County	•				•	•		•		Yes	Yes
North Andrews Garden Neighborhood Improvement Project, Broward County	•				•	•		•		Yes	Yes
NNW Industrial Area Sanitary Sewer & Storm Sewer Improvements, City of Ft. Lauderdale, FL	•				•	•		•		Yes	Yes
Cove Beach Club ROW Improvements, Deerfield Beach, FL	•				•	•		•		Yes	Yes
NW Area Sanitary Gravity Sewer Lines Project #10949-P, Deerfield Beach, FL	•				•	•		•		Yes	Yes
Highland Beach 16" Force Main Reconstruction, Delray Beach, FL	•				•	•		•		Yes	Yes



## RELEVANT EXPERIENCE | Signature Project | 1

### Washington Avenue Streetscape Improvement

- The project was **12 City Blocks** from 5th Street to 16th Street - Approximately 6,000 LF
- **Construction Budget:** \$18.2 Million
- **Project Duration:** 2005 to 2007
- **Residents, Businesses & Merchants Impacted:** 500 Residences and 200 Businesses & Merchants
- **Completed 5 months early and within budget**



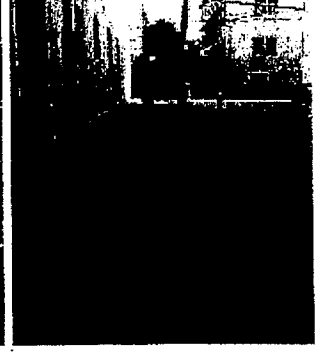
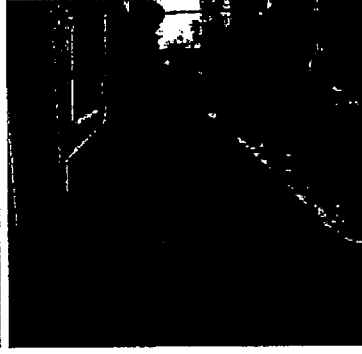
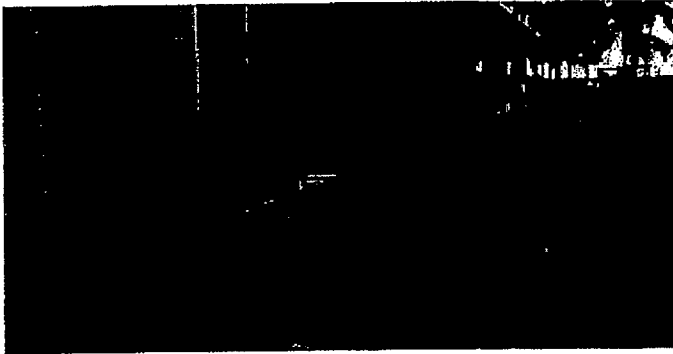
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## RELEVANT EXPERIENCE | Signature Project | 2

### Lummas BP10B Streetscape Improvement

- The project was **20 City Blocks** from 6th Street to 14th Lane from Washington Avenue to Ocean Drive - Approximately 6,250 LF
- **Construction Budget:** \$12.1 Million
- **Project Duration:** 2006 to 2008
- **Residents, Businesses & Merchants Impacted:** 100 Residents and 500 Businesses & Merchants
- **Completed 2 months early and within budget**

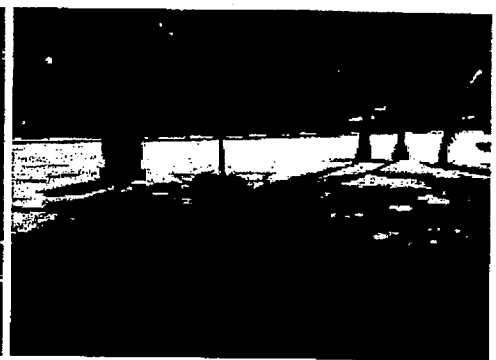
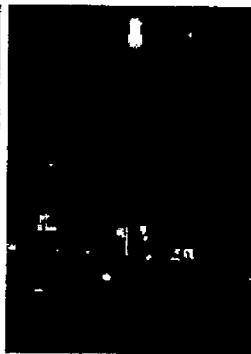




## RELEVANT EXPERIENCE | Signature Project | 3

### Flamingo Lummus BP10E Streetscape Improvement

- The project was **13 City Blocks** from 7th Street to 9th Street from Washington Avenue to Meridian Avenue - Approximately 10,000 LF
- **Construction Budget:** \$4.4 Million
- **Project Duration:** 2010 to 2011
- **Residents, Businesses & Merchants Impacted:** 1,600 Residents and 65 Businesses & Merchants
- **Completed on time and within budget**



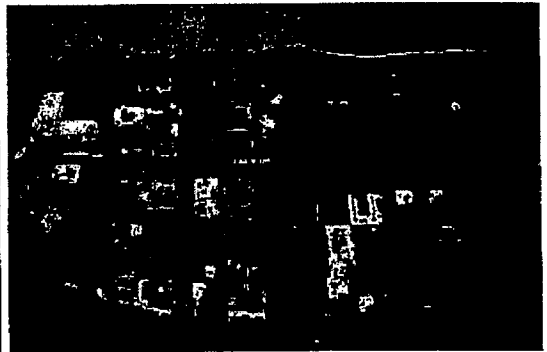
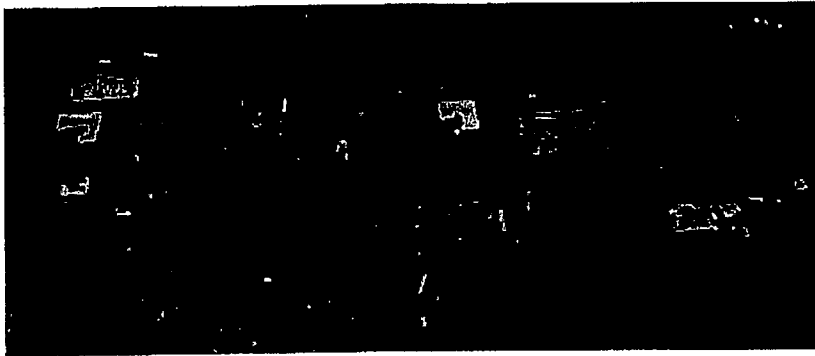
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## RELEVANT EXPERIENCE | Signature Project | 4

### Oceanfront Streetscape Improvement

- The project was **15 City Blocks** from 26th Street to 41st Street from Indian Creek to Collins Avenue - Approximately 3,750 LF
- **Construction Budget:** \$2.1 Million
- **Project Duration:** 2012
- **Residents, Businesses & Merchants Impacted:** 110 Residences & 25 Businesses & Merchants
- **Completed on time and within budget**



14 MIAMI TODAY

**TODAY'S NEWS**

WEEK OF THURSDAY, AUGUST 4, 1994

# **Miami Beach's Washington Avenue overhaul nearly complete**

By ERIK KATZ

Workers in Miami Beach have completed most of a major overhaul of one of the city's main streets. City officials say the project already is paying dividends for nearby businesses.

As part of the city's Right-of-Way Improvement Master Plan, Broward County contractor Ric-Man International Inc. spent 14 months working on Washington Avenue from Fifth to 15th streets, finishing the



Photo by MARY ELLEN

**"Ric-Man International has been understanding and cooperative of the city's needs," said Jorge Chartrand, the city's director of capital improvements. "This could be the start of a long-term relationship. In this market, it is difficult to find good contractors."**

to reduce rainwater buildup most important part of project. In Washington Avenue, just to alleviate traffic congestion.

sidewalks were built, and pedestrian access, landscaping was added. ment striping was ad-

Ric-Man International has been understanding and cooperative of the city's needs, said Jorge Chartrand, the city's director of capital improvements. This could be the start of a long-term relationship. In this market, it is difficult to find good contractors.

The most important element of the project, Mr. Chartrand said, were drainage improvements to reduce the buildup of rainwater.

With the help of engineering

firm AMP Consultants Ltd., Ric-Man workers changed four traffic signals, paid for by Miami-Dade County.

"The corridor needed a major overhaul," Mr. Chartrand said. "Washington Avenue is an important corridor commercially and for tourism. The city has great expectations for the street."

While businesses in the area suffered during construction, Mr. Chartrand said, activity has increased significantly since the primary work was completed. When Miami Beach's peak tourism season begins in late November, he said, city officials will be able to better gauge the direct impact the project has on Washington Avenue businesses.

Throughout the next six years, the city will hire contractors to improve 14 neighborhoods, with projects ranging from sewer replacements to tree planting on medians. The progress made on Washington Avenue, Mr. Dominguez said, should generate momentum for the rest of the project and make traveling through the city less cumbersome for drivers and pedestrians.

"I believe the area will thrive," Mr. Dominguez said. "When the peak season comes and people see a brand new Washington Avenue, they will be pleased."

Slide 21

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### Minimizing Impact to Work Zone

#### ► Sidewalk & Curb Installation

- After Demolition, Temporary Bridges to each impacted Business will be provided access during Construction.  
**Access to ALL businesses will remain open at all times.**
- Install Inner Portion of Sidewalk First to Allow Pedestrian Traffic within 1 work day. If pavers or tiles are the desired finish, this may be completed on the same day or night.
- Install Full Portion of Curb/Gutter and Sidewalk (Inside/ Outside) within one week to minimize pedestrian impact.





## PROJECT APPROACH

### Minimizing Impact to Work Zone

#### ► Use Green & Orange Water Filled Barricades

- Safely Enclose Work Zone for Safety Purposes
- Provides Access for safe Deliveries within Work Zone.  
One Travel Lane will be closed during construction or hardscape work and can be used for temporary access for deliveries.
- Valet Services will be reinstated within Impacted Areas on a nightly basis.

Slide 23

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## PROJECT APPROACH





## PROJECT APPROACH

### Minimizing Impact to Work Zone

#### ► Maintaining the Existing Drainage System

- Cleaning all Drainage Basins within Project Boundaries
  - At Beginning of Project
  - Monthly Basis
- Install Temporary Drainage from Impacted Construction Zone to Nearest Drainage Structure to alleviate disposal during rain event.



Slide 25

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## PROJECT APPROACH

### Innovative Solutions - Being a Good Neighbor

- **24-Hour On Call Emergency Response Unit**
- Perform Window Washing Adjacent to Work Zone Every Friday
- Daily Street Sweeping and / or water truck for dust control
- Provide Coral Gables Police Officers or Cadets within Work Zone during Non-Working Hours for safety purposes (preventing burglaries, vandalism and accidents)
- Coordinate with City, BID and Chamber for Special Events
- Completely demobilize to Staging Area during major events





## PROJECT APPROACH

### Promoting Existing Businesses & Merchants

- Provide **Individual Business Signs on Barrier Walls** for those Impacted Businesses, Residents & Merchants.
- Provide Signs throughout Project Limits Promoting that all businesses are "**OPEN**"
- Promote **Available Parking** at Underutilized Parking Garages
- Promote Local Business Specials or Events on Project Website



Slide 27

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### Proposed Staging Area - Old Spanish Village Site at 111 Palermo Avenue

- RMI Team has negotiated and obtained exclusive rights to use the site for this project.
- Use Staging Area to Remove all Construction Debris and Material on a daily basis to **Keep Project Site Clean.**
- Use Staging Area to Remove Most Construction Equipment Daily.
- **Build Temporary Surface Parking Lot within Staging Area**
  - Use Staging Area for RMI and Subcontractor Parking eliminating any further impact on existing parking.
  - Provide access to surface lot at non-working hours for City use.



## PROJECT APPROACH | Proposed Staging Area

### Proposed Staging Area Old Spanish Village Site at 111 Palermo Avenue

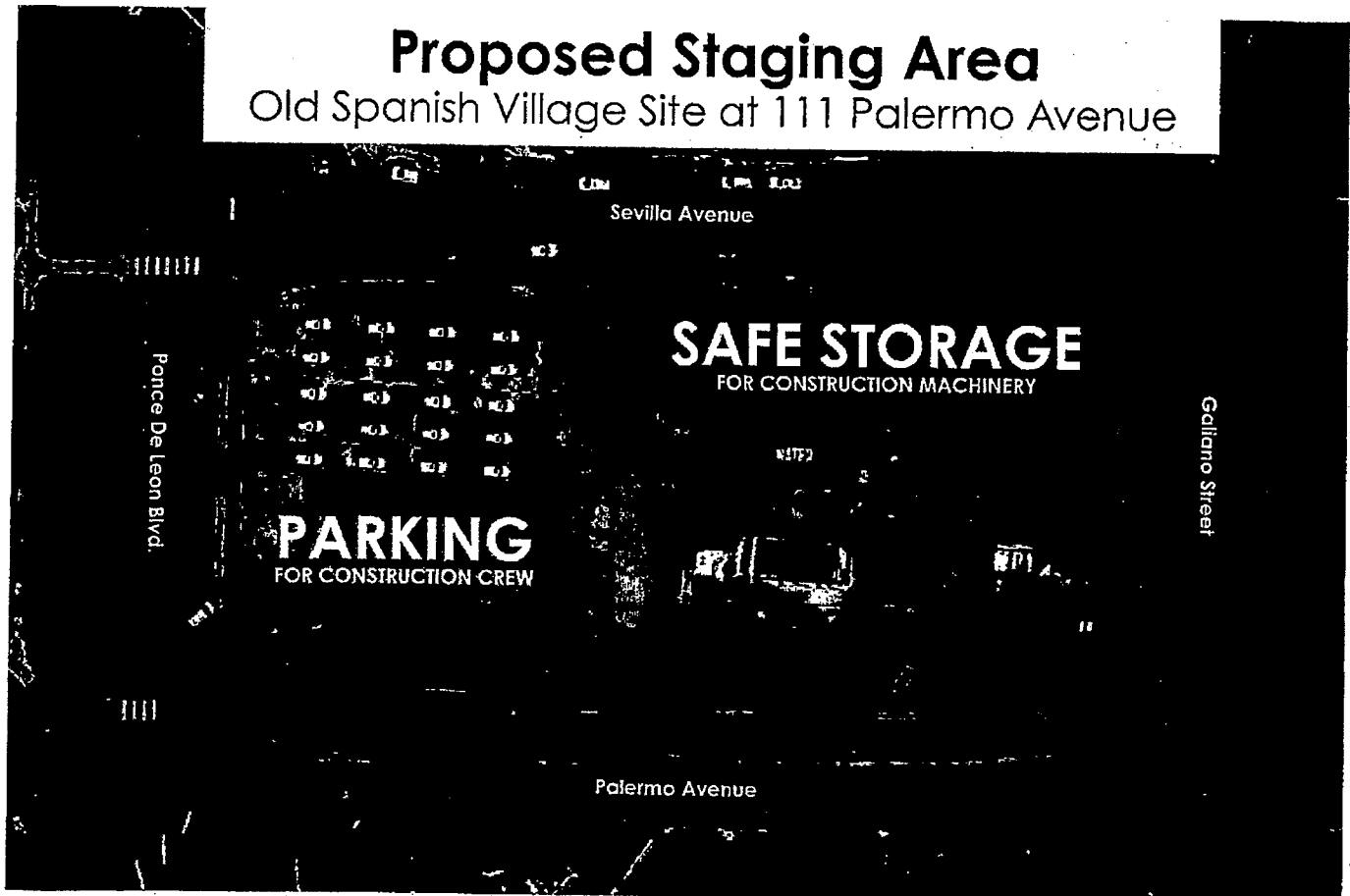
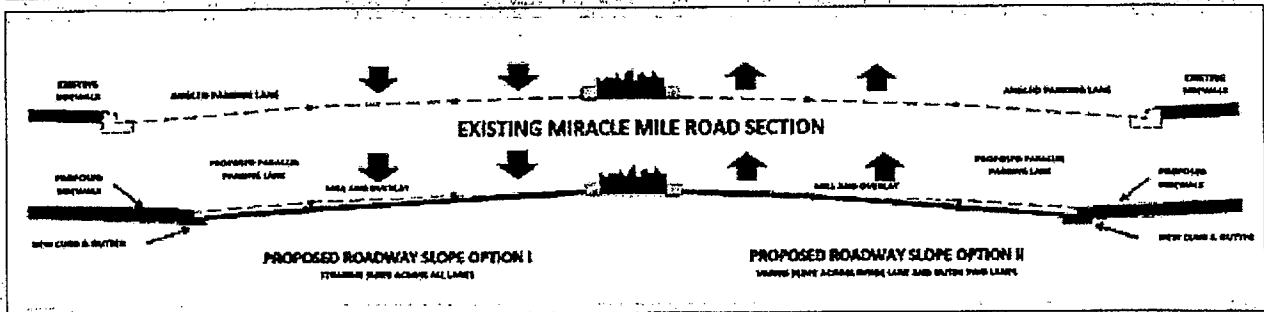


diagram not to scale

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## Experience Applied







## **Coordination with Residents, Businesses & Merchants**

### **► How:**

- **Conduct Door to Door Visits:** Operation Hours, Peak Business Hours, Delivery Coordination, Contact
- **Pre-Construction Public Information Workshop:** Televised on Coral Gables TV Channel 77
- **Communicate with Information Outlets:** Mobile App: [coraigables.com/cityapp](http://coraigables.com/cityapp) (Finds nearest Parking Spots – Traffic Updates), E-News Coral Gables - Newsletter / Traffic Watch, Coral Gables TV Channel 77, etc.
- **Coordination with Agencies:** Public Works, City Special Events/ Permit Office, Streetscape Steering Committee, Transit, Coral Gables Trolley, Business Improvement District, Coral Gables Chamber of Commerce
- **Uninterrupted Flow of Information:** Seamless and continuous line of communication & coordination: Property Owners, Merchants, Residents, Businesses

Slide 31

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## PUBLIC INFORMATION

### Coordination with Residents, Businesses & Merchants

- **Innovative Solutions:** Installation of Earth Cam CCTV - Monitor Traffic / Capture Still Shots - Record History of Transformation for Coral Gables Memory Talking Book
- **Coordination with City Events**
- Coordination with Anchor Restaurants
- Local Businesses and Merchants would receive information via: MOT Bulletins (Door to Door; Email on a regular basis, as dictated by the progress of the project), DMS Signs, 24-Hour Hotline, City Website, etc.





## RMI TEAM - THE RIGHT CHOICE

### Reasons to Select RMI TEAM

- Ric-Man International has **completed some of the largest public streetscape projects delivered in South Florida.**
- Ric-man International has **successfully completed 46 urban streetscape projects** in Miami - Dade County and Broward County impacting a total of over 17,000 residents and 780 businesses.
- Successfully completed streetscape and right of way improvement projects along the largest and busiest thoroughfares in Miami-Dade County with a **large volume of pedestrian and vehicular traffic including Washington Avenue.**

Slide 33

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## RMI TEAM - THE RIGHT CHOICE

### Reasons to Select RMI TEAM

- Experience coordinating construction during major events such as **Super Bowl, Art Basel, Miami International Boat Show, South Beach Food & Wine Festival.**
- Can self-perform portion of work to ensure work continues **on time and within budget.**
- Ability to perform emergency repairs to utility infrastructure on an as needed basis to prevent interruption to services. **1 of 5 emergency contractors certified by WASD.**
- Our Team has a proven track record of **maintaining effective communication** with constituents and businesses ensuring that doors stay open through public outreach, communication and responsiveness.



**THANK YOU FOR YOUR CONSIDERATION**

2601 Wiles Road, Pompano Beach, FL 33073 | 954.426.1042 | [www.ric-man.us](http://www.ric-man.us)

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# EXHIBIT E

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Coral Gables Street Scape Project  
2/27/15 Evaluation Committee Meeting  
Audio Transcription  
Excerpt 02:19:00 to 02:36:25

CITY OF CORAL GABLES  
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ORIGINAL



1 (02:19:00.)  
2 SPEAKER: Nice to meet you.  
3 SPEAKER: (Inaudible) all these  
4 (inaudible) --  
5 SPEAKER: Nice to meet you.  
6 SPEAKER: (Inaudible) the questions --  
7 SPEAKER: Thank you.  
8 SPEAKER: (Inaudible).  
9 SPEAKER: Thank you.  
10 SPEAKER: I know. I (inaudible) --  
11 (Talking simultaneously.)  
12 SPEAKER: I got -- I got that.  
13 SPEAKER: (Inaudible.)  
14 SPEAKER: Thank you.  
15 SPEAKER: Thank you.  
16 SPEAKER: Nice to meet you.  
17 SPEAKER: (Inaudible) --  
18 SPEAKER: (Inaudible) yes, sir.  
19 SPEAKER: (Inaudible) the same  
20 (inaudible) --  
21 SPEAKER: (Inaudible) understand --  
22 SPEAKER: That's what it takes.  
23 SPEAKER: (Inaudible) what the  
24 (inaudible) --  
25 SPEAKER: I am (inaudible) --

1 SPEAKER: We're done?

2 SPEAKER: That's us.

3 SPEAKER: All right. Thank you.

4 SPEAKER: Yeah. We've got to take these --

5 we're going to have the (inaudible.)

