

MIAMI BEACH
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SECTION 0200**INSTRUCTIONS TO RESPONDENTS**

1. GENERAL. This Request for Proposals (RFP) is issued by the City of Miami Beach, Florida (the “City”), as the means for prospective Proposer to submit their qualifications, proposed scope of work and cost proposals (the “proposal”) to the City for the City’s consideration as an option in achieving the required scope of services and requirements as noted herein. All documents released in connection with this solicitation, including all appendices and addenda, whether included herein or released under separate cover, comprise the solicitation, and are complementary to one another and together establish the complete terms, conditions and obligations of the Proposer and, subsequently, the successful proposer(s) (the “contractor[s]”) if this RFP results in an award.

The City utilizes **BidSync** (www.bidsync.com) for automatic notification of competitive solicitation opportunities and document fulfillment, including the issuance of any addendum to this RFP. Any prospective Proposer who has received this RFP by any means other than through **BidSync** must register immediately with **BidSync** to assure it receives any addendum issued to this RFP. **Failure to receive an addendum may result in disqualification of proposal submitted.**

2. PURPOSE.

By means of this RFP, the City seeks to contract with a Design/Build Firm (herein after referred to as “Contractor”) for the design, permitting, community outreach participation, and the construction of the 72nd Street Community Complex. Proposals received pursuant to this RFP will be evaluated in a two-phased process (Phase I and Phase II). Phase I proposals will be evaluated in accordance with the criteria established in Section 0500 for Phase I Evaluation. Following City Commission selection of the short-listed proposers pursuant to Phase I of the RFP, the short-listed proposers will be allotted approximately 60 days to prepare a detailed technical proposal for the Project. Following Phase I short-listing and prior to receipt of proposals pursuant to Phase II, the City may issue further information and clarifications via addenda to the short-listed proposers, including (but not limited to) any amendments to the Design Criteria Package, cost tender form, form of contract, and other informational items or requirements necessary for the short-listed proposers to submit its Phase II proposals. Additionally, the City will conduct a pre-submittal conference with short-listed proposers to facilitate project understanding and consider any project specific questions from the short-listed proposers. Phase II proposals will be evaluated in accordance with the criteria established in Section 0500 for Phase II Evaluation. Following City Commission approval of the City Managers recommendation pursuant to Phase II, the City will enter into contract negotiations and execution.

This RFP is issued pursuant to Chapter 287.055, Florida Statutes, the Consultants Competitive Negotiations Act (CCNA). The design criteria professional and subconsultant(s) for this project is precluded from participating in this solicitation.

3. SOLICITATION TIMETABLE. The tentative schedule for this solicitation is as follows:

Phase I - Qualifications	
RFP Issued	June 26, 2020
Pre-Proposal Meeting	July 9, 2020 at 9:00 a.m. ET
Deadline for Receipt of Questions	July 22, 2020 at 5:00 p.m. ET
Responses Due	August 10, 2020 at 3:00 p.m. ET
Evaluation Committee Meeting	TBD
Commission Approval to Shortlist (if required)	TBD
Phase II – Technical Proposals	
Solicitation Issued to Short-Listed Proposers	TBD

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Pre-Submittal Meeting	TBD
Deadline for Receipt of Questions	TBD
Proposals Due	TBD
Evaluation Committee Meeting to Interview	TBD
Commission Approval of Final Proposer	TBD

4. PROCUREMENT CONTACT. Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact noted below:

Procurement Contact:
Natalia Delgado

Telephone:
305-673-7490

Email:
nataliadelgado@miamibeachfl.gov

Additionally, the City Clerk is to be copied on all communications via e-mail at: RafaelGranado@miamibeachfl.gov, or via facsimile: 786-394-4188.

The Bid title/number shall be referenced on all correspondence. All questions or requests for clarification must be received no later than ten (10) calendar days prior to the date proposals are due as scheduled in Section 0200-3. All responses to questions/clarifications will be sent to all prospective Proposers in the form of an addendum.

5. PRE-PROPOSAL MEETING OR SITE VISIT(S). Only if deemed necessary by the City, a pre-proposal meeting or site visit(s) may be scheduled. Attendance for the pre-proposal meeting shall be via telephone and recommended as a source of information but is not mandatory. Proposers interested in participating in the Pre-Proposal Meeting must follow these steps:

- (1) Dial the TELEPHONE NUMBER: 1- 786-636-1480 (United States, Miami Toll-free)
- (2) Enter the MEETING NUMBER: 6312925

Proposers who are participating via telephone should send an e-mail to the contact person listed in this RFP expressing their intent to participate via telephone.

6. PRE-PROPOSAL INTERPRETATIONS. Oral information or responses to questions received by prospective Proposers are not binding on the City and will be without legal effect, including any information received at pre-submittal meeting or site visit(s). The City by means of addenda will issue interpretations or written addenda clarifications considered necessary by the City in response to questions. Only questions answered by written addenda will be binding and may supersede terms noted in this solicitation. Addendum will be released through *BidSync*. Any prospective proposer who has received this RFP by any means other than through *BidSync* must register immediately with BidSync to assure it receives any addendum issued to this RFP. Failure to receive an addendum may result in disqualification of proposal. Written questions should be received no later than the date outlined in the **Anticipated RFP Timetable** section.

7. CONE OF SILENCE. This RFP is subject to, and all proposers are expected to be or become familiar with, the City's Cone of Silence Requirements, as codified in Section 2-486 of the City Code. Proposers shall be solely responsible for ensuring that all applicable provisions of the City's Cone of Silence are complied with, and shall be subject to any and all sanctions, as prescribed therein, including rendering their response voidable, in the event of such non-compliance. Communications regarding this solicitation are to be submitted in writing to the Procurement Contact named herein with a copy to the City Clerk at rafaelgranado@miamibeachfl.gov

8. DETERMINATION OF AWARD. The final ranking results of the evaluation process will be considered by the City Manager who may recommend to the City Commission the Proposer(s) s/he deems to be in the best interest of the City or may recommend rejection of all proposals. The City Manager's recommendation need not be consistent with the scoring results identified herein and takes into consideration Miami Beach City Code Section 2-369, including the following considerations:

- (1) The ability, capacity and skill of the Proposer to perform the contract.
- (2) Whether the Proposer can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the Proposer.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the Proposer with laws and ordinances relating to the contract.

The City Commission shall consider the City Manager's recommendation and may approve such recommendation. The City Commission may also, at its option, reject the City Manager's recommendation and select another Proposal or Proposals which it deems to be in the best interest of the City, or it may also reject all Proposals.

9. NEGOTIATIONS. Following selection, the City reserves the right to enter into further negotiations with the selected Proposer. Notwithstanding the preceding, the City is in no way obligated to enter into a contract with the selected Proposer in the event the parties are unable to negotiate a contract. It is also understood and acknowledged by Proposers that no property, contract or legal rights of any kind shall be created at any time until and unless an Agreement has been agreed to; approved by the City; and executed by the parties.

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SECTION 0300**GENERAL CONDITIONS**

TERMS & CONDITIONS –SERVICES. By virtue of submitting a proposal in response to this solicitation, proposer agrees to be bound by and in compliance with the Terms and Conditions for Services (dated April 13, 2020), incorporated herein, which may be found at the following link:

<https://www.miamibeachfl.gov/wp-content/uploads/2020/04/Terms-Conditions-Services-General-4.3.2020.pdf>

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SECTION 0400

PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMAT

1. ELECTRONIC RESPONSES (ONLY). Electronic responses to this RFP are to be submitted through BidSync until the date and time as indicated in this document. ***It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time.*** There is no cost to the Proposer to submit a proposal in response to a City of Miami Beach solicitation via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files (proposal format indicated below). All proposals received and time stamped through BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted. Proposals will be opened promptly at the time and date specified. The City will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence.

A proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date and time. The City will only consider the latest version of the proposal.

2. NON-RESPONSIVENESS. Failure to submit the following requirements shall result in a determination of non-responsiveness. Non-responsive proposals will not be considered.

1. Bid Submittal Questionnaire (submitted electronically).

3. OMITTED OR ADDITIONAL INFORMATION. With exception of the Bid Submittal Questionnaire (submitted electronically) and the Cost/Revenue Proposal, if applicable, the City reserves the right to seek any omitted information/documentation or any additional information from Proposer or other source(s), including but not limited to: any firm or principal information, applicable licensure, resumes of relevant individuals, client information, financial information, or any information the City deems necessary to evaluate the capacity of the Proposer to perform in accordance with contract requirements. Failure to submit any omitted or additional information in accordance with the City's request shall result in proposal being deemed non-responsive.

4. PROPOSAL FORMAT. In order to maintain comparability, facilitate the review process and assist the Evaluation Committee in review of proposals, it is strongly recommended that proposals be organized and tabbed in accordance with the sections and manner specified below. The electronic submittal should be tabbed as enumerated below and contain a table of contents with page references. The electronic proposal shall be submitted through the "Line Items" attachment tab in BidSync.

PHASE I RESPONSE FORMAT

TAB 1	Cover Letter & Minimum Qualifications Requirements
1.1 Cover Letter and Table of Contents. The cover letter must indicate Prime Proposer and Prime Proposer Primary Contact for the purposes of this solicitation.	
1.2 Minimum Qualifications Requirements. Submit verifiable information documenting compliance with the minimum qualification requirements established in Appendix A, Minimum Requirements and Specifications, as required herein.	
<p>1.2.1 Request for Qualification Similar Experience. For each project that complies with the minimum requirements on Appendix A, Section A1, submit project name, total contract award amount, completion date, scope of work, project contact information (phone and email); and prime proposer's role in project.</p>	

TAB 2 Design/Build Firm (Prime Proposer) Experience & Qualifications

Qualifications of Firm. Describe experience and qualifications of the Prime Proposer and/or its principal in providing the services detailed herein.

1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience.
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience and qualifications with the services detailed herein. Provide a table that includes the following information: agency name, project name, type of project, percentage completed, anticipated completion date, your firm's role (i.e. design/build, lead designer, lead constructor). For each project, identify whether the experience is for the firm or for a principal (include name of principal).
3. **Relevant Experience:** Summarize any of the company's most similar projects of comparable size and scope where similar services to those described in this RFP have been provided. For each project, identify whether the experience is for the firm or for a principal (include name of principal). Projects must illustrate familiarity with all of the following aspects: multi-level mixed use parking structure with over 300 parking spaces , competition pool with support amenities, multi-purpose pool, municipal/governmental library, commercial/retail, 7, 500 SF fitness center, 5,000 SF community center , 60,000 SF of active green space and jogging path. For each project include:
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Awarded contract amount and final contract amount
 - e. Original contract duration and final contract duration.
 - f. Number of change orders. Indicate firm's role in the project (design/builder, lead designer, or lead constructor).
 - g. The names of the key project managers, highlighting any individuals who also worked on this project.
 - h. Reference contact information (including name, address, telephone number and e-mail address).
4. **Safety Record:** Provide the firm's Experience Modification Rate (EMR) data for the previous three (3) full calendar years on a firm-wide basis, which shall be documented by a signed letter with contact information from the firm's insurance carrier, or the insurance carrier's agency representative.
5. **Insurance:** Provide a letter from Proposer's insurer on the insurer company letterhead that the insurer can provide levels of coverage to the Proposer as indicated in Appendix D – Insurance Requirements.