6 SPEAKER: (Inaudible). Take care.

7 SPEAKER: (Inaudible.)

8 SPEAKER: (Inaudible) it was very nice

9 meeting you.

10 SPEAKER: (Inaudible) you would.

11 SPEAKER: Nice to meet you. (Inaudible.)

12 SPEAKER: Thank you.

13 SPEAKER: Uh-huh.

14 SPEAKER: All right. (Inaudible.)

15 SPEAKER: Thanks, guys.

16 SPEAKER: Thanks, guys.

17 SPEAKER: Thank you very much.

18 SPEAKER: Thank you.

19 SPEAKER: (Inaudible) --

20 (Talking simultaneously.)

21 WOMAN SPEAKER: Thank you. Nice to meet

22 you, too. Thank you.

23 SPEAKER: Goodbye. (Inaudible).

24 SPEAKER: (Inaudible) again.

25 WOMAN SPEAKER: Thank you.

1 SPEAKER: Thank you all.

2 SPEAKER: Thank you.

3 SPEAKER: (Inaudible.)

4 SPEAKER: It was a pleasure to meet you.

5 SPEAKER: Thank you.

6 SPEAKER: I'll see you (inaudible) --

7 WOMAN SPEAKER: (Inaudible). Thank you.

8 SPEAKER: Yes, sir.

9 SPEAKER: Well, I've got -- quite a lot of  
10 age behind me, too, so --

11 SPEAKER: Well, that happens to (inaudible)  
12 you got to (inaudible) --

13 SPEAKER: I've built -- I've built -- I've  
14 built almost anything that's legal.

15 SPEAKER: But the other (inaudible.)

16 SPEAKER: I didn't get paid for this. Nice  
17 to meet you. Take care.

18 SPEAKER: What's up?

19 SPEAKER: (Inaudible.)

20 SPEAKER: Let's sit across each other now.

21 SPEAKER: Yeah; we can sit across from each  
22 other. (Inaudible) I'll slide over here.

23 SPEAKER: Okay.

24 SPEAKER: It's easier for me.

25 SPEAKER: Okay.

1 SPEAKER: So, thoughts?

2 SPEAKER: I thought this last (inaudible)  
3 even though they weren't (inaudible) local,  
4 probably knew the most about the site already --

5 SPEAKER: Right.

6 SPEAKER: -- based on their photographs and  
7 talking about there on (inaudible) local, they  
8 were say, we kind of know what's -- what's out  
9 here.

10 SPEAKER: Uh-huh. And what (inaudible) --

11 SPEAKER: I like their answers already  
12 about (inaudible) making a frivolous (inaudible)  
13 sidewalk, trees (inaudible) issue, it's -- some of  
14 those situations that we can use (inaudible) for  
15 it. I'm sure it comes down (inaudible) a lot of  
16 aspects of what the designer (inaudible)  
17 identifies as best as (inaudible.)

18 SPEAKER: The -- the second group to me  
19 seemed more leaner and leaner in terms of how they  
20 get their pricing, more they're going to go with  
21 pricing than the first group. It seemed to me  
22 that they're -- they're more "numbers crunchers"  
23 and more of that than the first group, who may be  
24 a little softer on that, because (inaudible) --  
25 again, soft perform versus not soft perform

1 (inaudible).

2 These guys said three to five bidders per  
3 schedule, and they said two bidders. Two bidders  
4 doesn't cut it.

5 WOMAN SPEAKER: Uh-huh.

6 SPEAKER: And they said something else that  
7 was -- I -- I think is a key factor, I want you to  
8 discuss it with (inaudible) which approach we  
9 agree with, because the first firm likes to  
10 self-perform --

11 WOMAN SPEAKER: Right.

12 SPEAKER: -- and the second firm said, it's  
13 absolutely (inaudible) price, because then we're  
14 focussing on ourselves to perform instead of --

15 SPEAKER: Uh-huh.

16 SPEAKER: -- being your agent for the whole  
17 project. And I hadn't thought about that so much  
18 with the first firm, but when the second firm said  
19 that, it's like -- yeah, if you're  
20 self-performing, then where is your -- what --  
21 once your first priority is to make good money on  
22 that self-perform, it -- it creates a -- it  
23 creates a --

24 WOMAN SPEAKER: A little bit of a narrow  
25 vision as opposed to the whole vision, perhaps?

1 SPEAKER: I -- I can (inaudible) advisor  
2 more than the person making money off the  
3 construction of the (inaudible) --

4 WOMAN SPEAKER: Yeah. Well, and I -- I was  
5 a little hung up with the self-perform and how do  
6 you really know it's a good price. You know, they  
7 gave a good answer, but you just -- you don't have  
8 a check and balance. You don't have a second  
9 (inaudible) you don't have anything to compare it  
10 with.

11 SPEAKER: In -- in this --

12 WOMAN SPEAKER: And I think that becomes a  
13 challenge.

14 SPEAKER: And then the second group  
15 approached on that, too, you know, because he said  
16 if the -- if the -- if the construction company  
17 knows that you're self-performing that,  
18 (inaudible). I think there's probably some --  
19 some truth to that. If I know that your specialty  
20 is concrete and --

21 SPEAKER: Well (inaudible) --

22 SPEAKER: -- you need to get some  
23 additional bids (inaudible) --

24 SPEAKER: What's wrong with that?

25 SPEAKER: Yeah.

1 SPEAKER: -- if he does. I don't know.

2 SPEAKER: Well, the -- the two teams are  
3 very qualified.

4 SPEAKER: No -- no question. No question.

5 WOMAN SPEAKER: Yeah.

6 (Talking simultaneously.)

7 SPEAKER: (Inaudible) it's a -- it's a  
8 (inaudible) problem, you know?

9 SPEAKER: It is.

10 WOMAN SPEAKER: Yes.

11 SPEAKER: Again, I think -- (inaudible)  
12 we're doing the cost measure of stuff, the second  
13 guy will probably get you a better -- a better  
14 deal at the end of the day.

15 Now, the -- the first team seemed a little  
16 more local, more knowledgeable in the local  
17 situation because of --

18 WOMAN SPEAKER: Well -- yeah.

19 SPEAKER: -- but I don't know (inaudible)  
20 they'll just have to just --

21 WOMAN SPEAKER: Their -- the public  
22 information component of the first group, I  
23 thought convinced me more.

24 SPEAKER: Right.

25 WOMAN SPEAKER: But I -- I'd say that --

1 SPEAKER: You like the first group --

2 SPEAKER: Uh-huh.

3 SPEAKER: -- public information better?

4 WOMAN SPEAKER: I -- it seemed more -- more  
5 active --

6 SPEAKER: Yeah.

7 WOMAN SPEAKER: -- more -- it -- it -- she  
8 seemed to have done bigger projects when it came  
9 to -- to that public information component.

10 SPEAKER: Yeah, I agree.

11 WOMAN SPEAKER: On the second group I liked  
12 the -- when I asked them the question of how they  
13 interacted in the same process, I thought their  
14 answer was very good.

15 SPEAKER: Yeah.

16 WOMAN SPEAKER: And it seemed like that  
17 they've done "see more" in (inaudible) contractor  
18 at risk more, and they kind of -- it felt to me  
19 like they understood how that interaction needed  
20 to be happen and how that process works. You  
21 know?

22 SPEAKER: I -- I (inaudible) -- I think we  
23 do have two really good teams here.

24 SPEAKER: The community outreach process  
25 you spoke to, I get what you're talking about as



1 more like a folksy, almost warm touch, that the  
2 woman had in the first --

3 SPEAKER: Uh-huh.

4 SPEAKER: -- session. And I --

5 WOMAN SPEAKER: Yeah.

6 SPEAKER: -- I -- the second one was more  
7 professional though.

8 WOMAN SPEAKER: You think?

9 SPEAKER: (Inaudible) had a journalism  
10 background --

11 WOMAN SPEAKER: Uh-huh.

12 SPEAKER: -- in terms of, like, what you're  
13 really representing, are you representing, you  
14 know, the face of the project and you -- you're  
15 going to have to have hard conversations or you  
16 want to be somebody's best friend at the end of  
17 the day.

18 WOMAN SPEAKER: Uh-huh.

19 SPEAKER: It's a question of the balance  
20 between those of what you want out of your -- your  
21 point person. So --

22 SPEAKER: They -- they did show --

23 (Talking simultaneously.)

24 WOMAN SPEAKER: Because what they did is  
25 more professional --

1                   SPEAKER: (Inaudible) business -- they  
2 showed us a business issue's log --  
3                   WOMAN SPEAKER: Right. Is that why --  
4                   SPEAKER: -- that -- was that --  
5                   SPEAKER: Yeah.  
6                   SPEAKER: Yeah.  
7                   SPEAKER: Yeah. It's --  
8                   SPEAKER: And they had the (inaudible) --  
9                   SPEAKER: The second one --  
10                  SPEAKER: -- all the clients --  
11                  SPEAKER: (Inaudible) --  
12                  WOMAN SPEAKER: The second one --  
13                  SPEAKER: An organized structured way of  
14 approaching it that's an adviser for the city and  
15 not just, you know, out there making -- you know,  
16 some community outreach is, you know, just for the  
17 sake of gossip and/or have conversations with. So  
18 it -- it was (inaudible) the social dimension of  
19 it, more of the day-to-day how are you going to  
20 get this done, type of process. Not that there's  
21 a wrong way to do it, I'm just saying --  
22                  WOMAN SPEAKER: Uh-huh.  
23                  SPEAKER: -- (inaudible) --  
24                  SPEAKER: They're -- they're (inaudible) in  
25 going back to that, taking that back to the

1 self-performer or not self-perform, because the  
2 first group's project manager is responsible for  
3 the self-perform as well as the overall project,  
4 and that's when I asked the question of who -- who  
5 do you report to if the -- the outreach people,  
6 and they report to the person who is responsible  
7 for the self-perform too.

8 They're all very professional and they get  
9 along, I'm sure they do it quite well; but it sets  
10 up a natural sort of dilemma when -- when -- when  
11 those becomes competing interests. And the second  
12 group, I didn't see any competing interests at  
13 all, because their -- their objective is to get  
14 this done for the -- the community without that  
15 self-performed clouding.

16 Now, I imagine the -- if the first group,  
17 if we asked them to do the project with no  
18 self-perform, they would probably -- they would  
19 probably do that. With the second group, I would  
20 say totally hit all the points of what  
21 construction manager is all about --

22 SPEAKER: Uh-huh.

23 SPEAKER: -- very well, to the point where  
24 we had trouble not getting into this -- starting  
25 to discuss solutions to --

1 SPEAKER: It -- it --

2 SPEAKER: -- design problems with you --

3 SPEAKER: Yeah.

4 SPEAKER: -- guys because -- because  
5 they're bringing a different element  
6 that (inaudible) build, because you guys don't  
7 build, design and -- and what was happening is so  
8 natural and --

9 SPEAKER: But that's what the guy was  
10 stating, was we're more brains than brawn, and I  
11 think that hit it.

12 WOMAN SPEAKER: Uh-huh.

13 SPEAKER: I felt like we almost got to the  
14 point where we could just literally start working  
15 at the table together at the end of that meeting.

16 SPEAKER: Yeah.

17 SPEAKER: (Inaudible) not see anything like  
18 that.

19 SPEAKER: It felt -- it felt to me more  
20 like the first group was a little more traditional  
21 contractor who is going to build this project for  
22 us. And the -- the -- the interaction during the  
23 design -- I -- I didn't get a clear picture of  
24 what's going to happen design services -- I mean,  
25 construction services during design. It -- it was

1 fuzzy to me, and after the second group it was  
2 real clear --

3 SPEAKER: Uh-huh.

4 SPEAKER: -- of what they're going to be  
5 doing and -- and talking about different finishes  
6 and different solutions and different methods and  
7 different -- to the point of understand- -- of  
8 where -- where the roots have to be --

9 SPEAKER: Uh-huh.

10 SPEAKER: -- have to be pro-(inaudible)  
11 both groups would get. No doubt. No doubt about  
12 it. There wasn't -- it was the understanding of  
13 that's what the process needs at this phase, the  
14 way of -- the way it's designed to have that  
15 collaboration was portrayed -- was totally clear  
16 by the second group and was a little fuzzy to me  
17 in the first --

18 SPEAKER: Even the staging right next to  
19 the project to me seemed more logical when coming  
20 back from the -- the Govit (phonetic) project, the  
21 stuff down the street and --

22 SPEAKER: Uh-huh.

23 SPEAKER: -- then back over there, which  
24 means all the trucks would have to go back and  
25 forth, and you're just -- you're just right next

1 to it right there.

2 SPEAKER: And -- and -- and if we can --

3 (Talking simultaneously.)

4 SPEAKER: It seemed a smart solution to me.

5 SPEAKER: Yeah. I --

6 WOMAN SPEAKER: And you think that's  
7 possible, they have enough space?

8 SPEAKER: Yeah, it's the whole width of the  
9 street, plus the sidewalk. I think you can --

10 SPEAKER: And if they're getting staging at  
11 the Govit (phonetic) for -- I -- I --

12 SPEAKER: To me --

13 SPEAKER: -- was -- was per De Carmine  
14 (phonetic) are the --

15 WOMAN SPEAKERS: Neighbors --

16 SPEAKER: -- are the neighbors going to  
17 buy --

18 (Talking simultaneously.)

19 SPEAKER: But imagine -- imagine trucks  
20 and -- and every -- everybody coming back and  
21 forth from there three, four blocks --

22 SPEAKER: (Inaudible) --

23 SPEAKER: -- every day --

24 SPEAKER: -- businesses are --

25 SPEAKER: -- you create a whole mess for

1 the whole neighborhood. It makes no sense.

2 SPEAKER: They're going to have to --  
3 they're going to have to put off (inaudible) a  
4 couple of years of the Govit construction  
5 (phonetic) or they're going --

6 WOMAN SPEAKER: Right.

7 SPEAKER: -- if they're --

8 WOMAN SPEAKER: And we're going to add two  
9 more of --

10 (Talking simultaneously.)

11 SPEAKER: -- neighbors are going to say,  
12 then I also have to --

13 WOMAN SPEAKER: Right.

14 SPEAKER: -- absorb the Miracle Mile  
15 construction first? I -- I would be --

16 SPEAKER: Yeah.

17 SPEAKER: -- (inaudible) --

18 SPEAKER: But, you know, they threw out  
19 some nice things where they're going to wash the  
20 streets every day and -- and clean the windows. I  
21 mean, but we can ask everybody to do that. That's  
22 not (inaudible) --

23 SPEAKER: No. They're -- they're thinking  
24 (inaudible) --

25 SPEAKER: I mean, they were thinking --

1 SPEAKER: -- ideas --

2 SPEAKER: Yeah.

3 SPEAKER: -- and they're good innovative  
4 ideas. I -- let's see --

5 SPEAKER: And I thought the earth camera  
6 solution was a good idea as well, about putting  
7 some kind of cameras --

8 WOMAN SPEAKER: I liked that, yeah.

9 SPEAKER: That would be --

10 WOMAN SPEAKER: But I think it's always  
11 nice to see the progress --

12 SPEAKER: No. But I think you can manage  
13 any kind of disaster -- not disaster, but  
14 condition that maybe one will expect, traffic jams  
15 (inaudible) what's going on with the traffic jam  
16 (inaudible).

17 SPEAKER: I think that the -- a couple key  
18 biggest points for me were when they explained to  
19 us how they were going to buy out the project, the  
20 -- the pre-qualification, the four to five  
21 bidders --

22 SPEAKER: Yeah, that's what I  
23 (inaudible) --

24 SPEAKER: -- and -- and the -- and the GMP  
25 booklet that they -- they -- they -- they know



1        what the end product is. They're bringing it to  
2        us and saying, this is how you do it. That was  
3        key. I think their discussion about the reason  
4        they don't self-perform was preferable to the  
5        discussion about the -- about the sub-performance  
6        with the first group. And I thought they both  
7        brought a (inaudible) rate than kind of neutral,  
8        although I liked the professional approach of the  
9        second group with the -- with the tracking and  
10       stuff.

11                But the -- the first group could do that,  
12        too. Let's face it, they're all professional.  
13        They -- maybe they just didn't tell us they're --  
14        they would do that. I wouldn't doubt his -- but  
15        they both brought -- brought a very good component  
16        to the working with the businesses and the public  
17        outreach that they -- they're alike in both firms.  
18        I rate them somewhat neutral.

19                I -- it's -- with maybe a slight edge to  
20        the second group, because they had two that are  
21        equally involved, so you've got some backup.  
22        Because when you only have one and they're having,  
23        you know, some -- some -- for some reason that  
24        person is going to be away from the project a week  
25        and -- and if this is going to be an 18-month

1 project, let's be realistic, that person --

2 SPEAKER: Uh-huh.

3 WOMAN SPEAKER: Yeah. It's going to take  
4 some (inaudible) --

5 SPEAKER: They might get -- they might get  
6 sick. They --

7 WOMAN SPEAKER: Travel.

8 SPEAKER: -- a lot of things. I think the  
9 two gives that a little bit of an advantage that  
10 they both can cover for each other, so you always  
11 have coverage --

12 SPEAKER: Uh-huh.

13 SPEAKER: -- when someone (inaudible) if  
14 you just have one person. There's always a risk  
15 that that one person leaves.

16 SPEAKER: Uh-huh.

17 SPEAKER: Any one of those two could leave,  
18 less likely than both would leave.

19 WOMAN SPEAKER: Than both, right.

20 SPEAKER: So you've got some continuity.  
21 So I think that was -- I haven't thought about  
22 that, but I think that was --

23 SPEAKER: Yeah.

24 SPEAKER: -- that was good.

25 SPEAKER: I think you also have the track

1 record of delivering high quality projects and  
2 seeing them at (inaudible) street-scape with that  
3 second firm that you -- you can't let go of. I  
4 mean, I -- I can't speak to the quality of the CM  
5 work the first firm did, (inaudible) but just  
6 knowing that fact and seeing the award-winning  
7 projects that they've actually built and  
8 (inaudible) the areas, I think is important for  
9 the community to know as well, when you hire  
10 somebody like that who is going to build this.

11 SPEAKER: Uh-huh.

12 SPEAKER: I think -- I think the first firm  
13 (inaudible) is -- came across showing stronger if  
14 we were looking at design built, but this isn't  
15 design built. And I think there is a difference,  
16 because we don't know what we're building yet.

17 SPEAKER: Yeah.

18 SPEAKER: I -- I think --

19 SPEAKER: And that was their answer, too,  
20 by the way, in terms of (inaudible) --

21 (Talking simultaneously.)

22 SPEAKER: They (inaudible) this is what  
23 we're (inaudible) --

24 SPEAKER: (Inaudible) this would be like a  
25 design-built job.

1           SPEAKER: Yeah, but the second one was  
2 specifically and clearly "construction  
3 management." Everything about it was construction  
4 management.

5           SPEAKER: Right. Yeah.

6           SPEAKER: And the way that everything was  
7 laid out.

8           SPEAKER: Yes.

9           SPEAKER: I think that -- so the question I  
10 have is one is selected, the second one -- you  
11 don't want to lose the second one either, because  
12 if something happens with the first one, you got  
13 to have the backup.

14           SPEAKER: Well, what happens in this  
15 process, I think, is -- I mean, (inaudible)  
16 realistically, we -- we select one who is  
17 preferable and then we go to the commission and we  
18 recommend that -- that firm. And then we enter  
19 into a contract with that -- first contract, it's  
20 not the huge contract. So it's likely that --  
21 probably enter into that contract -- if for some  
22 reason we can't negotiate (inaudible) the contract  
23 for construction services starting design, then we  
24 always have the option to go to number two.

25           But once you start -- once you start down

1 the road with that firm, let's say we -- we were  
2 successful, we get a construction services  
3 (inaudible) design, and work with them for three  
4 months, you're not really at a point -- and then  
5 you start to negotiate GMP and it falls apart,  
6 you're not really in a position to bring in the  
7 other firm. You're backup is, you go to the --  
8 you go to a traditional bid.

9 SPEAKER: Bid.

10 SPEAKER: That's the backup. There --  
11 there's no other firm that you can bring in at  
12 that point. There's no advantage.

13 SPEAKER: It's not competitive.

14 SPEAKER: Yeah. So you -- so you say, I'm  
15 sorry, thank you for your services to this date,  
16 apparently, we can't come to an agreement on how  
17 to -- how to go on a price and terms and  
18 conditions --

19 SPEAKER: Well --

20 SPEAKER: -- so we -- at that point we have  
21 plans, the plans we can -- will be --

22 SPEAKER: (Inaudible) --

23 SPEAKER: -- you do have construction  
24 documents and permit sets --

25 SPEAKER: This is what's happening to

1 (inaudible) beach, this is what they're doing  
2 (inaudible) because it fell apart and they're  
3 going to go to a bid situation. That's  
4 (inaudible).

5 SPEAKER: It -- that (inaudible) --  
6 (Talking simultaneously.)

7 SPEAKER: With the convention center.

8 WOMAN SPEAKER: With the convention center,  
9 yeah.

10 SPEAKER: That is the backup for  
11 construction manager at risk. It rarely happens,  
12 because if -- if you get the right firm --

13 SPEAKER: Well, they couldn't commit -- in  
14 this instance, they couldn't get the budget to  
15 work. In this case, we -- that would be a  
16 disaster that we can't initially design the  
17 budget --

18 SPEAKER: Yeah. Well, that's --  
19 (Talking simultaneously.)

20 SPEAKER: I mean, that's -- that's what  
21 they're here for, to design a shoe budget, that  
22 means that they -- they can't get the -- they  
23 can't get the budget to work --

24 SPEAKER: Yeah, you don't think --  
25 (Talking simultaneously.)

1 SPEAKER: -- (inaudible) we're in  
2 trouble --

3 SPEAKER: -- and you don't dissolve -- you  
4 don't solve that problem by going out on a  
5 competitor (inaudible) I don't think.

6 SPEAKER: And the key is to get us maximum  
7 amount of dollars -- I'm sorry -- of value for the  
8 dollars.

9 WOMAN SPEAKER: (Inaudible) --

10 SPEAKER: That's what their role  
11 (inaudible) --

12 SPEAKER: And the key is to have a good  
13 relationship between the design process that  
14 they're in, working together to get to that  
15 point (inaudible) --

16 SPEAKER: Right.

17 SPEAKER: I -- I kind of have -- I felt  
18 they were honest. I -- I felt they were -- I'm  
19 (inaudible) almost geeky, (inaudible) good.

20 SPEAKER: You know, it was kind of like  
21 that --

22 SPEAKER: I'm not saying -- (inaudible)  
23 maybe not a lot, but it had that little  
24 (inaudible) which I felt good, you know?

25 WOMAN SPEAKER: I saw that.

1           SPEAKER: The evaluation committee will  
2 select a rank order and, obviously, the one that's  
3 ranked first will be the preferred firm.

4           SPEAKER: Okay.

5           SPEAKER: And the way it will work under  
6 the ordinance is that we will negotiate with the  
7 first firm, if we're unable to come to an  
8 agreement, then we go to the second firm.

9           SPEAKER: Okay.

10          SPEAKER: So do we vote a recommendation or  
11 do we -- how do we do this?

12          SPEAKER: I think it's always good for a  
13 committee to make a motion.

14          SPEAKER: It's a consensus.

15          SPEAKER: But -- but it is -- it is a  
16 consensus selection, we're not going to do any  
17 kind of number crunching or anything like that.  
18 You need to -- you need to decide as a -- as a  
19 group --

20          SPEAKER: Okay.

21          SPEAKER: -- by consensus, who do you want  
22 and -- and, you know, the rank order.

23          SPEAKER: Make a motion?

24          SPEAKER: Why don't you?

25          SPEAKER: I'll make the motion.



1 SPEAKER: Yeah. (Inaudible) go ahead.

2 SPEAKER: I'll make the motion that SCUC  
3 get the first position and Rickman (phonetic) gets  
4 second position.

5 SPEAKER: I'll second --

6 WOMAN SPEAKER: I'll second the motion. Do  
7 you want to vote?

8 SPEAKER: Uh-huh.

9 SPEAKER: All in favor say "aye"?

10 SPEAKERS: Aye.

11 SPEAKER: All right.

12 WOMAN SPEAKER: Aye. I'm sorry.

13 SPEAKER: I say aye.

14 WOMAN SPEAKER: No, because I didn't --  
15 I -- I raised my hand. So it doesn't go --

16 SPEAKER: You said "me." You said "me."

17 SPEAKER: Is that recorded?

18 WOMAN SPEAKER: Yes.

19 SPEAKER: I -- I got the motion and the  
20 second --

21 SPEAKER: Okay. We're good. As long as  
22 we're good.

23 SPEAKER: -- and it's an unanimous vote,  
24 and we have it recorded on our -- our recorder.

25 And I -- I usually do a little summary (inaudible)

1 but I'll (inaudible) --

2 SPEAKER: (Inaudible) what?

3 SPEAKER: So are -- are we finished? Do  
4 you think we're finished with the meeting so that  
5 I can officially adjourn the meeting or --

6 WOMAN SPEAKER: Yeah.

7 SPEAKER: -- do we have anything else to  
8 discuss?

9 SPEAKER: I have nothing else to discuss.

10 SPEAKER: Okay. All right. With that,  
11 we're going to adjourn the evaluation meeting for  
12 the Miracle Mile CMR. (Phonetic).

13 (End of recording.)

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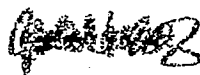
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C E R T I F I C A T E.

I, JACKIE MENTECKY, do hereby certify that  
I was authorized to transcribe the foregoing recorded  
proceeding, and that the transcript is a true and  
accurate transcription of my shorthand notes to the best  
of my ability taken while listening to the provided  
recording.

Dated this 3rd day of March, 2015.



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JACKIE MENTECKY

0	authorized 28:4	carmine 15:13	convention 23:7,8
02:19:00 1:6 2:1	award 20:6	case 23:15	conversations 10:15
1	aye 26:9,10,12,13	center 23:7,8	11:17
18 18:25	b	certify 28:3	convinced 8:23
2	back 11:25,25 14:20	challenge 7:13	coral 1:3
2/27/15 1:4	14:23,24 15:20	check 7:8	cost 8:12
2015 28:10	background 10:10	city 11:14	couple 16:4 17:17
3	backup 18:21 21:13	clean 16:20	cover 19:10
3rd 28:10	22:7,10 23:10	clear 13:23 14:2,15	coverage 19:11
a	balance 7:8 10:19	clearly 21:2	create 15:25
ability 28:7	based 5:6	clients 11:10	creates 6:22,23
absolutely 6:13	beach 23:1	clouding 12:15	crunchers 5:22
absorb 16:14	best 5:17 10:16 28:6	cm 20:4	crunching 25:17
accurate 28:6	better 8:13,13 9:3	cmr 27:12	cut 6:4
active 9:5	bid 22:8,9 23:3	collaboration 14:15	d
add 16:8	bidders 6:2,3,3 17:21	come 22:16 25:7	date 22:15
additional 7:23	bids 7:23	comes 5:15	dated 28:10
adjourn 27:5,11	bigger 9:8	coming 14:19 15:20	day 8:14 10:17 11:19
advantage 19:9	biggest 17:18	commission 21:17	11:19 15:23 16:20
22:12	bit 6:24 19:9	commit 23:13	28:10
adviser 11:14	blocks 15:21	committee 1:4 25:1	de 15:13
advisor 7:1	booklet 17:25	25:13	deal 8:14
age 4:10	bought 18:15	community 9:24	decide 25:18
agent 6:16	brains 13:10	11:16 12:14 20:9	delivering 20:1
agree 6:9 9:10	brawn 13:10	company 7:16	design 13:2,7,23,24
agreement 22:16	bring 22:6,11	compare 7:9	13:25 20:14,15,25
25:8	bringing 13:5 18:1	competing 12:11,12	21:23 22:3 23:16,21
ahead 26:1	brought 18:7,15	competitive 22:13	24:13
alike 18:17	budget 23:14,17,21	competitor 24:5	designed 14:14
amount 24:7	23:23	component 8:22 9:9	designer 5:16
answer 7:7 9:14	build 13:6,7,21 20:10	18:15	difference 20:15
20:19	building 20:16	concrete 7:20	different 13:5 14:5,6
answers 5:11	built 4:13,13,14 20:7	condition 17:14	14:6,7
apart 22:5 23:2	20:14,15,25	conditions 22:18	dilemma 12:10
apparently 22:16	business 11:1,2	consensus 25:14,16	dimension 11:18
approach 6:8 18:8	businesses 15:24	25:21	disaster 17:13,13
approached 7:15	18:16	construction 7:3,16	23:16
approaching 11:14	buy 15:17 17:19	12:21 13:25 16:4,15	discuss 6:8 12:25
areas 20:8	c	21:2,3,23 22:2,23	27:8,9
asked 9:12 12:4,17	c 28:1,1	23:11	discussion 18:3,5
aspects 5:16	camera 17:5	continuity 19:20	dissolve 24:3
audio 1:5	cameras 17:7	contract 21:19,19,20	documents 22:24
	care 3:6 4:17	21:21,22	doing 8:12 14:5 23:1
		contractor 9:17	
		13:21	

dollars 24:7,8 doubt 14:11,11 18:14	folksy 10:1 foregoing 28:4 forth 14:25 15:21 four 15:21 17:20 friend 10:16 frivolous 5:12 fuzzy 14:1,16	<b>h</b>	24:22,24 26:1,25 27:1,2 information 8:22 9:3 9:9 initially 23:16 innovative 17:3 instance 23:14 interacted 9:13 interaction 9:19 13:22 interests 12:11,12 involved 18:21 issue 5:13 issue's 11:2
<b>e</b>	<b>g</b>	hand 26:15 happen 9:20 13:24 happening 13:7 22:25 happens 4:11 21:12 21:14 23:11 hard 10:15 high 20:1 hire 20:9 hit 12:20 13:11 honest 24:18 huge 21:20 huh 3:13 5:10 6:5,15 9:2 10:3,11,18 11:22 12:22 13:12 14:3,9 14:22 19:2,12,16 20:11 26:8 hung 7:5	<b>j</b>
e 28:1,1 earth 17:5 easier 4:24 edge 18:19 either 21:11 element 13:5 enter 21:18,21 equally 18:21 evaluation 1:4 25:1 27:11 everybody 15:20 16:21 excerpt 1:6 expect 17:14 explained 17:18	gables 1:3 geeky 24:19 getting 12:24 15:10 gives 19:9 gmp 17:24 22:5 go 5:20 14:24 20:3 21:17,24 22:7,8,17 23:3 25:8 26:1,15 going 3:5 5:20 10:15 11:19,25 13:21,24 14:4 15:16 16:2,3,5,8 16:11,19 17:15,19 18:24,25 19:3 20:10 23:3 24:4 25:16 27:11 good 6:21 7:6,7 9:14 9:23 17:3,6 18:15 19:24 24:12,19,24 25:12 26:21,22 goodbye 3:23 gossip 11:17 govit 14:20 15:11 16:4 group 5:18,21,23 7:14 8:22 9:1,11 12:12,16,19 13:20 14:1,16 18:6,9,11,20 25:19 group's 12:2 groups 14:11 guy 8:13 13:9 guys 3:15,16 6:2 13:4 13:6	<b>i</b>	jackie 28:3,16 jam 17:15 jams 17:14 job 20:25 journalism 10:9
<b>f</b>		idea 17:6 ideas 17:1,4 identifies 5:17 imagine 12:16 15:19 15:19 important 20:8 inaudible 2:3,4,6,8 2:10,13,17,18,19,20 2:21,23,24,25 3:5,6,7 3:8,10,11,14,19,23 3:24 4:3,6,7,11,12,15 4:19,22 5:2,3,7,10,12 5:12,13,14,15,16,17 5:24 6:1,8,13 7:1,3,9 7:18,21,23 8:7,8,11 8:19 9:17,22 10:9 11:1,8,11,18,23,24 13:6,17 14:10 15:22 16:3,17,22,24 17:15 17:16,23 18:7 19:4 19:13 20:2,5,8,13,20 20:22,23,24 21:15,22 22:3,22 23:1,2,4,5 24:1,5,9,11,15,19,19	<b>k</b>
f 28:1 face 10:14 18:12 fact 20:6 factor 6:7 falls 22:5 favor 26:9 fell 23:2 felt 9:18 13:13,19,19 24:17,18,24 finished 27:3,4 finishes 14:5 firm 6:9,12,18,18 20:3,5,12 21:18 22:1 22:7,11 23:12 25:3,7 25:8 firms 18:17 first 5:21,23 6:9,18 6:21 8:15,22 9:1 10:2 12:2,16 13:20 14:17 16:15 18:6,11 20:5 20:12 21:12,19 25:3 25:7 26:3 five 6:2 17:20 focussing 6:14		<b>l</b>	key 6:7 17:17 18:3 24:6,12 kind 5:8 9:18 17:7,13 18:7 24:17,20 25:17 knew 5:4 know 2:10 5:8 7:6,6 7:15,19 8:1,8,19 9:21 10:14 11:15,15,16 16:18 17:25 18:23 20:9,16 24:20,24 25:22 knowing 20:6 knowledgeable 8:16 knows 7:17
			<b>l</b>
			laid 21:7 leaner 5:19,19 leave 19:17,18 leaves 19:15 legal 4:14 liked 9:11 17:8 18:8

likes 6:9	<b>n</b>	performing 6:20	18:24 19:1
listening 28:7	narrow 6:24	7:17	projects 9:8 20:1,7
literally 13:14	natural 12:10 13:8	permit 22:24	provided 28:7
little 5:24 6:24 7:5	need 7:22 25:18,18	person 7:2 10:21	public 8:21 9:3,9
8:15 13:20 14:16	needed 9:19	12:6 18:24 19:1,14	18:16
19:9 24:23 26:25	needs 14:13	19:15	put 16:3
local 5:3,7 8:16,16	negotiate 21:22 22:5	phase 14:13	putting 17:6
log 11:2	25:6	phonetic 14:20 15:11	<b>q</b>
logical 14:19	neighborhood 16:1	15:14 16:5 26:3	qualification 17:20
long 26:21	neighbors 15:15,16	27:12	qualified 8:3
looking 20:14	16:11	photographs 5:6	quality 20:1,4
lose 21:11	neutral 18:7,18	picture 13:23	question 8:4,4 9:12
lot 4:9 5:15 19:8	nice 2:2,5,16 3:8,11	plans 22:21,21	10:19 12:4 21:9
24:23	3:21 4:16 16:19	pleasure 4:4	questions 2:6
<b>m</b>	17:11	plus 15:9	quite 4:9 12:9
making 5:12 7:2	notes 28:6	point 10:21 12:23	<b>r</b>
11:15	number 21:24 25:17	13:14 14:7 22:4,12	r 28:1
manage 17:12	numbers 5:22	22:20 24:15	raised 26:15
management 21:3,4	<b>o</b>	points 12:20 17:18	rank 25:2,22
manager 12:2,21	objective 12:13	portrayed 14:15	ranked 25:3
23:11	obviously 25:2	position 22:6 26:3,4	rarely 23:11
march 28:10	officially 27:5	possible 15:7	rate 18:7,18
maximum 24:6	okay 4:23,25 25:4,9	pre 17:20	real 14:2
mean 13:24 16:21,25	25:20 26:21 27:10	preferable 18:4	realistic 19:1
20:4 21:15 23:20	once 6:21 21:25,25	21:17	realistically 21:16
means 14:24 23:22	opposed 6:25	preferred 25:3	really 7:6 9:23 10:13
measure 8:12	option 21:24	price 6:13 7:6 22:17	22:4,6
meet 2:2,5,16 3:11,21	order 25:2,22	pricing 5:20,21	reason 18:3,23 21:22
4:4,17	ordinance 25:6	priority 6:21	recommend 21:18
meeting 1:4 3:9	organized 11:13	pro 14:10	recommendation
13:15 27:4,5,11	outreach 9:24 11:16	probably 5:4 7:18	25:10
menteky 28:3,16	12:5 18:17	8:13 12:18,19 21:21	record 20:1
mess 15:25	overall 12:3	problem 8:8 24:4	recorded 26:17,24
methods 14:6	<b>p</b>	problems 13:2	28:4
mile 16:14 27:12	paid 4:16	proceeding 28:5	recorder 26:24
miracle 16:14 27:12	people 12:5	process 9:13,20,24	recording 27:13 28:8
money 6:21 7:2	perform 5:25,25 6:10	11:20 14:13 21:15	relationship 24:13
month 18:25	6:14,22 7:5 12:1,3,7	24:13	report 12:5,6
months 22:4	12:18 18:4	product 18:1	representing 10:13
motion 25:13,23,25	performance 18:5	professional 10:7,25	10:13
26:2,6,19	performed 12:15	12:8 18:8,12	responsible 12:2,6
	performer 12:1	progress 17:11	rickman 26:3
		project 1:3 6:17	right 3:3,14 5:5 6:11
		10:14 12:2,3,17	8:24 11:3 14:18,25
		13:21 14:19,20 17:19	