TAB 3 Project Team

Prime Proposer shall submit a design-build team organizational structure that has a sufficient number of professionals and other personnel to perform the work, including:

1. **Organizational Chart.** An organizational chart depicting the structure and lines of authority and communication. A narrative that describes the intended structure regarding project management, accountability, compliance and the teams' interaction with the terms of the RFP.
2. **Key Personnel.** Identify all key personnel, including the Project Manager, who will be assigned to the Project and their intended functions and responsibilities. Also indicate the percentage of time commitment of each key person on this Project.
3. **Resumes.** Resumes of the team's key personnel who will be assigned to the Project that demonstrate their

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experience and qualifications, education and performance record. The Prime Proposer shall include the above listed information for the following proposed project team members:

- a. Design/Build Project Manager
 - b. Design Lead Consultant
 - c. Structural Engineer
 - d. Aquatic Consultant
 - e. Parking Consultant
 - f. Civil Engineer
 - g. Resiliency Consultant
 - h. Leadership and energy environmental design (LEED) Consultant
4. **Evidence of Prior Working Experience.** Submit evidence, of any prior projects, that the proposed team has successfully collaborated on. For each project, submit project name, brief description of project, date of completion, owner's representative, and owner's representative contact information.
 5. **Other.** Provide any other information the Proposer believes will help the City understand and evaluate the team's capabilities.

TAB 4 Design Lead Consultant Experience & Qualifications

Qualifications of Firm. Describe experience and qualifications in providing the services detailed herein.

1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience.
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience in providing the services detailed herein. Provide a table to include the following information: agency name, project name, type of project, percentage completed, anticipated completion date, your firm's role (i.e. lead designer).
3. **Florida Registration:** Provide evidence of professional registration pursuant to Chapter 287.055, Florida Statutes, the Consultants Competitive Negotiations Act (CCNA).
4. **Relevant Experience:** Summarize (3) three of the company's most similar designs of comparable size and scope where similar services to those described in this RFP have been provided. Projects must illustrate experience with design of multi-level mixed use parking structure with over 300 parking spaces. For each project include:
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Awarded contract amount for the design portion.
 - e. List of permits applied for and obtained.
 - f. The names of the key project engineers, highlighting any individuals who will also work on this project
 - g. Reference contact information (including address, telephone number and e-mail address).

TAB 5 Aquatic Consultant Experience & Qualifications

Qualifications of Firm. Describe experience and qualifications in providing the services detailed herein.

1. **Company Information:** Provide background information, including company history, years in business, number

of employees, and any other information communicating capabilities and experience.

2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience in providing the services detailed herein. Provide a table to include the following information: agency name, project name, type of project, percentage completed, anticipated completion date.

3. **Miami Dade County License:** Provide evidence of the Miami Dade County required licensing.

4. **Relevant Experience:** Summarize (3) of the company's most similar design projects of comparable size and scope where similar services to those described in this RFP have been provided. Projects must illustrate familiarity with the following aspects: aquatic facilities, competition pool with support amenities, multi-purpose pool. For each project include:

- a. Project name and location
- b. Project description
- c. Date of project completion
- d. Awarded contract amount for the design portion.
- e. Reference contact information (including address, telephone number and e-mail address).

TAB 6 Structural Engineer Experience & Qualifications

Qualifications of Firm. Describe experience and qualifications in providing the services detailed herein.

1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience.
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience in providing the services detailed herein. Provide a table to include the following information: agency name, project name, type of project, percentage completed, anticipated completion date.
3. **Florida Registration:** Provide evidence of professional registration pursuant to Chapter 287.055, Florida Statutes, the Consultants Competitive Negotiations Act (CCNA).
4. **Relevant Experience:** Summarize (3) of the company's most similar design projects of comparable size and scope where similar services to those described in this RFP have been provided. Projects must illustrate familiarity with a diverse background in mixed-use complex building projects including mixed-use parking structures with over 300 parking spaces. For each project include:
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Awarded contract amount for the design portion.
 - e. Reference contact information (including address, telephone number and e-mail address).

TAB 7 Resiliency Experience & Qualifications

Qualifications of Firm. Describe experience and qualifications in providing the services detailed herein.

1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience.
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience in providing the services detailed herein. Provide a table to include the following information: agency name, project name, type of project, percentage completed, anticipated completion date.
3. **Miami Dade County License:** Provide evidence of the Miami Dade County required licensing.
4. **Relevant Experience:** Summarize (3) of the company's most similar design projects of comparable size and

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scope where similar services to those described in this RFP have been provided. Projects must illustrate familiarity with the design and permitting of following aspects: retention and treatment of stormwater, on-site stormwater management systems including any proposed drainage well system(s). LEED certified projects. For each project include:

- a. Project name and location
- b. Project description
- c. Date of project completion
- d. Awarded contract amount for the design portion.
- e. Reference contact information (including address, telephone number and e-mail address).

PHASE II RESPONSE FORMAT (TECHNICAL PROPOSAL)

In order to maintain comparability, facilitate the review process and assist the Evaluation Committee in review of proposals, it is strongly recommended that proposals be organized and tabbed in accordance with the sections and manner specified below. The electronic submittal should be tabbed as enumerated below and contain a table of contents with page references. The electronic proposal shall be submitted through the "Line Items" attachment tab in BidSync.