15:1 16:6,13 19:19 21:5 23:12 24:16 26:11 27:10 <b>risk</b> 9:18 19:14 23:11 <b>road</b> 22:1 <b>role</b> 24:10 <b>roots</b> 14:8	15:18 16:10 20:21 23:6,19,25 <b>sir</b> 2:18 4:8 <b>sit</b> 4:20,21 <b>site</b> 5:4 <b>situation</b> 8:17 23:3 <b>situations</b> 5:14 <b>slide</b> 4:22 <b>slight</b> 18:19 <b>smart</b> 15:4 <b>social</b> 11:18 <b>soft</b> 5:25,25 <b>softer</b> 5:24 <b>solution</b> 15:4 17:6 <b>solutions</b> 12:25 14:6 <b>solve</b> 24:4 <b>somebody</b> 20:10 <b>somebody's</b> 10:16 <b>somewhat</b> 18:18 <b>sorry</b> 22:15 24:7 26:12 <b>sort</b> 12:10 <b>space</b> 15:7 <b>speak</b> 20:4 <b>speaker</b> 2:2,3,5,6,7,8 2:9,10,12,13,14,15 2:16,17,18,19,21,22 2:23,25 3:1,2,3,4,6,7 3:8,10,11,12,13,14 3:15,16,17,18,19,21 3:23,24,25 4:1,2,3,4 4:5,6,7,8,9,11,13,15 4:16,18,19,20,21,23 4:24,25 5:1,2,5,6,10 5:11,18 6:5,6,11,12 6:15,16,24 7:1,4,11 7:12,14,21,22,24,25 8:1,2,4,5,7,9,10,11 8:18,19,21,24,25 9:1 9:2,3,4,6,7,10,11,15 9:16,22,24 10:3,4,5,6 10:8,9,11,12,18,19 10:22,24 11:1,3,4,5,6 11:7,8,9,10,11,12,13 11:22,23,24 12:22,23	13:1,2,3,4,9,12,13,16 13:17,19 14:3,4,9,10 14:18,22,23 15:2,4,5 15:6,8,10,12,13,16 15:19,22,23,24,25 16:2,6,7,8,11,13,14 16:16,17,18,23,25 17:1,2,3,5,8,9,10,12 17:17,22,24 19:2,3,5 19:7,8,12,13,16,17 19:19,20,23,24,25 20:11,12,17,18,19,22 20:24 21:1,5,6,8,9,14 22:9,10,13,14,19,20 22:22,23,25 23:5,7,8 23:10,13,18,20,24 24:1,3,6,9,10,12,16 24:17,20,22,25 25:1 25:4,5,9,10,12,14,15 25:20,21,23,24,25 26:1,2,5,6,8,9,11,12 26:13,14,16,17,18,19 26:21,23 27:2,3,6,7,9 27:10 <b>speakers</b> 15:15 26:10 <b>specialty</b> 7:19 <b>specifically</b> 21:2 <b>spoke</b> 9:25 <b>staging</b> 14:18 15:10 <b>start</b> 13:14 21:25,25 22:5 <b>starting</b> 12:24 21:23 <b>stating</b> 13:10 <b>street</b> 1:3 14:21 15:9 20:2 <b>streets</b> 16:20 <b>stronger</b> 20:13 <b>structured</b> 11:13 <b>stuff</b> 8:12 14:21 18:10 <b>sub</b> 18:5 <b>successful</b> 22:2 <b>summary</b> 26:25 <b>sure</b> 5:15 12:9	<b>t</b> <b>t</b> 28:1,1 <b>table</b> 13:15 <b>take</b> 3:4,6 4:17 19:3 <b>taken</b> 28:7 <b>takes</b> 2:22 <b>talking</b> 2:11 3:20 5:7 8:6 9:25 10:23 14:5 15:3,18 16:10 20:21 23:6,19,25 <b>team</b> 8:15 <b>teams</b> 8:2 9:23 <b>tell</b> 18:13 <b>terms</b> 5:19 10:12 20:20 22:17 <b>thank</b> 2:7,9,14,15 3:3 3:12,17,18,21,22,25 4:1,2,5,7 22:15 <b>thanks</b> 3:15,16 <b>things</b> 16:19 19:8 <b>think</b> 6:7 7:12,18 8:11 9:22 10:8 13:11 15:6,9 17:10,12,17 18:3 19:8,21,22,25 20:8,12,12,15,18 21:9,15 23:24 24:5 25:12 27:4 <b>thinking</b> 16:23,25 <b>thought</b> 5:2 6:17 8:23 9:13 17:5 18:6 19:21 <b>thoughts</b> 5:1 <b>three</b> 6:2 15:21 22:3 <b>threw</b> 16:18 <b>totally</b> 12:20 14:15 <b>touch</b> 10:1 <b>track</b> 19:25 <b>tracking</b> 18:9 <b>traditional</b> 13:20 22:8 <b>traffic</b> 17:14,15 <b>transcribe</b> 28:4 <b>transcript</b> 28:5
<b>s</b> <b>sake</b> 11:17 <b>saw</b> 24:25 <b>saying</b> 11:21 18:2 24:22 <b>scape</b> 1:3 20:2 <b>schedule</b> 6:3 <b>scuc</b> 26:2 <b>second</b> 5:18 6:12,18 7:8,14 8:12 9:11 10:6 11:9,12 12:11,19 14:1,16 18:9,20 20:3 21:1,10,11 25:8 26:4 26:5,6,20 <b>see</b> 4:6 9:17 12:12 13:17 17:4,11 <b>seeing</b> 20:2,6 <b>select</b> 21:16 25:2 <b>selected</b> 21:10 <b>selection</b> 25:16 <b>self</b> 6:10,20,22 7:5,17 12:1,1,3,7,15,18 18:4 <b>sense</b> 16:1 <b>services</b> 13:24,25 21:23 22:2,15 <b>session</b> 10:4 <b>sets</b> 12:9 22:24 <b>shoe</b> 23:21 <b>shorthand</b> 28:6 <b>show</b> 10:22 <b>showed</b> 11:2 <b>showing</b> 20:13 <b>sick</b> 19:6 <b>sidewalk</b> 5:13 15:9 <b>signature</b> 28:14 <b>simultaneously</b> 2:11 3:20 8:6 10:23 15:3			

transcription 1:5 28:6 travel 19:7 trees 5:13 trouble 12:24 24:2 trucks 14:24 15:19 true 28:5 truth 7:19 two 6:3,3 8:2 9:23 16:8 18:20 19:9,17 21:24 type 11:20	windows 16:20 winning 20:6 woman 3:21,25 4:7 6:5,11,24 7:4,12 8:5 8:10,18,21,25 9:4,7 9:11,16 10:2,5,8,11 10:18,24 11:3,12,22 13:12 15:6,15 16:6,8 16:13 17:8,10 19:3,7 19:19 23:8 24:9,25 26:6,12,14,18 27:6 work 20:5 22:3 23:15 23:23 25:5 working 13:14 18:16 24:14 works 9:20 wrong 7:24 11:21
u	y
uh 3:13 5:10 6:5,15 9:2 10:3,11,18 11:22 12:22 13:12 14:3,9 14:22 19:2,12,16 20:11 26:8 unable 25:7 unanimous 26:23 understand 2:21 14:7 understanding 14:12 understood 9:19 use 5:14 usually 26:25	yeah 3:4 4:21 6:19 7:4,25 8:5,18 9:6,10 9:15 10:5 11:5,6,7 13:3,16 15:5,8 16:16 17:2,8,22 19:3,23 20:17 21:1,5 22:14 23:9,18,24 26:1 27:6 years 16:4
v	
value 24:7 versus 5:25 vision 6:25,25 vote 25:10 26:7,23	
w	
want 6:7 10:16,20 21:11 25:21 26:7 warm 10:1 wash 16:19 way 11:13,21 14:14 14:14 20:20 21:6 25:5 we've 3:4 week 18:24 width 15:8	

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Sec. 2-950. - Resolution of protested solicitations and awards—Formal.

- (a) *Right to protest on solicitations.* The following procedures shall be used for resolution of protested solicitations.
- (b) *Protest of solicitation.* Any actual or prospective bidder or offeror who perceives itself aggrieved in connection with the formal solicitation of a contract or who intends to contest bid specifications or a bid solicitation may file a written notice of intent to file a protest with the city clerk's office within three calendar days prior to the date set for opening of bids or receipt of proposals. A notice of intent to file a protest is considered filed when received by the city clerk's office.
- (c) *Protest of award.* Any actual responsive and responsible bidder whose bid is lower than that of the recommended bidder or an offeror who perceives itself aggrieved in connection with the recommended award of contract may file a written notice of intent to file a protest with the city clerk's office within three calendar days after notice of the city manager's written recommendation to the city commission for award of contract. A notice of intent to file a protest is considered filed when received by the city clerk's office.
- (d) *Contents of protest.* A written protest based on any of the foregoing must be submitted to the city clerk's office within five calendar days after the date the notice of protest was filed. A written protest is considered filed when received by the city clerk's office. The written protest shall state with particularity the specific facts and law upon which the protest of the solicitation or the award is based, and shall include all pertinent documents and evidence and shall be accompanied by the required filing fee as provided in subsection (h) below. This shall form the basis for review of the written protest and no facts, grounds, documentation or evidence not contained in the protester's submission at the time of filing the protest shall be permitted in the consideration of the written protest.
- (e) *Computation of time.* No time will be added to the above time limits for service by mail. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the next day which is not a Saturday, Sunday or legal holiday.
- (f) *Challenges.* The written protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination.
- (g) *Authority to resolve protests.* The chief procurement officer, after consultation with the city attorney, shall issue a written recommendation within ten calendar days after receipt of the written protest. Said recommendation shall be sent to the city manager with a copy to the protesting party. The city manager may then either resolve the protest or reject all proposals. On any protest on a contract for supplies and services not exceeding \$100,000.00 or a contract for construction not exceeding \$25,000.00 the city manager as authorized in section 2-651 shall have sole authority to resolve in the best interests of the city. Otherwise, the city manager shall submit a recommendation to the city commission for approval or disapproval thereof. A protest of an award of a contract by the city commission may be filed with the circuit court pursuant to the Florida Rules of Appellate Procedure.
- (h) *Stay of procurement during protests.* Upon receipt of a written protest filed pursuant to the requirements of this section, the city shall not proceed further with the solicitation or with the award of the contract until the protest is resolved by the city manager or the city commission as provided in subsection (f) above, unless the city manager, after consultation with the head of the user department, the chief procurement officer, and the city attorney, makes a written determination that

the solicitation process or the contract award must be continued without delay in order to avoid an immediate and serious danger to the public health, safety or welfare and protect substantial interests of the city.

- (i) *Costs.* All costs accruing from a protest shall be assumed by the protestor.
- (j) *Filing fee.* The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the city in an amount equal to one percent of the amount of the bid or proposed contract, or \$2,500.00, whichever is less. The filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If the protest is denied, the filing fee shall be forfeited to the city in lieu of payment of costs for the administrative proceedings. If the protest is upheld by the city, the filing fee shall be refunded to the protestor less any costs assessed under subsection (i) above.
- (k) *Compliance with filing requirements.* Failure of a party to timely file either the notice of intent to file a protest or the written protest, or submit the filing fee, with the city clerk's office within the time provided in subsections (a), (b) and/or (c), above, shall constitute a forfeiture of such party's right to file a protest pursuant to this section. The protesting party shall not be entitled to seek redress before the city commission or seek judicial relief without first having followed the procedure set forth in this section.

(Ord. No. O-2003-6, § 2(2-447), 2-11-2003; Ord. No. O-2003-14, § 1(2-447), 4-22-2003; Ord. No. 2003-23, § 2(447), 7-23-2003; Ord. No. 2005-17, § 2(2-447), 8-23-2005; Ord. No. 2005-20, § 2(2-447), 9-13-2005; Ord. No. 2008-27, § 2, 10-28-2008; Ord. No. 2009-53, § 2, 11-17-2009)



Lucia A. Dougherty  
doughertyl@gtlaw.com  
Tel. 305.579.0603

March 6, 2015

**VIA HAND DELIVERY**

Walter Foeman  
City Clerk  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

2015 MAR - 6 PM  
CITY OF CORAL GABLES  
RECEIVED BY THE  
OFFICE OF THE CITY CLERK

**Re: Notice of Intent to Protest Regarding RFQ No. 2014.12.05 - Miracle Mile/Giralda Avenue Streetscape Construction Manager at Risk (CMAR)**

Dear Mr. Foeman:

We represent Ric-Man International, Inc. ("Ric-Man") in connection with its participation in the City of Coral Gables' (the "City") Request for Qualifications No. 2014.12.05 for Miracle Mile/Giralda Avenue Streetscape Construction Manager at Risk (the "RFQ"). We are writing to formally provide Ric-Man's Notice of Intent to Protest (i) the Selection Committee's recommendation of the order of preference of firms; (ii) the Chief Procurement Officer's notice of intent to submit the Selection Committee's recommendation to the City Commission for consideration at their March 10, 2015 meeting; and (iii) the City Manager's written recommendation to the City Commission, dated March 10, 2015, that the City Commission enter into negotiations with State Contracting and Engineering Corp. ("SCEC") for the contract to provide design and any other services pursuant to the RFQ. A copy of the City Manager's written recommendation to the City Commission, dated March 10, 2015, is attached as **Exhibit A**.

We submit that the Selection Committee did not comply with the terms of the RFQ and the requirements of Section 2-1089 of the Coral Gables, Florida, Code of Ordinances (the "Code"), by failing to properly follow and apply the Evaluation Criteria set forth in Section 4.13 of the RFQ. We further submit that, because the Selection Committee failed to follow and apply the Evaluation Criteria, its recommendation is arbitrary and capricious. Finally, we assert that SCEC's Response was not responsive or responsible as the firm does not have sufficient experience performing similar projects. Accordingly, we respectfully request that the City enter into negotiations with Ric-Man for the contract to provide design and any other services pursuant to the RFQ, and that the City grant to Ric-Man whatever other relief it deems appropriate.

**PROCEDURAL BACKGROUND**

The City issued this RFQ seeking statements of qualifications from qualified Construction Manager at Risk firms to provide design services and to act as general contractor for the Miracle Mile/Giralda Avenue Streetscape Project (the "Project"). Ric-Man submitted its

Mr. Walter Foeman  
Re: RFQ No. 2014.12.05 / Notice of Intent to Protest  
March 6, 2015

**I. The Selection Committee Failed to Properly Follow and Apply the RFQ's Evaluation Criteria.**

**A. Firm Qualifications**

Ric-Man's Response reflects that its firm qualifications are clearly superior to SCEC's, thereby demonstrating that the Selection Committee essentially disregarded the Evaluation Criteria pertaining to firm qualifications in recommending the inferior firm.

A review of each firm's submission relating to Section 4.13(7) of the RFQ exemplifies the Selection Committee's failure to apply the Evaluation Criteria. Section 4.13(7) requires the Selection Committee to assess each "Respondent's demonstrated experience and references with regard to recent and relevant projects to those described in the Specifications/Scope of Work." Section I of the RFQ provides that the Project is an improvement to a streetscape with a budget of approximately \$24.5 million total. *See* RFQ at 3. Ric-Man's Response references at least 43 completed streetscape projects, including descriptions of approximately 35 projects completed in the last 5 years, 3 of which had total costs of approximately \$17 million, \$18 million, and \$34 million. Ric-Man's Response at 4, 11-20, 21-25. Conversely, SCEC's Response describes approximately 11 completed projects, 4 of which appear to be streetscape projects. *See* SCEC's Response at 12-17. Of those streetscape projects listed as being completed in the last 5 years, no project cost more than \$2.5 million.<sup>2</sup> *See id.*

A review of the annual amount of construction work performed by each firm during the last 5 years and the current work load for each firm accentuates the disparity in firm qualifications. Ric-Man's average annual amount of construction work performed during the past 5 years is approximately \$20 million. *See* Ric-Man's Response at 54, 69. The average annual amount of construction work performed by SCEC during the past 5 years is far less: 2014: \$2,987,000; 2013: \$7,621,817; 2012: \$2,115,992; 2011: \$5,624,387; 2010: \$2,534,575. *See* SCEC's Response at 81. Thus, the budget for the Project at issue would be approximately 10 times bigger than what SCEC performed last year. Moreover, Ric-Man's total worth of work in progress and under contract where Ric-Man is the prime contractor, as of when Ric-Man submitted its Response, was \$39,920,962.00, whereas SCEC currently has only approximately \$6.1 million total worth of work in progress and under contract. *See* Ric-Man's Response at 54, 69-70; SCEC's Response at 81.

Further, Section 4.13(1) of the RFQ requires the Selection Committee to evaluate each respondent's qualifications, and lists specific examples that include "number of years in business, credentials, licenses, capabilities and size of the firm." During Ric-Man's 32 years of

<sup>2</sup> SCEC references one streetscape project with a cost of approximately \$17.5 million and another with a cost of approximately \$8.5 million, but does not indicate the year in which each was completed. *See* SCEC's Response at 15-16.

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2015 MAR - 6 PM 4: 53

Mr. Walter Foeman  
Re: RFQ No. 2014.12.05 / Notice of Intent to Protest  
March 6, 2015

capable firm; and Ric-Man showed it has significantly greater bonding capacity and insurance coverage. Yet, the Selection Committee failed to credit Ric-Man or otherwise account for these marked discrepancies.

### **B. Staffing Plan**

The second sub-set of Evaluation Criteria concern the firms' staffing plans. *See* RFQ § 4.13. The Evaluation Criteria instructed the Selection Committee to consider "key personnel's demonstrated experience with similar projects," qualifications, and ability. *See id.* Again, Ric-Man's clear superiority, in conjunction with the decision to recommend SCEC, demonstrates that the Selection Committee failed to properly follow and apply the Evaluation Criteria.

Illustratively, Ric-Man selected Rene L. Castillo, Sr. to serve as President for the Project. Since 2010, Mr. Castillo has overseen approximately \$50 million worth of streetscape improvements. *See* Ric-Man's Response at 36. Ric-Man Senior Project Manager Steve Adams, similarly, has over 39 years of construction experience and has overseen approximately \$150 million worth of projects since 2009. *See* Ric-Man's Response at 27, 37. Superintendent for Ric-Man, Luis Hernandez, has overseen approximately \$50 million worth of streetscape improvements in the last 5 years. *See* Ric-Man's Response at 40.

Conversely, SCEC's Response fails to show that its President, Timothy Smith, its Project Manager, Paul Carty, and its Superintendents have anywhere near this experience in recent years. SCEC's Response identifies only a few streetscape projects that Smith and Carty oversaw in recent years. These listed projects reflect a far lower aggregate value than Ric-Man's, and SCEC's Response provided specific completion dates in the last 5 years for only 2 of these projects, neither of which cost more than \$2.5 million. *See* SCEC's Response at 12-17, 19-23.

This trend continues with the respective assistant Project Managers. Ric-Man's second-in-command Project Manager, Victor G. Menocal, has over 15 years of experience in streetscape, roadway, and infrastructure projects, while SCEC's Assistant Project Manager has 6 years of experience in civil engineering and management. *See* Ric-Man's Response at 38; SCEC's Response at 27.

### **C. Project Control Experience**

The project control experience sub-set of the Evaluation Criteria focuses on each firm's ability to provide schedule control, cost control, and quality control for the Project, and directs each firm to provide information on its experience with similar projects completed on-time and within budget. *See* RFQ § 4.13. Ric-Man's superior ability to provide project control for streetscape projects of the type specified in the RFQ is demonstrated by the fact that it has completed on-time 41 streetscape projects totaling \$91.8 million in the last 7 years alone. *See* Ric-Man's Response at 21. Additionally, Ric-Man's presentation to the Selection Committee (**Exhibit D**) outlined 37 neighborhood and urban streetscape projects that it completed on time and within budget. *See* Ex. D at Slides 14-16. Of those projects, 9 were valued over \$10 million

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Mr. Walter Foeman  
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March 6, 2015

Because SCEC has failed to meet these RFQ specifications, SCEC is not a responsive or responsible bidder. *See Am. Eng'g and Dev. Corp. v. Town of Highland Beach*, 20 So.3d 1000, 1001 (Fla. 4th DCA 2009) ("American Engineering did not list projects performed for municipalities or projects on which it was the prime contractor, as the specifications required; therefore, American Engineering was not a responsible bidder."); *Eng'g Contractors Ass'n of S. Fla., Inc. v. Broward County*, 789 So.2d 445, 451 (Fla. 4th DCA 2011) (stating that the responsibility requirement does not concern only cost, but also experience and ability to perform the project at issue); *Consultech Of Jacksonville, Inc. v. Department Of Health*, 876 So.2d 731, 7340-35 (Fla. 1st DCA 2004) (affirming finding that Consultech was not a qualified responsive bidder where it "failed to demonstrate 'successful experience' in providing a CEU [continuing education units] system" as required by the RFP, and the winning bidder had identified experience with several similar projects).

### CONCLUSION

Based on the forgoing, under any reasonable analysis of the Responses under the Evaluation Criteria, Ric-Man's Response established that it has superior Firm Qualifications (including being the only firm on the short list with the required procured employee insurance coverage), Staffing Plans, and Project Control Experience as compared to SCEC. Therefore, the Selection Committee's recommendation and ranking of the firms is arbitrary and capricious because the Selection Committee failed to follow and apply the specified Evaluation Criteria as required. Accordingly, we respectfully submit that the Commission should reject the recommendation of the Selection Committee, and the City should enter into negotiations with Ric-Man for the contract to provide the pre-construction services at issue.

This Notice of Protest is timely filed within three calendar days after notice of the City Manager's written recommendation to the City Commission, attached as Exhibit A, as required by Section 2-950(c) of the Code. Please direct all communications to Ric-Man's counsel, Lucia A. Dougherty at the following address and email: Lucia A. Dougherty, Esq., Greenberg Traurig, P.A., 333 S.E. 2nd Avenue, Miami, FL 33131; DoughertyL@GTlaw.com.

Best Regards,

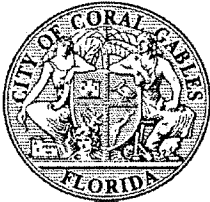


Lucia A. Dougherty

cc: Craig Leen, Esq.  
cleen@coralgables.com  
Michael Pounds  
mpounds@coralgables.com  
Cathy Swanson-Rivenbark  
cswanson@coralgables.com

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**REQUEST FOR QUALIFICATIONS  
CONSTRUCTION MANAGER AT RISK SERVICES  
RFQ 2014.12.05**



**PROCUREMENT DIVISION**

Mailing Address:  
**2800 S.W. 72<sup>nd</sup> Avenue  
Miami, FL  
33155**

**Solicitation Data**

Request Number: RFQ 2014.12.05

Title: Miracle Mile / Giralda Avenue Streetscape Construction Manager at Risk (CMAR)

Description: The City of Coral Gables requests statement of qualifications from qualified Construction Manager at Risk firms to provide design phase services during the design of the project and serve as the general contractor during the construction of the project for the successful completion of the Miracle Mile, Giralda Avenue Streetscape, and Biltmore Way (the "Project") pursuant to Florida Statutes 255.103, 287.055 and Section 2-768 of the City of Coral Gables Code of Ordinances. The Project calls for the transformation of the public realm between building facades on both sides of the street. When completed, the downtown will be more visitor-friendly and better poised for economic growth. The Project will protect and leverage the historical assets of the City's downtown, while promoting quality retail and dining opportunities. The Miracle Mile Project will create a civic promenade that will become a focal point for the region. The Project will include installing extensive gardens and landscaping, setting the stage for the incorporation of public art, providing decorative street lighting and way finding. The Project limits include Miracle Mile beginning at Douglas Road (SW 37th Avenue) on the East and ending at Le Jeune Road (SW 42nd Avenue) on the West as well as on Giralda Avenue from Galiano Street on the East to Ponce de Leon Boulevard on the West. Further, a second phase of the Project will also include improvements to Biltmore Way and Merrick Park in front of City Hall.

Contact: Michael Pounds  
Chief Procurement Officer

Fax: (305) 261-1601

**Non-Mandatory Pre-Submittal Conference**

Day/Date: Friday, December 12, 2014.

Time: 10:00 a.m.

Location/Mail Address: Public Works Conference Room, 2800 SW 72<sup>nd</sup> Avenue  
Miami, FL 33155

**Submittal Opening**

Day/Date: Thursday, January 15, 2015

Time: 3:00 p.m.

Location/Mail Address: Procurement Division Office, 2800 SW 72<sup>nd</sup> Avenue  
Miami, FL 33155

**RFQ Contents**

Section 1:	Specifications / Scope of Work
Section 2:	Additional Requirements (Not Applicable)
Section 3:	Attachments
Section 4:	Instructions to Respondents
Section 5:	Term and General Conditions
Section 6:	Submittal Execution, RFQ Checklist, & Procurement Forms
Section 7:	City's Form Agreement for Standard Terms and Conditions for Agreement (Information Purposes Only)

Note: If not submitting a response, please fill out and return the "Statement of No-Response" Form.

**Special Accommodation:**

In accordance with the Americans with Disabilities Act, any person who believes he or she has a disability requiring the use of a special accommodation at either the scheduled pre-submittal conference or submittal closing should contact the Procurement Division (305) 460-5102, at least two days prior to the event to advise of his/her special requirements.



## SECTION 1 – SPECIFICATIONS / SCOPE OF WORK

Pursuant to Section 2-768 of the City of Coral Gables Code of Ordinances and Sections 255.103 and 287.055, Florida Statutes, the City of Coral Gables is seeking to engage the services of a qualified Construction Manager at Risk (CMAR) firm for the successful completion of the Miracle Mile, Giralda Avenue Streetscape, and Biltmore Way (the "Project"). Initially, the Construction Manager at Risk (CMAR) will enter into a contract to provide construction expertise to the City and design team during the design phase of the Project. Subsequently, pending successful negotiations, agreement on a contract price, and execution of a construction contract between the City and the CMAR, the CMAR will serve as the general contractor during the construction of the Project. CMAR begins with the firm providing an agency support role for the design phase services. At some point prior to construction, the CMAR will assume the risk of delivering the Project through a guaranteed maximum price or fixed price contract. The City reserves the right to cease negotiations for the construction portion of the CMAR agreement at any time during the preconstruction services phase for any reason, including, but not limited to if the parties are unable to reach agreement on a contract or if the City otherwise decides not to proceed with the Project.

The CMAR will enter into a construction contract, will be responsible for construction means and methods, and will be required to competitively solicit bids from pre-qualified subcontractors to perform the work. The CMAR may also compete to self-perform up to 50%, based on cost, of the work.

Design Phase Services by the CMAR may include, but not limited to;

- Provide detailed independent cost estimating and knowledge of market conditions;
- Provide project planning and scheduling;
- Provide alternate systems evaluation and constructability studies;
- Advise the City of ways to gain efficiency in project delivery;
- Provide long-lead procurement studies and possibly initiate procurement of long-lead items;
- Assist in the permitting process; and
- Protect the City's sensitivity to quality, safety, and environmental factors; and
- Participate in community based project steering committee.
- 

Construction Phase Services by the CMAR may include:

- Construct the designed improvements;
- Coordinate with various City of Coral Gables departments and other agencies, utility companies, business community, and similar entities;
- Arrange for procurement of materials and equipment;
- Schedule and manage site operations;
- Bid, award, and manage all construction related contracts and subcontracts while meeting the City bid requirements including health insurance provisions;
- Provide quality controls;
- Bond and insure the construction in accordance with City requirements;
- Address all federal, state and local permitting requirements;
- Deal with owner's issues including public information, business continuity, safety and traffic issues; and
- Maintain a safe work site for all project participants.

The Project includes improvements to the streetscape to enhance the pedestrian experience and sense of place along Miracle Mile (approximately 2600 feet) beginning at Douglas Road (SW 37<sup>th</sup> Avenue) on the East and ending at Le Jeune Road (SW 42<sup>nd</sup> Avenue) on the West as well as on Giralda Avenue (approximately 600 feet) from Galiano Street on the East to Ponce de Leon Boulevard on the West. A separate phase will also include improvements to Biltmore Way (approximately 300 feet) and Merrick Park in front of City Hall. The total budget (design and construction) for this project is estimated to be approximately (+/-) \$20 million plus an additional \$ 4.5 million for the Biltmore Way and Merrick park portion.

**The Scope of Work for Miracle Mile may consist of the following, including, but not limited to:**

- 1.1. Construction of new curb, gutter, drainage, and other infrastructure assessment and improvements along both sides of the full length of Miracle Mile.
- 1.2. Street improvements including paving, striping and signage. Street design may include a restructuring of on-street parking from diagonal to parallel.
- 1.3. Reconstruction and widening of existing sidewalks including ADA accessible ramps, expanded sidewalk design, special sidewalk elements, and mid-block mini-parks.
- 1.4. Improvement of existing Paseos (walkways) between Miracle Mile and parking areas.
- 1.5. Installation of new street amenities such as trash receptacles, kiosks, benches, newspaper stands, bollards and valet stations.
- 1.6. Installation of new ornamental lights and pedestrian lighting.
- 1.7. Design and installation of new landscaping including trees, groundcover, lighting, irrigation system and all appurtenances to create a garden-like feel for the environment.
- 1.8. Construction of a new gateway entrance to Miracle Mile from Le Jeune Road that may include electronic displays.
- 1.9. Incorporation of Art in Public Places throughout the project, which could include fountains.
- 1.10. Design and development of a downtown wayfinding program.
- 1.11. Other related services necessary to complete project objectives.

**The Scope of Work for Giralda Avenue may consist of the following, including, but not limited to:**

- 1.12. Construction of the street and sidewalks to include a continuous section with no vertical curbs. This may include street pavers and sidewalk elements that flow with the street concept.
- 1.13. Street improvements including paving/pavers, striping, and signage.
- 1.14. Modification of drainage system and other infrastructure assessment and improvements to street.
- 1.15. Installation of new street amenities such as trash receptacles, kiosks, benches, newspaper stand, bollards and valet stations.
- 1.16. Installation of new ornamental lights and pedestrian lighting.
- 1.17. Design and installation of new landscaping including moveable planters, trees, groundcover, lighting, irrigation system and all appurtenances.
- 1.18. Incorporation of Art in Public Places throughout the project.
- 1.19. Other related services necessary to complete project objectives.

**Scope of Work for Biltmore Way and Merrick Park in front of City Hall may consist of the following, including, but not limited to:**

- 1.20. Street improvements including paving/pavers, striping, signage and retractable or removable bollards located at both ends of the project.
- 1.21. Covered structure (Pergola) along the north edge of the Park.
- 1.22. Walkway(s) in Merrick Park.
- 1.23. Incorporation of Art in Public Places throughout the project, which could include a fountain.

1.24. Other related services necessary to complete project objectives.

Qualified Construction Manager at Risk firms or individuals interested in providing these services for the Project are hereby requested to submit a "Statement of Qualifications" on or before (but not later than) 2:00 p.m., Thursday, January 15<sup>th</sup>, 2015. Section 6, "Submission Package", check list, and any other required documents must be returned in order for the submittal to be considered for award. The Respondent should submit an original Statement of Qualifications, one (1) CD or USB in PDF format and four (4) photocopies (all collated) of their submittal.

RFQ submittals mailed or hand delivered should be addressed as follows: City of Coral Gables, Procurement Division Office, 2800 SW 72<sup>nd</sup> Avenue, Miami, FL 33155.

NO SUBMISSIONS WILL BE RECEIVED, ACCEPTED, OR CONSIDERED AFTER SAID TIME AND DATE, unless the City, in its sole discretion reasonably exercised, elects to extend the time for submission and receipt of statements.

This solicitation falls under the City of Coral Gables Procurement Code, Section 2-1059 entitled "Cone of Silence (refer to Schedule H).

## **SECTION 2– ADDITIONAL REQUIREMENTS**

☒

Not Applicable for this RFQ

*or*

☐

As listed below:

### **SECTION 3 – ATTACHMENTS**

☒

Not Applicable for this RFQ

*or*

☐

As listed below:

## **SECTION 4 – INSTRUCTIONS TO RESPONDENTS**

RESPONDENTS: TO ENSURE ACCEPTANCE OF THE SUBMITTAL, THE FOLLOWING INSTRUCTIONS MUST BE ADHERED TO.

### **4.1. Submission Requirements**

All Statement of Qualifications and information required by this RFQ must be submitted in sealed envelopes, delivered or mailed to Chief Procurement Officer, City of Coral Gables, 2800 S.W. 72<sup>nd</sup> Avenue, Miami, FL 33155. The RFQ number and title must be plainly marked on the outside of the envelope. It will be the sole responsibility of the Respondent to ensure that the Statement of Qualifications reaches the office of the Chief Procurement Officer on or before the closing hour and date shown on the RFQ cover (Page 1). No submittals will be received, accepted, or considered after said time and date, unless the City, in its sole discretion reasonably exercised, elects to extend the time for submission and receipt of submittals.

ELECTRONIC OR FAXED SUBMITTALS WILL NOT BE ACCEPTED

### **4.2. The RFQ Package**

The RFQ package consists of Specifications/Scope of Work, Additional Requirements, Attachments, Instructions to the Respondents, and the following Schedules:

Schedule "A" - Certification  
Schedule "B" - Non-Collusion Affidavit  
Schedule "C" - Drug Free Statement  
Schedule "D" - Qualification Statement  
Schedule "E" & "F" not applicable  
Schedule "G" - Statement of No Response  
Schedule "H" - Code of Ethics, Code of Silence  
Schedule "I" - Disability Nondiscrimination Statement  
Schedule "J" - Public Entity Crimes  
Schedule "K" - Acknowledgement of Addenda

### **4.3. Inquiries, Addenda and Modifications**

The Respondent must direct any inquiries on the specifications, additional requirements, attachments, terms and general conditions or instructions, in writing, either via Fax or email, to the individual named on Page 1 at the Procurement Division, City of Coral Gables, 2800 S.W. 72<sup>nd</sup> Avenue, Miami, FL 33155, Fax No. (305) 261-1601. All inquiries must be received by the Procurement Division no later than 4:00 p.m., Tuesday, December 23, 2014.

Any addenda or other modifications to the Documents will be made in writing, and issued by the City, prior to the time and date of opening. Such written addenda or modifications shall be part of the documents and shall be binding upon each Respondent. No verbal addenda or modifications shall be allowed nor shall any Respondent rely upon any verbal addenda or modifications in preparing or submitting its Statement of Qualifications.

### **4.4. General Requirements**

The Respondent and its Principals in charge of the Project must have demonstrated experience in providing the type of assistance requested. Written statements of qualification should be brief, but may be accompanied by preprinted brochures. Statements shall include, but are not limited to, the following:

1. All pertinent data or information deemed necessary by the Respondent to establish their qualifications for the various projects cited to allow the City to evaluate their submissions based on the criteria described herein.
2. A staffing plan and organizational chart. Include specifics for this project.
3. Statements shall be signed by an official authorized to bind the Respondent.

### **4.5. Additional Requirements**

The Respondent and its Principals must agree to allow duly authorized agents of the City access to any books, documents, papers or records which are directly pertinent to this Project for the purposes of making audit examinations, excerpts, and for the purposes of transcriptions and to maintain all required records for three years after the City's final payment and all other pending matters are closed. The successful Respondent must agree to

enter into a contract with the City for CMAR services, which shall be negotiated between the successful Respondent and the City.

4.6. **Familiarity with Laws**

The Respondent should be familiar with all federal, state, and local laws, ordinances, codes, rules, and regulations that may in any way affect this Request for Qualifications and the Project. Lack of knowledge on the part of the Respondent shall in no way relieve them from responsibility.

4.7. **Cost Liability**

The Respondent shall bear all costs associated with submitting the Statement of Qualifications, including preparation, site visitation or any travel connected with the Statement of Qualifications.

4.8. **Investigation of Conditions Affecting Operations**

Before submitting a Statement of Qualifications, each Respondent shall make all investigations and examinations necessary to ascertain conditions and requirements of the Request for Qualifications. Failure to make investigations and examinations shall not relieve the successful Respondent from the obligation to comply in every detail with all provisions and requirements of the RFQ nor shall it be a basis for any claim whatsoever for alteration in any term of or payment required by the Purchase Order or any subsequent Contract.

4.9. **Conflict of Interest / Cone of Silence**

The successful Respondent must comply with all laws governing Conflicts of Interest and all Respondents must comply with all laws governing Cone of Silence.

4.10. **Oral Presentation**

Short-listed firms may be invited to interview with staff at which time each firm will make a brief presentation as further discussion in Paragraph 4.14 of this RFQ.

4.11. **Compliance with State of Florida Crime Entity**

Please be informed that pursuant to Section 287.133(2) (a), Florida Statutes, "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Statement of Qualifications on a contract to provide any goods or services to the City, may not submit a Statement of Qualifications on a contract with the City for the construction or repair of a public building or public work, may not submit submittals on leases of real property to the City, may not be awarded or perform work as a Respondent, supplier, sub-Respondent, or consultant under a contract with the City, and may not transact business with the City in excess of the threshold amount provided in §287.017 for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list." The submittal of a Statement of Qualifications shall constitute an affirmative representation by the Respondent to the City that the Respondent is aware of the Statute and in full compliance thereof.

4.12. **Respondent Organization**

**The Statement of Qualifications shall be organized as indicated and adequately address each criteria. Please provide the page number in the blanks provided where compliance information is located in your Qualification Statement for each of the required submittal items listed below:**

**Submittal - Section I:** Provide a **Table of Contents** in accordance with and in the same order as the respective "Sections" listed below. \_\_\_\_\_

**Submittal - Section II:** Firm Qualifications

1. Provide a complete company background and history, including, but not limited to: the number of years in business, credentials, licenses, number of employees, an organizational chart identifying key staff members, their level of responsibility, their job titles and how long they have been with the firm. \_\_\_\_\_
2. Clearly identify office locations for the following: \_\_\_\_\_
  - a. Office location providing primary project management
  - b. Corporate headquarters of the firm
  - c. Office location(s) for any anticipated sub-consultants

3. Provide a statement detailing Respondent's familiarity with permitting agencies and permitting procedures, especially in Miami-Dade County. \_\_\_\_\_
4. Submit bank and trade references, the most recent financial statements, D-U-N-S number and other information sufficiently comprehensive to permit an appraisal of the firm's current financial condition. \_\_\_\_\_
5. Submit proof of the ability to obtain the required insurances with the limits specified herein. \_\_\_\_\_
6. Provide detailed information on five (5) of the Respondent's most recent and relevant projects similar to those described in the Specifications/Scope of Work including at least one CMAR project. Provide references for these same projects, including: \_\_\_\_\_
  - a. Name, address and telephone number of the owner
  - b. Name and telephone number of the owner's Project Manager
  - c. Name, location and address of project
  - d. Detailed information on any additional services provided, including the reason, cost and description.
7. Provide information with regard to three (3) signature projects that your firm has completed. These projects may be duplicative of projects listed in 6, above. The list should include the following: \_\_\_\_\_
  - a. Name, address and telephone number of the owner
  - b. Name and telephone number of the owner's Project Manager
  - c. Name, location and address of project
  - d. Description of work
  - e. Detailed information on any additional services provided, including the reason, cost and description.
8. Provide information on the incorporation of art into prior projects including the method for selecting the artist(s). \_\_\_\_\_

**Submittal - Section III: Staffing Plan**

1. Provide resumes and relevant background information for the company's key personnel (including owner(s), project manager, supervisors, field representatives, field inspectors and other technical personnel), including experience with similar projects. \_\_\_\_\_
2. Provide the current and future workload of the assigned staff to indicate their availability to perform and successfully complete the project in an expeditious manner. \_\_\_\_\_
3. Provide a statement detailing the Respondent's expertise and experience in working with other disciplines, including coordination with other design professionals and consultants. \_\_\_\_\_
4. Provide qualifications, licenses and references for proposed key staff. \_\_\_\_\_

**Submittal - Section IV: Project Control Experience**

1. Provide a section indicating how the Respondent intends to positively and innovatively work with the community to move this project with multiple stakeholders from the conceptual stage into a clearly defined project that may be designed and constructed. \_\_\_\_\_
2. Provide specific examples of similar CMAR initiatives that the Respondent has successfully undertaken with other public entities completed on-time and within budget. \_\_\_\_\_
3. Describe Respondent's ability and experience with moving the project along on a fast-track or expedited pace (e.g., staging work, extended hours) while minimizing the impact on adjacent businesses. Explain in detail the methods to be used. \_\_\_\_\_
4. Describe Respondent's ability to successfully deliver similar projects that have significant community and business involvement. \_\_\_\_\_



5. Describe respondent's willingness to work with other consultants designated by the City. \_\_\_\_\_

#### 4.13. **Respondent Evaluation Criteria**

##### **Firm Qualifications**

1. Respondent's qualifications, including, but not limited to: the number of years in business, credentials, licenses, capabilities and size of the firm.
2. The location of Respondent's headquarters and key staff that will be assigned to the project.
3. Respondent's knowledge of permitting agencies and permitting procedures, especially in Miami-Dade County.
4. Respondent's financial stability.
5. Ability of the Respondent to provide required insurance coverages as specified.
6. Ability of Respondent to provide performance and payment bonds for the full value of construction of the Project and in the form required by City.
7. Respondent's demonstrated experience and references with regard to recent and relevant projects to those described in the Specifications/Scope of Work.
8. Respondent's demonstrated creativity as shown in the signature projects.
9. Demonstrated experience incorporating art into projects.
10. Respondent's demonstrated experience in working with a Construction Manager at Risk delivery method.

##### **Staffing Plan**

1. Respondent's ability and experience in providing the required services, including key personnel's demonstrated experience with similar projects.
2. Availability of the Respondent's personnel to perform and successfully complete the project in an expeditious manner.
3. Respondent's expertise and experience in working with other disciplines, including coordination with artists and other design professionals and subconsultants.
4. Qualifications, licenses and references for firm and key personnel.

##### **Project Control Experience**

1. Respondent's demonstrated ability to positively and innovatively work with the community and design consultants to move this project with multiple stakeholders from the conceptual stage into a clearly defined project that is successfully constructed.
2. Respondent's demonstrated ability to provide schedule control, cost control and quality control for the specified herein. Provide information on experience with similar projects completed on-time and within budget.
3. Respondent's demonstrated ability and approach to handle the various tasks specified herein on a fast track or an expedited basis (e.g. staging work, extended hours, etc.), while minimizing the impact on adjacent businesses.