1. **DUE DILIGENCE AND SITE INSPECTIONS:** It is the responsibility of each Proposer, before submitting the Phase II proposal, to:
 - Visit the site or structure to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work;
 - Take into account federal, state and local (City and Miami-Dade County) laws, regulations, permits, and ordinances that may affect costs, progress, performance, furnishing of the Work, or award;
 - Study and carefully correlate Proposer's observations with the RFP; and

The submission of a proposal shall constitute an incontrovertible representation by Proposer that Proposer has complied with the above requirements and understands all terms and conditions for performance and furnishing of the Work.

2. **OMITTED OR ADDITIONAL INFORMATION.** With exception of the Cost Proposal, the City reserves the right to seek any omitted information/documentation or any additional information from Proposer or other source(s) the City deems necessary to evaluate the capacity of the Proposer to perform in accordance with contract requirements. Failure to submit any omitted or additional information in accordance with the City's request shall result in proposal being deemed non-responsive.

TAB 1	Project Technical Proposal
The technical proposal shall document team's understanding of the project's singular structure with signature design features, synergies between elements, and adjacent City facilities. The technical proposal shall be developed using narratives, tables, design development drawings inclusive of, but not limited to, floor plans, building sections, elevations and renderings, and proposed materials, as appropriate. The technical proposal shall be in sufficient detail to allow the City to evaluate its compliance with the design criteria package, including major systems and requirements. The technical proposal shall include how the proposer intends to incorporate the proposed project requirements/programming and project enhancements.	
TAB 2	Subcontractor Experience & Qualifications
Qualifications of Key Subcontractors. For each key construction subcontractor, inclusive of but not limited to pool builder, describe experience and qualifications as detailed below.	

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1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience.
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience and qualifications with the Services detailed herein. Provide a table that includes the following information: agency name, project name, type of project, design/build, etc.), work assigned.
3. **Relevant Experience:** Summarize (3) of the company's most similar projects of comparable size and scope where similar construction services have been provided. Please be specific of the actual work provided this firm that relates this this project. For each project include:
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Amount of contract amount for the portion of the work provided by this firm.
 - e. Reference contact information

TAB 3 Approach & Methodology Plan

Proposer shall, at a minimum, address the following factors:

1. The Proposer shall illustrate complete understanding of the scope of work for all components of the Project. The narrative shall address methodology, sequencing, and staging the construction site.
2. The proposer shall provide specific information on how it will meet the design requirements.
3. Proposer shall clearly detail and present its approach to all required permitting issues, including but not limited to, structural design, on-site storm water management system, pool backwash, etc., relative to the applicable agency(ies) and entity(ies), e.g. City of Miami Beach, Miami-Dade County RER, Miami-Dade Health Department, FDEP etc.
4. Proposer shall describe their Quality Assurance / Quality Control Plan ("QA/QC Plan") for the Work, including design, construction, coordination, implementation and completion of the Project.
5. Proposer shall provide summary narrative inclusive of the proposer's project understanding of the approach & methodology of the proposed singular structure with signature design and construction approach which highlights the main attributes and benefits of this approach inclusive of:
 - Signature Building / Project Design
 - Incorporation of the different Design Criteria Package (DCP) components, inclusive but not limited to, aquatic facility and active green space
 - The diverse collection of program components will require a unique design solution to embody the synergies of the uses specifically between the aquatic components, fitness center and community center as well as to showcase a facility of timeless quality and vision.
 - Proposed LEED Score Card
 - Proposed on-site stormwater management and retention systems concept
 - Implementation of project enhancement components
6. Proposer shall describe the technical approach, and provide calculations and design development drawings as applicable, to sufficiently demonstrate the ability to design and build the proposed Community Complex.

7. Proposer shall describe the planned environmental quality management approach by demonstrating the following:
- Approach to minimize community impacts from construction noise, dust and vibration.
 - Correcting any resultant settlement and / or damage to any existing structures that are a consequence of the Proposer's construction activities.
 - Prevention or containment of any discharges caused by the proposed work.
 - Tree mitigation plan on preserving the existing trees with the proposed design.

TAB 4 Project Schedule

The Proposer shall submit a Preliminary Critical Path Method (CPM) Project Schedule covering the period from Notice to Proceed (NTP) to Final Completion with the submittal, which will be the initial Project Baseline Schedule. The Preliminary Project Schedule shall include all design, permitting, manufacturing and construction, testing and commissioning activities and meet the stated Contract Dates and any other suggested major milestones. Activities shall indicate their associated phasing and dependence with other activities, and highlight the main, coordination efforts and issues requiring the City's involvement and necessary reviews.

Proposer shall describe the project schedule approach utilizing the Critical Path Method

- Schedule shall utilize calendar days,
- Weekend and City Holidays shall not be considered workdays

At a minimum, the Preliminary Project Schedule must address the following milestones and activities:

- Design Schedule & Submittals
- Design Phase Reviews by the City's Departments – Assume 3 weeks
- Community Involvement
- Preparing for and attending all required stakeholder meetings
- Planning Boards
- Permitting
- Start and completion of Construction, Testing and Commissioning
- Substantial Completion and Final Completion Dates for all Work.