4. Respondent's demonstrated ability and experience in delivering similar projects successfully that have significant community and business involvement.
5. Respondent's demonstrated willingness to work with other consultants designated by the City.

4.14. **SELECTION**

A Selection Committee will evaluate all written submissions received and will establish a short list of no less than three (3) firms. The City may request additional information if deemed necessary for this evaluation. The Selection Committee will require each short-listed firm to be present for interviews. Upon the completion of the evaluation and interviews, the committee recommended rank will be presented to the City Commission for authorization to proceed with Phase II, Contract Negotiations. Additionally, the City Commission may choose to interview and rank short-listed firms. Phase II Contract Negotiations are to enter into a contract for CMAR services for preconstruction services. At some point prior to the commencement of construction for the Project, the City and CMAR will negotiate either a guaranteed maximum price or fixed price contract for the construction of the Project. The form of contract for construction will be determined during the preconstruction services phase of the Project. However, the City reserves the right to cease negotiations for the construction portion of the CMAR agreement at any time during the preconstruction services phase for any reason, including, but not limited to if the parties are unable to reach agreement on a contract or if the City otherwise decides not to proceed with the Project.

The City will enter into negotiations with the top ranked firm for preconstruction services. Should the City be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the City determines to be fair, competitive, and reasonable, negotiations with that firm will be formally terminated. The City shall then undertake negotiations with the second ranked firm. Failing accord with the second ranked firm, negotiations will be terminated. The City shall then undertake negotiations with the third ranked firm. Should the City be unable to negotiate a satisfactory contract with the third ranked firm, the City may terminate the negotiations and initiate a new Request for Qualifications process. At the conclusion of a successful negotiation with a firm, the contract will be submitted to the City Commission for approval.

## **SECTION 5 – TERMS AND GENERAL CONDITIONS**

- 5.1. The City reserves the right to accept or reject any or all submissions, request resubmissions and to enter into negotiations with Respondents as warranted. The City reserves the right to award a contract to those firms whose submissions are most advantageous to and in the best interest of the City. The City shall be the sole judge of which submission is in its best interest.
- 5.2. The City shall further reserve the right to waive and determine the nature of any minor irregularities. A minor irregularity is a variation from the Request for Statements of Qualifications, terms and conditions which do not constitute failure to substantially comply with requirements set forth in this request. A Respondent may not modify its statement after submission.
- 5.2.1 If at any time after the selection of the successful Respondent as the CMAR and prior to the commencement of construction, CMAR and the City are unable to reach agreement on a contract for the actual construction of the Project, the City reserves the right to cease negotiations with the CMAR for the construction of the Project without penalty,

### **5.3. Public Records**

- 1. Once opened by the City, a response to this Request for Statements of Qualifications is a public record under Chapter 119, Florida Statutes. The submission of any information to the City in connection with this RFQ shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to the Respondent, except that financial statements, if marked confidential, shall be exempt from public disclosure as provided by Fla. Stat. § 119.071.
- 2. Any Respondent awarded a contract under this Request for Statements of Qualifications will be required to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Respondent in conjunction with such contract.

### **5.4. Indemnification, Hold Harmless, Bond & Insurance Requirements**

#### **5.4.1 Indemnification and Hold Harmless Provisions**

Except for CMAR's indemnification obligations subject to Fla. Stat. §725.06, to the fullest extent permitted by laws and regulations, the Respondent who is awarded the solicitation shall defend, indemnify and hold harmless the City and its consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by any willful or negligent act or omission of Respondent, any 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, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

For CMAR's indemnification obligations subject to Fla. Stat. §725.06, to the fullest extent permitted by law, the Respondent who is awarded the solicitation shall indemnify and hold harmless the City, and its officers, directors, agents, members and employees (the "Indemnified Parties") from liability, damages, losses and costs, including, but not limited to, reasonable attorney's fees at the trial and appellate level, but only to the extent caused by any negligent, reckless, or intentionally wrongful act, omission or misconduct of the Respondent or any of the Respondent's subcontractors, consultants, agents, employees or others for whom the Respondent is responsible, (the "Indemnitor"), arising from Indemnitor's work on the Project. The City's contributory negligence shall only reduce, but not prevent, the Respondent's obligation to indemnify provided herein.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Respondent, 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

obligations in the above paragraphs shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Respondent or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

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

#### **5.4.2 Insurance Requirements – General Conditions**

Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Human Resources Department 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, upon receipt of the intent to award notification from the City and in any event, prior to commencing work, the Respondent shall procure, and provide the City with evidence of insurance coverage as required herein and by the terms of the contract and name the City as an Additional Insured on a primary and non-contributory basis. The Respondent 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 the required documentation to the Risk Management Division for review and approval.

#### **Respondent Requirements**

The Respondent 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 most recent edition of 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 Risk Management Division.

#### **Type of Coverage & Limit of Liability Requirement**

**Workers' Compensation and Employers Liability Insurance** covering all employees, subcontractors, and/or volunteers of the Respondent engaged in the performance of the scope of work associated with the contract. Regardless of the number of employees, any Respondent performing work for the City of Coral Gables must procure this coverage. 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 required limits of liability for this project:

Workers' Compensation - Coverage A  
Statutory Limits (as required by State of Florida Statutes §440 or Federal Act)

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

**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:

Each Occurrence Limit - \$1,000,000  
Fire Damage Limit (Damage to rented premises) - \$100,000  
Personal & Advertising Injury Limit - \$1,000,000  
General Aggregate Limit - \$5,000,000 (may be combined with an Excess/Umbrella policy)  
Products & Completed Operations Aggregate Limit - \$2,000,000

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

Combined Single Limit (Each Accident) - \$1,000,000

**Minimum Coverage Form (Shall be at least as broad as the most recent edition of):**

**Workers Compensation**

The standard coverage form approved by the State of Jurisdiction

**Commercial General Liability**

As a minimum standard, an unendorsed ISO (Insurance Services Office, Inc.) Commercial General Liability coverage form (CG 0001) or its equivalent. A "Claims made" form is unacceptable except for professional or environmental liability.

**Commercial Auto Liability**

As a minimum standard, an unendorsed ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage form (CA 0001) or its equivalent.

**Copies of Endorsements providing the following coverage to the City of Coral Gables meeting the minimum coverage criteria standards must be provided along with the standard Certificate of Insurance:**

1. Additional insured status for Commercial General Liability and Business Automobile Liability providing coverage on a primary & non-contributory basis, including the exposure of Products and Completed Operations beyond the time period when operations are completed. Coverage cannot be restricted to specific designated premises or be restricted to sole negligence.
2. Waiver of Subrogation on all requested coverages ~~except for Professional Liability~~
3. Every effort must be made to have all insurance policies endorsed so that Notice of Cancellation, and/or Material Change to the policy are sent directly to the City of Coral Gables by the Insurance Company. The City only requires that the same statutory notice of cancellation or material change that is provided to the first named insured by the insurance company is also provided to the City of Coral Gables. Should the insurance company refuse to provide such notice, it will be the responsibility of the Respondent to immediately provide said notice of cancellation or material change to the City of Coral Gables Risk Management Division by receipted deliver within in 48 hours of receipt of said notice.
4. Notices of Cancellation, and/or Material Change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
PO BOX 12010-CE  
HEMET, CA 92546-8010

**Required Endorsements Minimum Standard (Shall be at least as broad as the most recent edition date of):**

**Commercial General Liability – Additional Insured Coverage**

As a minimum standard, an ISO (Insurance Services Office, Inc.) (CG 20 10) in conjunction with the (CG 20 37) or their combined equivalents.

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

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.

**The City reserves the right to require additional insurance requirements at any time during the Project or during contract negotiation.**

**How to Evidence Coverage to the City**

Upon receipt of the intent to award notice from the City, Respondent shall provide all documents evidencing insurance to City of Coral Gables – Insurance Compliance and all documents shall be sent via email to [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com) with a copy to [druiz@coralgables.com](mailto:druiz@coralgables.com). Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables – Insurance Compliance at (951) 652-2883.

The Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables  
Insurance Compliance  
PO Box 12010 –CE  
Hemet, CA 92546-8010

The following required documents must be provided to the City;

1. A Certificate of Insurance containing the following information:

Issued to the entity contracting with the City  
Evidencing the appropriate Coverage  
Evidencing the required Limits of Liability required  
Evidencing that coverage is currently in force

2. A copy of each endorsement extending the coverage provided by the insurance policy evidenced to the City.

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

Respondents 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.

Should any of the indemnification and/or insurance provisions above not be complied with by the Respondent, it will be considered an immediate material breach of the contract with the City and the City will be entitled to any and all available remedies.

**5.4.3 Bond Requirements.** The successful Respondent must provide payment and performance bonds consistent with Fla. Stat. §255.05 and on forms provided by the City guaranteeing CMAR's obligations for construction of the Project in the full amount of the contract for construction of the Project.

**5.5** The successful Respondent will be expected to negotiate a contract (with multiple parts) encompassing CMAR's preconstruction and construction phase services for the Project. The precise form and substance of which will be negotiated between the successful Respondent and the City. However, the Respondent shall be expected to execute a contract containing the City's general terms and conditions as included in the form agreement provided as part of this RFQ as **Schedule "L"**.



## CITY OF CORAL GABLES REQUIRED COVER SHEET & CHECK LIST WHEN EVIDENCING INSURANCE

This check list was developed to identify the documents required when an entity and/or an individual is evidencing insurance to the City. All applicable boxes must be checked. This form, and other related insurance documents are available @ [www.coralgables.com](http://www.coralgables.com). Under City Departments tab, click on Human Resources, then the Risk Management Division Page.

**◀◀◀ THIS FORM MUST BE SUBMITTED WHEN EVIDENCING INSURANCE TO THE CITY ▶▶▶▶**

Full Legal Name (as shown on the agreement or permit with the City):	
City Department (that you are working with or that is issuing a permit):	
City Employee (contract manager or employee issuing permit):	
The name & phone # of the individual who completed this check list:	
The date this check list was completed in its entirety:	

☐ **A Certificate of Insurance is attached and the following information is contained therein:**

- ☐ The named insured listed on the Certificate of Insurance exactly matches the name of the individual and/or entity that is required to evidence insurance to the City.
- ☐ The Certificate Holder section of the Certificate of Insurance reads as follows:  
City of Coral Gables • Insurance Compliance  
PO Box 12010 - CE • Hemet, CA 92546-8010
- ☐ The special provisions section of the Certificate of Insurance contains language affirming that;
  - 1) Endorsements have been issued to all required insurance policies naming the City of Coral Gables as an additional insured on a primary and non-contributory basis (except workers compensation & professional liability insurance) and;
  - 2) That all policies evidenced to the City contain a waiver of subrogation endorsement and;
  - 3) That all policies have been endorsed to ensure that the City receives the same Florida statutorily required notice of cancellation that an insurance company provides the first named insured of the policy.

**IF COVERAGE IS REQUIRED FOR THE LINES OF INSURANCE BELOW, THEN THE DOCUMENTS LISTED MUST ALSO BE ATTACHED TO THE CERTIFICATE OF INSURANCE EVIDENCED TO THE CITY**

☐ **Copies of the following Commercial General Liability Endorsements (or a copy of the section of the insurance policy that provides this coverage) are attached to this check list:**

- ☐ Endorsement (or a copy of the policy) naming the City of Coral Gables as an Additional Insured on a Primary and Non-Contributory Basis.
- ☐ Waiver of Subrogation Endorsement (or a copy of the policy) in favor of the City.
- ☐ Endorsement providing the City with the same Florida statutorily required notice of cancellation that an insurance company provides the first named insured of the policy.

☐ **Copies of the following Automobile Liability Endorsements (or a copy of the section of the insurance policy that provides this coverage) are attached to this check list:**

- ☐ Endorsement (or a copy of the policy) naming the City of Coral Gables as an Additional Insured on a Primary and Non-Contributory Basis.
- ☐ Waiver of Subrogation Endorsement (or a copy of the policy) in favor of the City.
- ☐ Endorsement providing the City with the same Florida statutorily required notice of cancellation that an insurance company provides the first named insured of the policy.

☐ **Copies of the following Workers Compensation Endorsements (or a copy of the section of the insurance policy that provides this coverage) are attached to this check list:**

- ☐ Waiver of Subrogation Endorsement (or a copy of the policy) in favor of the City.
- ☐ Endorsement providing the City with the same Florida statutorily required notice of cancellation that an insurance company provides the first named insured of the policy.

**SECTION 6**  
**RFQ SUBMISSION CHECK LIST**

COMPANY NAME: (Please Print): \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**-- NOTICE --**

BEFORE SUBMITTING YOUR RFQ, MAKE SURE YOU...

- ☐ 1. **Carefully read Section 4.21, Respondent Organization, of the RFQ, and provide the page number in the blanks provided where compliance information is located in your Qualification Statement for each of the required submittal items.**
- ☐ 2. Carefully read the SPECIFICATIONS/SCOPE OF WORK and then properly fill out the RFQ SHEET and CERTIFICATION PAGE (Schedule "A").
- ☐ 3. Fill out and sign the NON-COLLUSION AFFIDAVIT (Schedule "B") and have it properly notarized.
- ☐ 4. Sign the VENDOR DRUG FREE STATEMENT (Schedule "C").
- ☐ 5. Complete, sign and have notarized RESPONDENT'S QUALIFICATIONS STATEMENT (Schedule "D").
- ☐ 6. Complete STATEMENT OF NO RESPONSE (Schedule "G") if applicable.
- ☐ 7. Sign and return **first page** acknowledging CODE OF ETHICS, CONFLICT OF INTEREST AND CONE OF SILENCE (Schedule "H").
- ☐ 8. Complete, sign and have notarized American with Disabilities Act (ADA) Non-Discrimination Statement (Schedule "I").
- ☐ 9. Complete, sign and have notarized the Sworn Statement Pursuant to Section 287.133 (3) (a), Florida Statutes, On Public Entity Crimes (Schedule "J").
- ☐ 10. Complete and submit Acknowledgement of Addenda (Schedule "K") if applicable.
- ☐ 11. Complete, sign and have notarized LOBBYIST forms (if applicable). Forms available at [www.coralgables.com](http://www.coralgables.com), City Clerk
- ☐ 12. Complete and submit STANDARD FORM 330, Architect-Engineer Qualifications.
- ☐ 13. Clearly mark the RFQ NUMBER AND RFQ NAME on the outside of your envelope.
- ☐ 14. Submit ONE ORIGINAL and FOUR PHOTOCOPIES with ONE disk or memory stick in PDF format of your RFQ.
- ☐ 15. Make sure your RFQ is submitted prior to the deadline. Late RFQs will not be accepted.
- ☐ 16. Include Bond if applicable.

FAILURE TO PROVIDE THE REQUESTED SCHEDULES MAY RESULT IN YOUR RFQ BEING DEEMED NON-RESPONSIVE. THIS PAGE ALONG WITH SCHEDULES "A" THRU "K" ARE TO BE RETURNED WITH YOUR RFQ (DRAW A LINE ACROSS A FORM WHICH IS NOT APPLICABLE).



**SCHEDULE "A"**  
**CITY OF CORAL GABLES**

**CERTIFICATE OF CONSULTANT**

I hereby certify that I am \_\_\_\_\_ and a duly authorized representative of the firm  
\_\_\_\_\_, whose address is \_\_\_\_\_,  
and that neither I, nor the above firm, I here represent has:

- a. employed or retained for a commission, percentage brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this contract.
- b. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- c. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the City of Coral Gables, and is subject to applicable Local, State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Consultant (signature)

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Federal Employer I.D.

**SCHEDULE "B"**  
**CITY OF CORAL GABLES**

**NON-COLLUSION AND CONTINGENT FEE AFFIDAVIT**

This affidavit is to be filled in, executed and notarized by the Consultant. If the Response is made by a Corporation, then it should be executed by its Chief Officer. This document MUST be submitted with the Response.

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that  
(Type or print name of person who is signing below)

1. He/she is the \_\_\_\_\_  
(Owner, Partner, Officer, Representative or Agent)  
of the Consultant that has submitted the attached Response.
2. He/she is fully informed with respect to the preparation and contents of the attached Response and of all pertinent circumstances respecting such Response;
3. Said Response is made without any connection or common interest in the profits with any other persons making any Response to this solicitation. Said Response is on our part in all respects fair and without collusion or fraud. No head of any department, any employee or any officer of the City of Coral Gables is directly or indirectly interested therein. If any relatives of Consultant's officers or employees are employed by the City, indicate name and relationship below.

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

1. No lobbyist or other consultant is to be paid on a contingent or percentage fee basis in connection with the award of this Contract.

Company Name: \_\_\_\_\_

Consultant's Authorized Signature: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_ (Print, Type or Stamp name of Notary Public)

Personally known \_\_\_\_\_ or Produced I.D. \_\_\_\_\_

Type and number of I.D. Produced: \_\_\_\_\_

\_\_\_\_\_ Did take an oath, or \_\_\_\_\_ Did not take an oath

**SCHEDULE "C"**  
**CITY OF CORAL GABLES**

**VENDOR DRUG-FREE STATEMENT**

Preference may be given to vendors submitting a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and becomes effective January 1, 1991. The special condition is as follows:

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

I hereby certify that the company submitting this solicitation has established a Drug Free work place program in accordance with Sate Statute 287.087

---

VENDOR'S SIGNATURE

---

COMPANY'S NAME

**SCHEDULE "D"**  
**CITY OF CORAL GABLES**

**CONSULTANT'S QUALIFICATION STATEMENT**

The undersigned certifies under oath the truth and correctness of all statements and all answers to questions made hereinafter:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip Code

Telephone No: (\_\_\_\_) \_\_\_\_\_ Fax No: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

How many years has your organization been in business under its present name? \_\_\_\_\_ Years

If Consultant is operating under Fictitious Name, submit evidence of compliance with Florida Fictitious Name Statue: \_\_\_\_\_

Under what former names has your business operated? : \_\_\_\_\_

At what address was that business located? \_\_\_\_\_

Are You Certified? Yes \_\_\_\_\_ No \_\_\_\_\_ If Yes, **ATTACH COPY** of Certification.

Are You Licensed? Yes \_\_\_\_\_ No \_\_\_\_\_ If Yes, **ATTACH COPY** of License

Has your company or its senior officers ever declared bankruptcy?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain: \_\_\_\_\_

Please identify each incident within the last five (5) years where (a) a civil, criminal, administrative, other similar proceeding was filed or is pending, if such proceeding arises from or is a dispute concerning the Consultant's rights, remedies or duties under a contract for the same or similar type services to be provided under this RFQ;

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

Have you ever been debarred or suspended from doing business with any government entity?

Yes \_\_\_\_ No \_\_\_\_ If Yes, explain \_\_\_\_\_

Signature of party authorized to sign on behalf of firm.

**SCHEDULE "D" (Continued)**  
**CITY OF CORAL GABLES**

**CONSULTANT'S QUALIFICATION STATEMENT**

\_\_\_\_\_  
Print or type name of person signing

\_\_\_\_\_  
Title of person signing

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
*(Print, Type or Stamp name of Notary Public)*

Personally known \_\_\_\_\_ or Produced I.D. \_\_\_\_\_

Type and number of I.D. Produced:

\_\_\_\_\_  
\_\_\_\_\_ Did take an oath, or \_\_\_\_\_ Did not take an oath

Please attach additional sheets if a more comprehensive explanation is desired.

**SCHEDULE "G"**  
**CITY OF CORAL GABLES**

**STATEMENT OF NO-RESPONSE**

NOTE: If you do not intend to propose on this RFQ, please return this form immediately. Failure to return this form may result in your name being removed from the list of qualified Respondents for the City of Coral Gables. Please indicate Statement of Qualifications name and number on the outside of the envelope.

MAIL TO:       CITY OF CORAL GABLES  
                  2800 S.W. 72nd AVENUE  
                  MIAMI, FL 33155  
                  ATTN: CHIEF PROCUREMENT OFFICER

We, the undersigned have declined to respond for the following reason:

\_\_\_\_\_ Insufficient time to respond to the Request from Statement of Qualifications.

\_\_\_\_\_ We do not offer these services or an equivalent.

\_\_\_\_\_ Our schedule would not permit us to perform.

\_\_\_\_\_ Unable to meet specifications.