TAB 5 Cost Proposal (MUST BE SUBMITTED IN A SEALED ENVELOPE)

Submit a Guaranteed Maximum Price (GMP) Lump Sum Price for delivering the completed Project consistent with the Design Criteria Package. Utilize Appendix C – Cost Tender Form to submit your GMP. Cost Tender

TAB 6 Project Resiliency and Sustainability

Project shall be designed with the objective of achieving LEED Gold certification. Provide approach for meeting or exceeding the Resiliency Standards set forth in the Design Criteria Package inclusive of the proposed on-site stormwater management and retention systems concept including the proposed project enhancements. Project shall follow the Sustainability & Resiliency Ordinance, Urban Heat Island ordinance and EV parking ordinance, amongst others.

TAB 7 Project Enhancements

The technical proposal shall list the project enhancements that are being proposed. The technical proposal shall include how the proposer intends to incorporate any project enhancements with the proposed project requirements/programming.

TAB 8 Sample Contract Exceptions

Provide redline comments to the sample contract included in Appendix B. Proposers must clearly indicate any exceptions they wish to take to any of the terms, and what, if any, alternative proposed revisions are being offered. All exceptions and alternatives shall be included and clearly delineated by redlining the City's sample contract in this tab. Notwithstanding the foregoing, in no event shall any of the Proposer's terms be inconsistent or in conflict with the Statement of Work set forth in Section A2 of Appendix A to the RFP. The failure to adhere to the Statement of Work requirements shall render a Proposer non-responsive. City reserves the right to reject any proposed exceptions and/or revisions at its sole and absolute discretion.

SECTION 0500**PROPOSAL EVALUATION**

The Evaluation Process will be conducted in two phases.

PHASE I EVALUATION PROCESS

1. Two Step Evaluation. The evaluation of responsive proposals in Phase 1 will proceed in a two-step process. The first step (Step 1) will consist of the qualitative criteria listed below to be considered by the Evaluation Committee. The second step (Step 2) will consist of quantitative criteria established below to be added to the first step scores by the Procurement Department. The City reserves the right to engage the advice of its consultant, DCP or other technical experts in assisting the Evaluation Committee in the review of proposals received.

2. Phase I / Step 1 Evaluation (100 Points). An Evaluation Committee, appointed by the City Manager, shall meet to evaluate each Proposal in accordance with the requirements set forth in the solicitation. If further information is desired, Proposers may be requested to make additional written submissions of a clarifying nature or oral presentations to the Evaluation Committee. The evaluation of proposals will proceed in a two-step process as noted below. It is important to note that the Evaluation Committee will score the qualitative portions of the proposals only. In doing so, the Evaluation Committee may:

- review and score all proposals received, with or without conducting interview sessions; or
- review all proposals received and short-list one or more Proposers to be further considered during subsequent interview session(s) (using the same criteria).

Proposers will be evaluated on the following criteria (100 maximum possible points):

- Design/Build Firm Experience & Qualifications (30 Points)
- Project Team (25 Points)
- Design Lead Consultant Experience & Qualifications (15 Points)
- Aquatic Consultant Experience & Qualifications (10 Points)
- Structural Engineer Consultant Experience & Qualifications (10 Points)
- Resiliency Experience & Qualifications (10 Points)

3. Phase I / Step 2 Evaluation (10 Points). Following the results of Step 1 Evaluation Qualitative criteria, the proposers may receive additional points to be added by the Procurement Department to those points earned in Step 1, as follows.

- Veterans and State-Certified Service-Disabled Veteran Business Enterprise (5 points)
- Prime Proposer Volume of Work (0-5 Points). Points awarded to the proposer for volume of work awarded by the City in the last three (3) years in accordance with the following table:

Less than \$250,000	5
\$250,000.01 – \$2,000,000	3
Greater than \$2,000,000	0

4. Determination of Phase I Ranking. Phase 1/Step 1 scores (by the Evaluation Committee) and Phase 1/Step 2 scores (by the Procurement Department) will be converted to rankings in accordance with the following example:

		Proposer A	Proposer B	Proposer C
Committee Member 1	Step 1 Points	82	76	80
	Step 2 Points	10	7	5
	Total	92	84	85
	Rank	1	3	2
Committee Member 2	Step 1 Points	90	85	72
	Step 2 Points	10	7	5
	Total	100	92	79
	Rank	1	2	3
Committee Member 2	Step 1 Points	80	74	66
	Step 2 Points	10	7	5
	Total	90	81	72
	Rank	1	2	3
Low Aggregate Score		3	7	8
Phase I Ranking		1	2	3

If fewer than three responsive proposals are received by the City or if all responsive proposals received are determined by City Manager to be qualified for Phase II, Phase II may proceed without interruption or additional approvals following Phase I. Otherwise, the City Manager may submit a recommendation to the City Commission to short-list one or more proposers at the conclusion of the Phase I evaluation. Following City Commission approval of the City Manager's recommendation pursuant to Phase I of the RFP, the short-listed proposers will be allotted approximately 45 days to prepare a detailed technical proposal for the Project. The short-listed proposers will also be provided, via addendum, with the formal DCP and the Design/Building Agreement. Following Phase I short-listing and prior to receipt of proposals pursuant to Phase II, the City may issue further information and clarifications via addenda to the short-listed proposers, including (but not limited to) any amendments to the Design Criteria Package, cost tender form, form of contract, and other informational items or requirements necessary for the short-listed proposers to submit its Phase II proposals. Additionally, the City will conduct a pre-submittal conference with short-listed proposer to facilitate project understanding and consider any project specific questions from the short-listed proposers. Phase II proposals will be evaluated in accordance with the criteria established in Section 0500 for Phase II Evaluation.

PHASE II EVALUATION PROCESS

The Phase II evaluation process shall be completed by a Technical Review Committee, appointed by the City Manager, who may be different than the Evaluation Committee, who shall meet to evaluate each short-listed response and technical package. In doing so, the Evaluation Committee will:

- a. Interview short-listed proposers, if deemed necessary.
- b. Receive input from a Technical Review by City Staff, the Design Criteria Professional, and other City advisors
- c. Score proposers utilizing the Evaluation Criteria

Proposers will be evaluated on the following criteria (100 maximum possible points):

- Project Technical Proposal (30 Points)
- Subcontractor Experience & Qualifications (10 Points)
- Approach & Methodology Plan (20 Points)
- Project Schedule (10 Points)
- Lowest GMP (10 Points)*
- Project Resiliency and Sustainability (20 Points)

Additional Points:

- Project Enhancements (10 Points)

* Sealed Cost Proposals will be reviewed for responsiveness and point allocation as noted below. Actual points for GMP will be applied to the evaluation of technical proposals by the Procurement Officer in accordance with the formula outlined below.

Each proposed GMP shall be scored as follows:

Sample Objective Formula for Cost				
Vendor	Lump Sum Price	Example Maximum Allowable Points (Points noted are for illustrative purposes only. Actual points are noted above.)	Formula for Calculating Points (lowest cost / cost of proposal being evaluated X maximum allowable points = awarded points) Round to	Total Points Awarded
Vendor A	\$100.00	20	$\$100 / \$100 \times 20 = 20$	20
Vendor B	\$150.00	20	$\$100 / \$150 \times 20 = 13$	13
Vendor C	\$200.00	20	$\$100 / \$200 \times 20 = 10$	10

Final Ranking is presented to the City Manager for further due diligence and recommendation to the City Commission. Final Ranking does not constitute an award recommendation until such time as the City Manager has made his recommendation to the City Commission, which may be different than final ranking results.

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SECTION 0600

CITY OF MIAMI BEACH LICENSES, PERMITS AND FEES

Each license, permit or fee a Contractor will have to pay the City before or during construction or the percentage method or unit method of all licenses, permits and fees **REQUIRED BY THE CITY AND PAYABLE TO THE CITY** by virtue of this construction as part of the Contract is as follows:

The City of Miami Beach will require occupational licenses for Contractors as well as sub-contractors.

Licenses, permits and fees which may be required by Miami-Dade County, the State of Florida, or other governmental entities are not included in the above list, but are listed as attached (next page) and included as an allowance in the proposal.

1. Occupational licenses from City of Miami Beach firms will be required to be submitted within fifteen (15) days of notification of intent to award.
2. Occupational licenses will be required pursuant to Chapter 205.065 Florida Statutes.

NOTE: a) If the Contractor is a State of Florida Certified Contractor the following will be required:

- 1) Copy of State Contractors Certification
- 2) Place of Business Occupational License
- 3) Liability and Property Damage Insurance Certificate made to City of Miami Beach
- 4) Workers compensation or the exemption

b) If a Dade County Licensed Contractor:

- 1) Dade Certificate of Competency in the Discipline Licensed
- 2) Municipal Contractors Occupational License
- 3) Liability and Property damage Insurance Certificate made to City of Miami Beach
- 4) Workers Compensation or the exemption

NOTE: PLEASE PROVIDE COPIES OF ALL YOUR LICENSES AND CORPORATE CERTIFICATES WITH YOUR PROPOSAL RESPONSE.

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MIAMI BEACH
CITY OF MIAMI BEACH

**REQUEST FOR PROPOSALS (RFP) No. 2020-180-ND
DESIGN/BUILD SERVICES FOR 72ND STREET COMMUNITY COMPLEX**

Note: The Proposer shall obtain and pay for all permits required for execution of the work; provided however, that the City will waive Public Works Department Right-of-Way permit fees.

PERMITS

Including but limited to the following:

- I. MIAMI-DADE COUNTY DEPARTMENT OF REGULATORY AND ECONOMIC RESOURCES (RER) (formerly DERM).**
 - Class II Permit for Construction of Drainage System with Outfall.
 - Class IV Dewatering Permit
 - File Notice of commencement with SFWMD and MD RER
- II. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP)**
 - Notice of Intent to Use Generic Permit for Storm Water Discharge from Large and Small Construction Activities
 - National Pollutant Discharge Elimination System (NPDES) permit
- III. CITY OF MIAMI BEACH BUILDING DEPARTMENT**
 - Building Permit.
- IV. SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) Environmental Resource Permit (ERP)**
- V. DEPARTMENT OF HEALTH**

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APPENDIX A

MIAMI BEACH

Minimum Requirements & Specifications

RFP NO. 2020-180-ND
DESIGN/BUILD SERVICES FOR 72nd STREET
COMMUNITY COMPLEX

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

A1. Minimum Eligibility Requirements. The Minimum Eligibility Requirements for this solicitation are listed below. Bidder shall submit the required submittal(s) documenting compliance with each minimum requirement. Proposers that fail to comply with minimum requirements shall be deemed non-responsive and shall not have its bid considered.

1. Design/Build Firm (prime proposer) must be licensed as a General Contractor by the State of Florida, Division of Business and Professional Regulations **OR** an Architectural or Engineering Firm, must be certified as "Architect Business" or an "Engineer Business" with a Certificate of Authorization by the State of Florida, Division of Business and Professional Regulations.
2. If the prime proposer is a General Contractor the design lead consultant must be an Architectural or Engineering Firm, must be certified as "Architect Business" or an "Engineer Business" with a Certificate of Authorization by the State of Florida, Division of Business and Professional Regulations.
3. If the prime proposer is an Architectural or Engineering Firm, the lead contractor must be licensed as a General Contractor by the State of Florida, Division of Business and Professional Regulations
4. Design/Build Firm and/or its principal shall demonstrate to have successfully completed three (3) Projects similar in scope multi-level mixed use parking structure with over 300 parking spaces in the past 5 (five) years.