\_\_\_\_\_ Unable to meet Bond requirements.

\_\_\_\_\_ Specifications unclear (explain below).

\_\_\_\_\_ Unable to meet insurance requirements.

\_\_\_\_\_ Other (specify below).

REMARKS:

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COMPANY NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

**SCHEDULE "H"**  
**CITY OF CORAL GABLES**

**CODE OF ETHICS AND CONFLICT OF INTEREST**

**CONE OF SILENCE**

THIS FORM MUST BE COMPLETED BY PERSON RECEIVING THIS BOOKLET AND INCLUDED IN YOUR SUBMITTAL, AS REQUIRED BY CITY OF CORAL GABLES SECTIONS 2-1055 AND 2-1059.

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**CODE OF ETHICS AND CONFLICT OF INTEREST**  
**CONE OF SILENCE**

---

IS HEREBY ACKNOWLEDGED

Printed Name: \_\_\_\_\_

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

Board/Position/Department: \_\_\_\_\_

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

---

**Sec. 2-1055. Ethics**

Any attempt by city employees to realize personal gain by conduct inconsistent with proper discharge of their duties is a breach of public trust. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this division is also a breach of ethical standards. The provisions of city ordinances, county ordinances, and state statutes shall be strictly enforced to preserve the public trust.

**Sec. 2-1056. Prohibition on transacting business with the city**

No commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee shall enter into any contract or transact any business in which that person or a member of the immediate family has a financial interest, direct or indirect with the board or committee of the City of Coral Gables on which that person serves, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Willful violations of this subsection shall constitute malfeasance in office and shall affect forfeiture of office or position. Nothing in this subsection shall prohibit or make illegal (1) the payment of taxes, special assessments or fees for services provided by the city government; (2) the purchase of bonds, anticipation notes or other securities that may be issued by the city through underwriters or directly from time to time. This provision shall not apply to boards and committees which have been exempted by the city commission from the requirement of the city's ethic code.

- (1) *Waiver of prohibition.* The requirements of this subsection may be waived for a particular transaction only by four affirmative votes of the city commission after public hearing upon finding that:
  - a. An open-to-all sealed competitive proposal has been submitted by the offeror; or
  - b. The proposal has been submitted by a person or firm offering services within the scope of the practice of architecture, professional engineering, or registered land surveying, as defined by the laws of the State of Florida and pursuant to the provisions of the Consultants' Competitive Negotiation Act, and when the proposal has been submitted by an offeror defined above; or
  - c. The property or services to be involved in the proposed transaction are unique and the city cannot avail itself of such property or services without entering a transaction which would violate this subsection but for waiver of its requirements; or
  - d. That the property or services to be involved in the proposed transaction are being offered to the city at a cost of no more than 80 percent of fair market value based on a certified appraisal paid for by the offeror; and
  - e. That the proposed transaction will be in the best interest of the city. Such findings shall be spread on the minutes of the commission. This subsection shall be applicable only to prospective transactions, and the city commission may in no case ratify a transaction entered in violation of this subsection.
- (2) *Provisions cumulative.* This subsection shall be taken to be cumulative and shall not be construed to amend or repeal any other law pertaining to the same subject matter.

**Sec. 2-1057. Further prohibition on transacting business with the city**

No commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which that person or any member of the immediate family has a controlling financial interest, direct or indirect, with the city board or committee on which they serve, or with any person or agency acting for the city board or committee, and any such contract, agreement or business engagement entered in violation of this subsection shall render the transaction voidable. Waiver of this section may only be obtained by following the provisions of section 2-1056.

Additionally, no commission member shall vote on or participate in any way in any matter presented to the city commission if that person has any of the following relationships with any persons or entities which would be or might be directly or indirectly affected by any action of the city commission: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the commission member in a manner distinct from the manner in which it would affect the public generally. Any commission member who has any of the specified relationships or who would or might, directly or indirectly, realize a profit by



the action of the city commission shall not vote on or participate in any way in the matter.

**Sec. 2-1058. Compulsory disclosure by employees of firms doing business with the city**

Should any commissioner, appointed official, member of an advisory board or committee, member of a quasi-judicial board or committee, or employee be employed, by a corporation, firm, partnership or business entity in which that person or the immediate family does not have a controlling financial interest, and should the corporation, firm, partnership or business entity have substantial business commitments to or from the city or any city agency, or be subject to direct regulation by the city or a city agency, then the person shall file a sworn statement disclosing such employment and interest with the clerk of the City within 15 days after the person has actual or constructive notice of the relationship.

## CONE OF SILENCE (Revised 11-17-2009)

### Sec. 2-1059. Cone of Silence; contracts for the provision of goods and services.

The requirements of section 2-11.1(t) ("Cone of Silence Ordinances") of the Code of Miami-Dade County, Florida, as amended, shall not be applicable to the City of Coral Gables.

- (1) *Purpose and intent.* It is the intent of this article to prevent city commissioners, potential vendors, bidders, offerors or service providers from communicating with city department directors, their staff or selection and evaluation committee members during the period of time in which the cone of silence is imposed on the request for proposals (RFP), request for qualifications (RFQ), or invitations for bids (IFB).
- (2) *Cone of silence* is defined to mean a prohibition on:
  - a. 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 directors, their staff, selection committee or evaluation committee members;
  - b. 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 directors, the city departments' staff, selection committee or evaluation committee members.
- (3) *Applicability.*
  - a. The cone of silence shall be applicable only to contracts for the provision of supplies, services and construction for amounts greater than \$25,000.00.
  - b. The cone of silence shall not apply to:
    1. Informal bids as defined in the procurement code;
    2. Emergency purchases of supplies, services or construction;
    3. Duly noticed pre-bid or pre-proposal conferences;
    4. Duly noticed site visits;
    5. Sole source procurements;
    6. Bid waivers;
    7. Oral presentations during duly noticed meetings;
    8. Competitive negotiations;
    9. Public presentations made to the city commission during any duly noticed public meeting;
    10. Contract negotiations and electronic commerce;
    11. Inquiries by the city commissioners or third parties to the city manager or assistant city managers to determine responsibility or responsiveness of bidders/offerors regarding a particular solicitation, or with regard to the process;
    12. Written communications with the chief procurement officer or staff responsible for administering the procurement process for a particular solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation;
    13. Communications with the city attorney, **city manager or chief procurement officer**;
    14. Communications between a city commissioner, the city manager, assistant city managers, the city clerk and the city attorney;
    15. Communications between a city commissioner, the city manager, assistant city managers, the city clerk, the city attorney and potential offeror, vendors, service providers, lobbyists or consultants;
- (4) *Procedure.*
  - a. *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. At the time of imposition of the cone of silence, the city manager shall provide public notice of the cone of silence and shall advise the affected department(s) in writing. The affected departments includes, but is not limited to, selection committee members, user departments, department directors, city attorney, city manager, assistant city manager(s), and the city commission.

- b. *Termination.* Except as otherwise provided herein, the cone of silence shall terminate at the time of the city manager's approval of the award, or the city manager's written recommendation to the city commission, as may be applicable, is received by the city clerk, or at such time that bids or proposals are rejected by the city commission or the city manager; provided, however, that if the commission refers the city manager's recommendation back to the city manager or staff for further review, the cone of silence shall be re-imposed until such time as the city manager's subsequent written recommendation is received by the city clerk.
- (5) *Penalties.* Violation of the cone of silence by a particular bidder or offeror shall render any award to said person voidable by the city commission. In addition to any other penalty provided by law, violation of any provision of this ordinance by a city employee shall subject said employee to disciplinary action up to and including dismissal. Any person who violates a provision of this ordinance shall be prohibited from serving on a city competitive selection or evaluation committee unless such appointment is approved by a four-fifths vote of 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.

**SCHEDULE "I"**  
**CITY OF CORAL GABLES**

**AMERICANS WITH DISABILITIES ACT (ADA)**

**DISABILITY NONDISCRIMINATION STATEMENT**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

This sworn statement is submitted \_\_\_\_\_  
(print name of public entity)

by \_\_\_\_\_  
(print individual's name and title)

for \_\_\_\_\_  
(print name of entity submitting sworn statement)

whose business address is: \_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) \_\_\_\_\_

(If the entity has not FEIN, include Social Security Number of the individual signing this sworn statement:

\_\_\_\_\_

I, being duly first sworn state:

That the above named firm, corporation or organization is in compliance with and agreed to continue to comply with, and assure that any sub-contractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and service, transportation, communications, access to facilities, renovations, and new construction.

The American with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 U.S.C. 12101,12213 and 47 U.S.C. Sections 225 and 661 including Title I, Employment; Title 11, Public Services; Title III, Public Accommodations and Services Operated by Private Entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions.

The Florida Americans with Disabilities Accessibility Implementation Act of 1993, Sections 5553.501-553.513, Florida Statutes

The Rehabilitation Act of 1973, 229 U.S.C. Section 794

The Federal Transit Act, as amended, 49 U.S.C. Section 1612

The Fair Housing Act as amended, 42 U.S.C. Section 3601-3631

**SCHEDULE "J"**  
**CITY OF CORAL GABLES**

**SWORN STATEMENT PURSUANT TO SECTION 287.133 (3) (a),**  
**FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to \_\_\_\_\_  
[print name of the public entity]
- by \_\_\_\_\_  
[print individual's name and title]
- for \_\_\_\_\_  
[print name of entity submitting sworn statement]

Whose business address is: \_\_\_\_\_  
\_\_\_\_\_

and (if applicable) its Federal Employer Identification Number (FEIN) \_\_\_\_\_

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:

\_\_\_\_\_

2. I understand that a "public entity crime" as define in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any Proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural

person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which Proposals or applies to Proposal on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **[indicate which statement applies.]**

\_\_\_\_Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_\_The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list.

***[attach a copy of the final order]***

**I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.**

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**[signature]**

**SCHEDULE "K"**  
**CITY OF CORAL GABLES**

**Acknowledgement of Addenda**

**Request for Qualification (RFQ) No 2014.00.00**

**SUBMITTED TO:**

City of Coral Gables  
Office of the Chief Procurement Officer  
2800 SW 72 Avenue  
Miami, Florida 33155

1. The undersigned agrees, if this RFQ is accepted, to enter in a Contract with the CITY to perform and furnish all work as specified or indicated in the RFQ and Contract Documents within the Contract time indicated in the RFQ and in accordance with the other terms and conditions of the solicitation and contract documents.
2. The Addenda issued may be downloaded on-line by visiting [www.coralgables.com](http://www.coralgables.com), "Open Bid Invitation".
3. Acknowledgement is hereby made of the following Addenda, if any (identified by number) received since issuance of the Request for Qualification.

Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____
Addendum No. _____ Date _____	Addendum No. _____ Date _____

4. Company Legal name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone No./Fax No.: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Signature \_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name and Sign)

**SECTION 7 - AGREEMENT FORM**  
**FOR INFORMATIONAL PURPOSES ONLY**

**AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 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 \_\_\_\_\_, (hereinafter referred to as "CONTRACTOR") (License # \_\_\_\_\_), having its principal office at: \_\_\_\_\_ for the [insert project name] \_\_\_\_\_ at \_\_\_\_\_ (hereinafter the "Property"), in accordance with the Contract Documents, as hereinafter defined.

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 proposals from qualified Contractors pursuant to City RFQ No. \_\_\_\_\_, which RFQ is incorporated into this Agreement by reference and made a part hereof (the "RFQ"), and the Contractor submitted a response to the RFQ dated \_\_\_\_\_, which Response is incorporated into this Agreement as part of Exhibit "A" and made a part hereof.

**W I T N E S S E T H**

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 RFQ No. \_\_\_\_\_, dated \_\_\_\_\_, and the Contractor's Response to the RFQ, 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"; and
- 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 defined in Paragraph 9.8 of 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:

[Describe Work]

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 later of the execution of this Agreement or the issuance by the City of a Notice to Proceed, and shall be Substantially Completed no later than \_\_\_\_\_ calendar days ("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 \_\_\_\_\_ Dollars, 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 bid 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 RFQ.

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 9.8 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 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 "H". 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.

6.2 **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: (i) 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 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 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 Engineer, the Project Manager, any City Employee or Agent of the City;
- (d) Claims based upon an alleged waiver of any of the terms of this Agreement. 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.**

Except for Contractor's indemnification obligations subject to Fla. Stat. §725.06, to the fullest extent permitted by Laws and Regulations, Contractor shall defend, indemnify and hold harmless the City and its consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work or this Agreement and caused in whole or in part by any willful or negligent act or omission of Contractor, any subcontractor, supplier, subsubcontractor, 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, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

For Contractor's indemnification obligations subject to Fla. Stat. §725.06, Contractor shall defend, indemnify and hold harmless the City, and its officers, directors, agents, members and employees (the "Indemnified Parties") from liability, damages, losses and costs, including, but not limited to, reasonable attorney's fees at the trial and appellate level, but only to the extent caused by any negligent, reckless, or intentionally wrongful act, omission or misconduct of the Contractor, any subcontractor, supplier, subsubcontractor, 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 "Indemnitor"), arising from Indemnitor's work on the Project. The City's contributory negligence shall only reduce, but not prevent, the Respondent's obligation to indemnify provided herein.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Respondent, 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 obligations in the above paragraphs shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, sub-subcontractor, subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification obligations comply with Section 725.06 (Chapter 725), Florida Statutes. 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 The indemnification and hold harmless obligations of Article 9.12. 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 RFQ. 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. The Surety's responsibility under this Section is further governed by Article 14 ("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.

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 19.2 ("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 RFQ, 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 proposal.

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 Chief 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**

11.1 The project duration shall be \_\_\_\_\_ calendar days from the Notice to Proceed to substantial completion.

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 RFQ 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 \_\_\_\_\_ 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**

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.

## **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 RFQ), 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.
- 13.1.2 **Commercial Umbrella/Excess Liability**. Contractor agrees to provide and maintain either a Commercial Umbrella or Excess Liability Policy (Excess Following Form/True Excess Following Form/True Umbrella) at a limit of

liability not less than \$\_\_\_\_\_ Each Occurrence \$\_\_\_\_\_ annual Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the City is automatically defined as an Additional Protected Person/Entity. The Contractor agrees any Self-Insured-Retention or deductible shall not exceed \$25,000.

- 13.1.3 **Pollution Liability**. Contractor hereby agrees to maintain Pollution Legal & Remediation Liability coverage at a minimum limit not less than One Million (\$1,000,000) Dollars per occurrence and per annual aggregate providing coverage for damages against, but not limited to, third party liability, environmental clean-up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of \$10,000, the City reserves the right to review and request a copy of the Contractor's most recent annual report or audited financial statements. This coverage shall be endorsed to include the "City of Coral Gables" as an Additional Insured.
- 13.1.4 **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.
- 13.1.5 **Professional Liability** Contractor agrees to provide and maintain Professional Liability Insurance with a limit of liability not less than One Million (\$1,000,000) Dollars per claim, with a deductible per claim not to exceed 5% of the limit of liability providing for all sums which the Contractor shall become legally obligated to pay as damages for claims arising out of the services performed by the Contractor or any person employed in connection with this agreement. Contractor shall maintain Professional Liability coverage for at least ten (10) years after completion of the work.

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.

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. The City shall be named as an Additional Insured and Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

13.4 **Builders Risk** Unless otherwise provided, the Contractor shall purchase and maintain, with a company or companies lawfully authorized to do business in the State of Florida, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, comprising of the total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of the City, Contractor and Subcontractors on the Project. The Contractor shall be solely responsible for any deductibles under the builders risk insurance and under all other insurance required by Article 13. The policy must be endorsed to provide that the builder's risk will continue to apply until final acceptance of the building(s) or additions by the City. The policy must be endorsed to provide the City at least forty five (45) days notice of any cancellation and/or restriction.

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. Additionally, the Contractor agrees to endorse the City as an Additional Insured under the Commercial Umbrella/Excess Liability, and Builder's Risk Insurance when it is required coverage. 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.

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 City is endorsed as an Additional Insured on the Builder's Risk.
6. Clearly indicate the project name and project number.
7. Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
8. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
9. Clearly indicated Certificate Holder(s) as follows:

Original to:

Copy to:

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

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

10. Clearly indicate a Waiver of Subrogation for Commercial General Liability, Commercial Umbrella/Excess Liability, Pollution Liability and Auto Liability.
11. 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 RFQ 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 Obligatee. 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 21 ("Resolution of Disputes").

## **ARTICLE 18**

### **TERMINATION BY THE CONTRACTOR**

18.1 If the Engineer fails to issue a Certificate of Payment for a period of thirty (30) days through no fault of the Contractor and there are no deficiencies with the Application for Payment as set forth in Paragraph 5.2.1, or if the City fails to make undisputed payment for a period of thirty (30) days from the date that the Engineer has certified payment, the Contractor may, after fourteen (14) calendar days' written notice to the City and the Project Manager, terminate this Agreement and

recover from the City payment 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, but which sum shall never exceed the Contract Sum, less payments made, less the cost to complete any remaining Work, less the cost to correct any damaged, defective, or non-conforming Work, and any setoffs to which the City is entitled under this Agreement. This sum shall be Contractor's sole remedy under this Agreement.

## **ARTICLE 19**

### **TERMINATION BY THE CITY**

19.1 **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 19.2 below.

19.2 **Termination for Convenience.** The City may also terminate this Agreement for the City's convenience and without cause upon ten (10) 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 20**

### **WAIVER OF CONSEQUENTIAL DAMAGES**

20.1 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 21**

### **RESOLUTION OF DISPUTES; GOVERNING LAW AND VENUE**

21.1 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 2-953 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.

21.2 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.

21.3 **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 22**

### **WAIVER OF TRIAL BY JURY**

22.1 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 23**

#### **SUCCESSORS AND ASSIGNS**

23.1 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 24**

#### **MODIFICATION**

24.1 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 25**

#### **RIGHTS AND REMEDIES**

25.1 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 26**

#### **SEVERABILITY AND WAIVER**

26.1 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 27**

### **INDEPENDENT CONTRACTOR & COMPLIANCE WITH LAWS**

27.1 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.

27.2 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 commissioners, 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. Additionally, Contractor agrees and warrants that it shall comply with any and all applicable federal and state laws and regulations.

## **ARTICLE 28**

### **ENTIRETY OF AGREEMENT**

28.1 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 29**

### **WRITTEN NOTICE**

29.1 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:  
Michael P. Pounds  
Chief Procurement Officer  
2800 S.W. 72 Ave.  
Miami, Florida 33155

For Project Manager:  
Glenn Kephart  
Director Public Works  
City of Coral Gables  
2800 S.W. 72<sup>nd</sup> Ave.  
Miami, Florida 33155

For Engineer:

**WRITTEN NOTICE PURSUANT TO ARTICLE 18 & ARTICLE 19:**

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:

\_\_\_\_\_  
Name: David Ruiz  
Risk Management Division

CITY OF CORAL GABLES:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Insurance:

\_\_\_\_\_  
Name: David Ruiz  
Risk Management Division

Approved as to form and  
Legal sufficiency:

\_\_\_\_\_  
Name: Craig E. Leen  
City Attorney

Approved by  
Department Director or head of  
Negotiations team as to  
The negotiated business terms:

Approved as to Funds Appropriation:

\_\_\_\_\_  
Name: Glen Kephart  
Public Works Director

\_\_\_\_\_  
Name: Diana Gomez  
Financial Officer

Approved as to compliance with  
Procurement Code:

\_\_\_\_\_  
Name: Michael P. Pounds  
Chief Procurement Officer

ATTEST:

CONTRACTOR:

WITNESSES (2)

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

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT "A"**

**PROJECT MANUAL, BID SPECIFICATIONS, AND SUPPLEMENTARY**  
**CONDITIONS OF RFQ. No. \_\_\_\_\_,**  
**DATED \_\_\_\_\_**

**EXHIBIT "B"**

**PROJECT DRAWINGS AND PLANS**



**EXHIBIT “C”**

**CONTRACTOR'S CERTIFICATE OF INSURANCE**  
**AND ENDORSEMENTS**

**EXHIBIT "D"**

**CONTRACTOR'S PAYMENT AND PERFORMANCE BONDS**

BOND NO: \_\_\_\_\_

**FORM OF PAYMENT BOND**

BY THIS BOND, We \_\_\_\_\_,  
as Principal, hereinafter called CONTRACTOR, and \_\_\_\_\_,  
as Surety, are bound to the City of Coral Gables, Florida, as Obligee, hereinafter called CITY; in  
the amount of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs,  
executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement entered into a Construction Contract,  
Bid/Contract No.: \_\_\_\_\_ awarded the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, with the CITY which is by reference incorporated herein and made a part hereof, and  
specifically includes provision for liquidated damages and other damages;

THE CONDITION OF THIS BOND is that if CONTRACTOR:

1. Pays CITY all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that CITY sustains because of default by CONTRACTOR under the Construction Contract; and
2. Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by CONTRACTOR in the performance of the Construction Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with CONTRACTOR and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to CONTRACTOR a notice that he intends to look to the bond for protection.