Submittal Requirement: For each project, submit project name, brief description of project, date of completion, owner's representative, and owner's representative contact information. For each project, identify whether the experience is for the firm or for a principal (include name of principal).

5. Design/Build Firm or team members shall demonstrate to have successfully completed three (3) Projects similar in scope (competitive aquatic complex) in the past 10 (ten) years.

Submittal Requirement: For each project, submit project name, brief description of project, date of completion, owner's representative, and owner's representative contact information.

6. Proposer must have sufficient bonding capacity for a Payment and Performance Bond in an amount not less than \$55,000,000.00.

Submittal Requirement: Provide a letter from a Surety firm affirming that the Proposer has sufficient bonding capacity to provide performance and payment bonds in an amount not less than \$55,000,000.00 for the project. The Surety firm shall be rated by AM Best as to be no less than A- (Excellent) and within a Financial Size Category of no less than Category V (\$10 - \$25 million). The statement of bonding capacity shall be directly from the Surety firm on its official letterhead and signed by an authorized agent of the firm.

A2. Statement of Work Required.

The purpose of this RFP is to contract with a Design/Build Firm for the 72nd Street Community Complex. Proposals received pursuant to this RFP will be evaluated in a two-phased process (Phase I and Phase II). Phase I Proposers will be evaluated in accordance with the criteria

established in Section 0500 for Phase I Evaluation. Following City Commission selection of the short-listed proposers pursuant to Phase I of the RFP, the short-listed proposers will be allotted approximately 60 days to prepare a detailed technical proposal for the Project. The short-listed proposers will also be provided the Design/Build Agreement. Following Phase I short-listing and prior to receipt of proposals pursuant to Phase II, the City may issue further information and clarifications via addenda to the short-listed proposers, including (but not limited to) any amendments to the Design Criteria Package, cost tender form, form of contract, and other informational items or requirements necessary for the short-listed proposers to submit its Phase II proposals. Additionally, the City will conduct a pre-submittal conference with short-listed proposers to facilitate project understanding and consider any project specific questions from the short-listed proposers. Phase II proposals will be evaluated in accordance with the criteria established in Section 0500 for Phase II Evaluation. Following City Commission approval of the City Manager's recommendation pursuant to Phase II, the City will enter into contract negotiations and execution.

Scope of Work:

The Design/Build Firm (DBF) shall be responsible for the design, permitting, manufacture, installation, and construction of the 72nd Street Community Complex. The Project includes a multi-level mixed-use parking garage requiring the program components of a 500 space parking structure, 50-meter competition pool with support amenities, 25-meter multi-purpose pool, 7,500 SF Miami-Dade County library, 5,000 SF commercial/retail, 7, 500 SF fitness center, 5,000 SF community center, 60,000 SF of active green space, and a jogging path. Provisions shall be made for the restoration of all construction and landscaping disrupted as a part of the proposed construction.

The scope of the project shall consist of the following:

1. Preparation of a Conceptual Design
2. Preparation of Construction Documents and Shop drawings as required for obtaining permits for construction
3. Obtain approval of documents for permits
4. A multi-level mixed-use parking garage requiring the program components of 500 space Parking Structure
5. 50-meter Competition Pool with Support Amenities
6. 25-meter Multi-purpose Pool
7. 7,500 SF Miami-Dade County Library
8. 5,000 SF Commercial/Retail
9. 7,500 SF Fitness Center
10. 5,000 SF Community Center
11. 60,000 SF of Active Green Space
12. Jogging Path
13. Provide warranty for materials and labor as described in the Design Criteria Package.
14. Project Enhancements

Proposed Budget:

The City of Miami Beach's Capital Improvement Projects budget for the proposed project is \$55,000, 000.00.

Project Duration: There will be two Notices to Proceed issued for this project. The first Notice to Proceed (NTP1) will be issued soon after the contract has been executed by all parties to initiate the design and procurement of approved materials and/or equipment. The second Notice to Proceed (NTP2) will be issued for construction on or after the advance design is complete and permits for construction has been obtained.

- Substantial Completion: 930 Calendar Days from NTP 1.
- The design phase ready for construction (approved permit plans) must be completed within 365 days after NTP 1
- Final Completion: 60 Calendar Days from date of attaining Substantial Completion.

If the Design/Build Firm does not achieve Substantial Completion by the established Substantial Completion Contract Date, Liquidated Damages (LDs) will be assessed in the amount of \$1,500 per calendar day, which will be paid to the City by the Design/Build Firm. If the Design/Build Firm does not achieve Final Completion by the established Final Completion Contract Date, LDs will be assessed in the amount of \$1,500 per calendar day, which will be paid to the City by the Design/Build Firm. LDs will be cumulative if both the Substantial Completion Contract Date and the Final Completion Contract Date are exceeded. All assessments of LDs to the Design/Build Firm may be adjustments to payments due to the Design/Build Firm.