- 2.2. A claimant who is not in privity with CONTRACTOR and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to CONTRACTOR and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against CONTRACTOR or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Construction Contract or the changes does not affect the Surety's obligation under this Bond.

## DEFINITIONS

Construction Contract: For purposes of this Bond, the Construction Contract is the entire integrated agreement between the City and the Contractor, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
(Secretary)

CONTRACTOR

\_\_\_\_\_  
(Name of Corporation)

By: \_\_\_\_\_  
(Signature)

CORPORATE SEAL

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

IN THE PRESENCE OF:

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

INSURANCE COMPANY:

By: \_\_\_\_\_

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

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City, State and Zip Code)

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

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bonds; that \_\_\_\_\_, who signed the Bond(s) on behalf of the Principal, was then \_\_\_\_\_ of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

Secretary (on behalf of)

(SEAL)

Corporation

STATE OF FLORIDA )  
 ) SS  
COUNTY OF MIAMI-DADE )

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared \_\_\_\_\_ to me well known or who has provided \_\_\_\_\_ as identification, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond(s) on behalf of CONTRACTOR named therein in favor of CITY.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires:

Notary Public, State of Florida

Bonded

By: \_\_\_\_\_

PERFORMANCE BOND

BOND NO: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_ a Corporation, as Principal (hereinafter called Contractor), whose principal business address and telephone number is \_\_\_\_\_ and \_\_\_\_\_ organized and existing under and virtue of the laws of the State of Florida, as Surety (hereinafter called Surety), and authorized to transact business within the State of Florida, whose principal business address and telephone number is \_\_\_\_\_, are held and firmly bound unto the City of Coral Gables, a Municipality of the State of Florida, as OBLIGEE (hereinafter called the City), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which, well and truly be made to the City, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents as follows:

WHEREAS, the CONTRACTOR has executed and entered into a Construction Contract, Bid/Contract No: \_\_\_\_\_, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with CITY, which is by reference incorporated herein and made a part of this Bond as fully and completely as if set forth herein;

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT IF CONTRACTOR:

1. In all respects fully, promptly and faithfully complies with the terms and conditions of the Construction Contract for the construction of \_\_\_\_\_; and
2. Indemnifies and saves harmless the above CITY against and from all costs, expenses, damages including liquidated damages, attorney's fees, including appellate proceedings, injury, or loss to which said CITY may be subject by reason of any wrong doing, misconduct, want of care or skill, negligence, failure to complete within the prescribed time, failure to petition within the prescribed time, or default, including patent infringements, on the part of said CONTRACTOR, its agents or employees, in the execution or performance of said Construction Contract; and
3. Performs the guarantee and warranty of all work and materials furnished under the Construction Contract for the time specified in the Construction Contract;

THEN THIS BOND IS VOID; OTHERWISE IT WILL REMAIN IN FULL FORCE AND EFFECT for the term of the Construction Contract, including any and all warranty periods as specifically mentioned in said Construction Contract.

By incorporating the Construction Contract into its Performance Bond, the Surety consents to the

provisions of the Construction Contract wherein Contractor's and 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 the Construction Contract, then Surety will be liable to City for all damages City may sustain and be entitled to in law and pursuant to the Construction Contract including, but not limited to, all damages to correct defects or deficiencies in Contractor's Work, to cure defaults and breaches of the Construction Contract, to add manpower, for all delay damages including Liquidated Damages, to perform the Contractor's warranty or guarantee obligations pursuant to the Construction Contract, and pay City all damages City may be entitled to. The City shall simply give the Surety the same notices that City shall be required to give to Contractor pursuant to the Construction Contract to trigger Surety's liability.

The Surety is also obligated to the City without duplication for:

1. The responsibilities of the Contractor for correction of defective or deficient work, materials, and completion of the Construction Contract, including all punch list work, the performance of all warranty and guarantee obligations, including those which arise subsequent to substantial and final completion of the Construction Contract,
2. Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act pursuant to this Bond, and
3. Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance by the Contractor.

After notice of a default or breach from the City, the Surety shall be deemed to be in default on this Bond if the Surety fails to take appropriate action to cure the Contractor's default or breach thirty (30) days after receipt of the written default notice from the City to the Surety demanding that the Surety perform Contractor's obligations. Should the Surety not take reasonable action to cure the default or correct the breach within thirty (30) days the City shall be entitled to all damages as set forth herein or in the Construction Contract and enforce any other remedy available to the City.

The Surety shall indemnify, save harmless and pay the City after fifteen (15) days' additional notice from the City of the amount due.

The Surety shall be bound by any administrative decision made in accordance with the procedure for dispute resolution set forth in the Construction Contract.

Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within four (4) years after Contractor Default, or within four (4) years after the Contractor ceased working, or within four (4) years after the Surety refuses or fails to perform its obligations under this Bond, or within four (4) years after Surety is notified by City to correct Contractor's work, or within four (4) years after City has knowledge of a breach of any construction deficiency or breach of any contractor Warranty, or answer in damages, whichever occurs later. However, in such event the statute of limitation on such action by City against Contractor, and against Surety, shall not begin to

run until knowledge by the City of the Contractor Breach. The statute of limitations for all claims arising under the Construction Contract except for claims for latent defects which are available to City, shall be governed by Section 95.11(2)(b), Florida Statutes. The statute of limitations for post-completion latent defects or deficiencies in materials or workmanship shall be governed by Section 95.11(3)(c), Florida Statutes.

The Surety for value received hereby stipulates and specifically agrees that no change involving any extension of time, or alteration or addition to the terms of the Construction Contract or to the Work to be performed, or materials, equipment or supplies to be furnished thereunder, or in the Plans, Drawings and Specifications accompanying the said Construction Contract shall affect the said Surety's obligation under this Bond and the said Surety does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Construction Contract or to the Work, or to the Plans, Drawings and Specifications or any other changes, compliance or noncompliance to the terms of the Construction Contract or to the work or to the Specifications.

## DEFINITIONS

Construction Contract: For purposes of this Bond, the Construction Contract is the entire integrated agreement between the City and the Contractor, which includes the Agreement and other documents incorporated therein and all Contract Documents and the changes thereto.

Contractor Default: Failure of the Contractor, which has not been remedied, to perform or otherwise to comply with the Construction Contract.

IN WITNESS WHEREOF, the above parties bound together have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

CONTRACTOR (Principal)

\_\_\_\_\_  
(Typed Name of Contractor)

ATTEST:

By: \_\_\_\_\_  
(Signature of Officer)

(SEAL)

\_\_\_\_\_  
(Typed Name and Title)



SURETY

\_\_\_\_\_  
(Typed Name of Surety)

\_\_\_\_\_  
(Florida Resident Agent)

By: \_\_\_\_\_  
(Signature of Attorney-in-fact. Attach  
Power of Attorney)

STATE OF FLORIDA  
\_\_\_\_\_ COUNTY

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

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

\_\_\_\_\_  
My commission expires

\_\_\_\_\_  
Stamp

IMPORTANT: Surety companies executing this Bond must appear on and have sufficient bonding capacity per the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

**EXHIBIT“E”**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**PROJECT:**\_\_\_\_\_

**ENGINEER :**\_\_\_\_\_

**CITY OF CORAL GABLES**

**BID/AGREEMENT**

**NO.:**\_\_\_\_\_

**Attention:**\_\_\_\_\_

**CONTRACTOR:**\_\_\_\_\_

**NOTICE TO PROCEED DATE:**\_\_\_\_\_

**DATE OF ISSUANCE:**\_\_\_\_\_

**THE PROJECT (OR DESIGNATED PORTION) SHALL INCLUDE:**

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

The Work performed under this Agreement has been reviewed and found to be Substantially Complete, and all documents required to be submitted by the Contractor under the Contract Documents for the achievement of Substantial Completion have been received and accepted. The Date of Substantial Completion of the Project or portion thereof designated above is hereby established as \_\_\_\_\_ (date), which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

**DEFINITION OF DATE OF SUBSTANTIAL COMPLETION**

The Date of Substantial Completion of the Work or portion thereof designated by the City is the date certified herein, when all conditions and requirements and permits and regulatory agencies have been satisfied and the Work is sufficiently complete in accordance with the Contract Documents that all requirements for Substantial Completion have been met and the Project is available for beneficial occupancy by the City.

An initial list of items to be completed or corrected (the “Punch List”) is attached hereto. The failure to include any items on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment, unless otherwise agreed in writing.

\_\_\_\_\_  
Engineer

\_\_\_\_\_  
Date

In accordance with Article 6.4 of the Agreement, the Contractor shall achieve final completion within thirty (30) days from the date of the delivery of the final Punch List to the Contractor.

The responsibilities of the City and Contractor for security, maintenance, heat, utilities, and insurance shall be as follows:

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The initial Punch List of minor omissions and defects, as submitted by the Contractor, is as follows:

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Date

**EXHIBIT "F"**  
**CERTIFICATE OF FINAL COMPLETION**

---

Owner's Project No.  
Project  
Owner:  
Contractor:  
Engineer:

---

Agreement Date:  
Notice to Proceed Date:  
Contractual Substantial Completion Date as modified by Change Orders:  
Actual Substantial Completion Date:  
Contractual Final Completion Date as modified by Change Orders:

---

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, Engineer and COCG, the punch list has been completed and the Work of the Contract is hereby declared to be Finally Complete in accordance with the Contract Documents on:

\_\_\_\_\_  
Date of Final Completion

This Certificate does not constitute an acceptance of any Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents. The Warranty for all Work completed subsequent to the date of Substantial Completion expires one year from the date of this Final Acceptance.

---

Executed by Engineer on: \_\_\_\_\_

By: \_\_\_\_\_

Contractor accepts this Certificate of Final Completion on: \_\_\_\_\_

By: \_\_\_\_\_

PM accepts this Certificate of Final Completion on: \_\_\_\_\_

By: \_\_\_\_\_

COCG accepts this Certificate of Final Completion on: \_\_\_\_\_

By: \_\_\_\_\_

**Exhibit "E"**

City of Coral Gables  
Miracle Mile / Giralda Avenue Streetscape  
Construction Management at Risk Experience (CMAR)  
RFQ No. 014.012.05

No.	Project	Description	Value	Role on Project	Project Delivery	Key Personnel
1	Volvo of America, 7000 19 Mile Road, Sterling Heights, MI, 137,000	137,000 Square Feet. Office Warehouse Industrial Building Completed 1989 Two Story, Block and Metal wall construction, rubber roof,	\$12,500,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
2	Michigan State Police, Forensic Lab, 42800 Merrill Road, Sterling Heights, MI	16,000 Square Feet. State Forensic Labs Completed 1994 One Story, Block and Metal wall construction, rubber roof,	\$1,600,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
3	Titan International, 250,000 SF Addition	250,000 Square Feet. Office Warehouse Industrial Building Completed 2010 One Story, Block and Metal wall construction, rubber roof,	\$18,977,010.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
4	3150 SW 15th Street, Deerfield Beach, FL	48,965 Square Feet. Office Warehouse Industrial Building Completed 2010 One Story, tilt up wall construction, hot tar build up roof, Hurricane Code	\$3,671,625.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
5	Ferrous Process & Trading - Miami, 3700 NW North River Drive Miami, FL	80,000 Square Feet Warehouse Industrial Building Completed 2008, Site, Block, Steel Wall construction	\$4,000,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
6	24241 Mound Road, Warren, MI, Expansion for Cort Furniture and Central Michigan University	98,125 Square Feet Renovation with 25,000 Square Feet Expansion Office Warehouse Industrial Building Completed 2010 Two Story, Block, Metal Wall construction, hot tar build up roof,	\$1,713,250.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
7	5051 - 5061 SW 13th Avenue, Deerfield Beach, FL	47,892 Square Feet. 2 Office Warehouse Industrial Buildings Completed 2009 One Story with mezzanine, tilt up wall construction, hot tar build up roof, Hurricane Code	\$3,591,900.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
8	6993 19 Mile Road, Sterling Heights, MI	30,112 Square Feet. Office Warehouse Industrial Building Completed 2009 One Story, Block and Brick wall construction, rubber roof,	\$1,656,160.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
9	38435 Mound Road, Sterling Heights, MI	9,035 Square Feet. Office Warehouse Industrial Building Completed 2008 One Story, Block and Brick wall construction, rubber roof,	\$1,084,200.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
10	1901 Green Road, Deerfield Beach, FL	76,381 Square Feet. Office Warehouse Industrial Building Completed 2007 One Story, tilt up wall construction, hot tar build up roof, Hurricane Code	\$5,728,575.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
11	1500 S Powerline Road, Deerfield Beach, FL	30,918 Square Feet. Office Warehouse Industrial Building Completed 2006 One Story, tilt up wall construction, hot tar build up roof, Hurricane Code	\$2,318,850.00	Principal	Construction Management at Risk	Paul Jankowski, Principal

12	42315 Mancini Drive, Sterling Heights, MI for TRW Automotive	93,000 Square Feet. Office Warehouse Industrial Building Completed 2006 One Story, Block and Brick wall construction, rubber roof,	\$4,185,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
13	2601 Wiles Road, Deerfield Beach, FL	139,600 Square Feet. 21 Free Standing 6,000 to 8,500 Square feet Office Warehouse Industrial Building Completed 2000 to 2003 One Story, Block wall construction, hot tar build up roof,	\$10,470,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
14	2601 Wiles Road, Deerfield Beach, FL	7,900 Square Feet. Office Warehouse Industrial Building Completed 1992 One Story, Block wall construction, hot tar build up roof,	\$592,500.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
15	6993 19 Mile Road, Sterling Heights, MI	30,112 Square Feet. Office Warehouse Industrial Building Completed 2009 One Story, Block and Brick wall construction, rubber roof,	\$1,656,160.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
16	John R. Troy, MI	27 Residential Homes. Land Acquisition, Land balance, infrastructure, roads new residential subdivision	\$12,150,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
17	Dequnder, Sterling Heights, MI	44 Residential Homes. Land Acquisition, Land balance, infrastructure, roads, Landscape. new residential subdivision	\$19,800,000.00	Principal	Construction Management at Risk	Paul Jankowski, Principal
18	1988-1992 Whiteman AFB, Knob Noster Missouri.	Converted Base from an anti-continental ballistic missile base to the home of 25 B-2 Stealth Bombers. Included all infrastructure, housing, medical facilities, and shopping center for 4000 military personnel.	\$210,000,000.00	Project Manager	Construction Management at Risk	Steve Adams, Sr. Project Manager
19	2003-2005 NSF Diego Garcia, BIOT	Construction of four (4) hangers for the 4 B-2 Bombers supporting the bombing missions in Iraq and Afghanistan. Runway and taxiway repairs and renovations for the 3 mile long runway, along with housing renovations for 2000 military personnel, a new dining facility, a new gas station servicing the entire base, waterfront operations building, new base gymnasium and medical clinics.	\$ 65,000,000.00	Project Manager	Construction Management at Risk	Steve Adams, Sr. Project Manager
20	New Hyatt Regency Hotel	The construction of the New Hyatt Regency Hotel on 7 Mile Beach in the Grand Cayman Islands. Project Cost was \$84 Million.	\$ 84,000,000.00	Project Engineer	Construction Management at Risk	Steve Adams, Sr. Project Manager
21	Phnom Penh National Hospital Project	The Construction of the National Hospital in Phnom Penh, Cambodia. The Construction cost was ~\$32 Million.	\$ 32,000,000.00	Project Manager	Construction Management at Risk	Steve Adams, Sr. Project Manager
22	Chancery Lane Building Construction	The Construction of Chancery Lane Building in San Fernando, Trinidad.	\$120,000,000.00	Project Manager	Construction Management at Risk	Steve Adams, Sr. Project Manager
23	Coral Key Condos	A 364-unit development acquired and converted in 2005-2006. Consisted of renovating approximately 150-units, clubhouse facility with a fitness center, two indoor racquetball courts, sauna, billiard room, two pools, and the tennis court.	\$ 5,500,000.00	Project Manager	Construction Management at Risk	Victor G. Menocal, Project Manager

24	Mirassou Condos	A 310-unit development acquired and converted to condominiums in 2006. The property consisted of renovating 125-units, a clubhouse facility, two pools, a tot lot, tennis court, and a fitness center.	\$ 3,200,000.00	Project Manager	Construction Management at Risk	Victor G. Menocal, Project Manager
25	Miami-Dade Community College Burn Building Training Facility	The construction of a training facility for the fire department at Miami-Dade Community College North Campus.	\$ 1,200,000.00	Ass. Project Manager	Construction Management at Risk	Victor G. Menocal, Project Manager
26	Miami-Dade Community College Restroom Renovations for Building 5000 & 7000	The renovations to the restrooms in Buildings 5000 & 7000 at Miami-Dade Community College North Campus.	\$ 979,000.00	Ass. Project Manager	Construction Management at Risk	Victor G. Menocal, Project Manager

\$627,574,230.00



Sec. 2-1089. - Construction manager-at-risk.

(a) *Policy.* It is the policy of this city to publicly announce all requirements for a construction manager-at-risk as defined in the appropriate Florida Statute, including F.S. § 287.055, Consultants' Competitive Negotiation Act, and, to negotiate contracts on the basis of demonstrated competence and qualification for the type of services required at fair and reasonable prices.

(b) *Selection.*

- (1) For each proposed project, the public works director or designee, upon consultation with the chief procurement officer or designee, shall recommend a selection committee, with the city manager's approval, to evaluate current statements of qualifications and performance data on file with the city, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.
- (2) The public works director or designee, upon consultation with the chief procurement officer or designee, in conjunction with the selection committee, shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the public works director or designee, upon consultation with the chief procurement officer or designee, may consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the city, with the object of ranking the companies based on qualifications and selection of the most highly qualified firms. The public works director or designee, upon consultation with the chief procurement officer or designee, in conjunction with the selection committee, may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (2) below.

(c) *Negotiation.*

- (1) The public works director or designee, upon consultation with the chief procurement officer or designee, shall negotiate a contract with the most qualified firm for professional services at compensation which the public works director or designee, upon consultation with the chief procurement officer or designee, determines is fair, competitive, and reasonable. In making such determination, the public works director or designee, upon consultation with the chief procurement officer or designee, shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity and shall negotiate a guaranteed maximum price including overhead and profit with approval from the city manager. For any lump-sum or cost-plus-a-fixed-fee professional service contract over \$100,000.00, the chief procurement officer shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which

**Exhibit** "F"

the city determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within one year following the end of the contract.

- (2) Should the public works director or designee, upon consultation with the chief procurement officer or designee, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price determined to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The public works director or designee, upon consultation with the chief procurement officer or designee, shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the public works director or designee, upon consultation with the chief procurement officer or designee, must terminate negotiations and shall then undertake negotiations with the third most qualified firm.
  - (3) Should the public works director or designee, upon consultation with the chief procurement officer or designee, be unable to negotiate a satisfactory contract with any of the selected firms, the chief procurement officer shall select additional firms in the order of competence and qualification and continue negotiations in accordance with this section until an agreement is reached.
- (d) *Award.* The public works director shall make a recommendation to the city commission indicating the guaranteed maximum product. Contracts shall be awarded in accordance with section 2-828 (Ord. No. 2003-23, § 2(466), 7-23-2003; Ord. No. 2005-17, § 2(2-466), 8-23-2005; Ord. No. 2005-20, § 2(2-466), 9-13-2005; Ord. No. 2008-27, § 2, 10-28-2008)