Location of Work: The Project is located in the City of Miami Beach and encompasses the entire block bordered to the north and south by 73rd and 72nd Streets, Collins Avenue to the east and Harding Avenue to the west Parking Lot 92 (P92)

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APPENDIX B

MIAMI BEACH

Sample Contract

RFP NO. 2020-180-ND
DESIGN/BUILD SERVICES FOR 72nd STREET
COMMUNITY COMPLEX

CONTRACT EXCEPTIONS MAY BE SUBMITTED IN PHASE II, TAB 8

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

DESIGN/BUILD AGREEMENT

by and between

The City of Miami Beach, Florida

and

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SAMPLE

DESIGN/BUILD AGREEMENT

THIS DESIGN/BUILD AGREEMENT (this "Agreement") is made as of this ____ day of ____, 2015 by and between the City of Miami Beach, Florida, a municipal corporation existing under the laws of the State of Florida (the "City"), and [redacted], a [entity] (the "Design/Builder") (sometimes individually referred to as a "Party" and collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the City wishes to develop, design and construct the Project (as hereinafter defined) in the area more particularly described in Appendix "A" attached hereto (the "Project Site"); and

WHEREAS, pursuant to a Request for Proposals RFP No. [redacted] (the "RFP"), the City requested that qualified firms submit proposals to provide all services necessary and appropriate to design, construct, equip and deliver the Project in accordance with the terms and conditions of the Contract Documents (as hereinafter defined); and

WHEREAS, the City has selected the Design/Builder to perform design, construction and other services in accordance with this Agreement and the other Contract Documents (as defined in Section 1.1 below) for the total amount of [redacted] Dollars (\$X), as determined pursuant to Article 7 hereto (the "Contract Price"); and

WHEREAS, the Design/Builder shall either directly or through Subcontractors (as defined herein) perform the services required under this Agreement and the other Contract Documents: and

WHEREAS, the Design/Builder is ready, willing and able to perform its respective services in accordance with the terms and conditions of the Contract Documents as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS AND INTERPRETATION OF CONTRACT DOCUMENTS

1.1. Definitions. The definitions included in this Section are not exhaustive of all definitions used in this Agreement. Additional terms may be defined in other Contract Documents. The following terms shall have the meanings specified herein unless otherwise stated herein:

"Amendment" means a written modification to the Contract Documents, including any Change Orders signed by the City and the Design/Builder and Construction Change Directives.

"Applicable Laws" means all laws, codes (including, but not limited to, building codes), ordinances, rules, regulations, lawful orders and decrees of governmental authorities having jurisdiction over the Project, the Project Site or the Parties.

"Consultant" means [REDACTED], who shall be a qualified and properly professionally licensed design professional in the State of Florida and as otherwise required by any entities, agencies, boards, governmental authorities and/or any other professional organizations with jurisdiction governing the professional practice area for which the design professional has been engaged by Design/Builder and who will perform (or cause to be performed through Design Subconsultants acceptable to the City) all architectural, design and engineering services required under this Agreement and will serve as the "architect of record" and/or "engineer of record" for the Project. The Consultant shall not be replaced by any other entity, except as otherwise permitted in this Agreement. Further, any Design Subconsultant that may perform services on behalf of the Consultant shall be a qualified and properly professionally licensed design professional in the State of Florida and as otherwise required by any entities, agencies, boards, governmental authorities and/or any other professional organizations with jurisdiction governing the professional practice area for which the Design Subconsultant has been engaged by Design/Builder and/or Consultant to perform professional design services in connection with the Project. The Design/Builder shall be ultimately responsible for ensuring the Consultant's and all Design Subconsultants' compliance with the requirements of this Section and any other provision of the Agreement and other Contract Documents. No Design Subconsultant shall be replaced, nor will additional entities be added as Design Subconsultants, without the prior written consent of the Contract Administrator or City Manager. The Design/Builder shall, upon the request of the City, submit to the City such documentation and information as the City reasonably requests to evidence the creation, standing, ownership and professional licensure of the Consultant (and Design Subconsultants), including organizational documents, operating agreements and professional licensure documentation. However, the City's failure to request such documentation or evidence and/or failure to enforce in any way the terms and provisions of this Section, the Agreement and/or any other Contract Documents during the Project does not excuse, waive and/or condone in any way any noncompliance of the requirements set forth therein including, without limitation, the professional licensure requirements.

"Change Order" means a written document ordering a change in the Contract Price and/or Contract Time or a material change in the Work (as defined herein). A Change Order must comply with the requirements of the Contract Documents.

"City" or **"Owner"** shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Project acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body including, but not limited to, its regulatory authority for code inspections and issuance of Building Department permits, Public Works Department permits, or other applicable permits within its jurisdiction, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a Party to this Agreement.

"City Commission" shall mean the governing and legislative body of the City.

"City's Contingency" means that separate fund established for the Project, which is available for City's use at its sole discretion to defray additional expenses relative to design and construction of the Project, as well as additional expenses expressly chargeable to the City pursuant to the Contract Documents. The Design/Builder has no right or entitlement whatsoever to the City's Contingency, and use of such funds are subject to the Contract Administrator's and/or City Manager's prior written approval and issuance of a Change Order by

the City at its sole and absolute discretion. Any unused amounts in City's Contingency remaining at the completion of the Project shall accrue solely to the City.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing (including the Contract Administrator) with respect to any specific matter(s) concerning the Project and/or the Contract Documents (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to the Project and/or the Contract Documents).

"Claim" shall mean a demand or assertion by one of the Parties seeking, as a matter of right, adjustment or interpretation of the Contract Documents, payment of money, extension of time or other relief with respect to the Contract Documents and/or Project. The term "Claim" also includes other disputes and matters in question between the City and Design/Builder arising out of or relating to the Contract Documents. Claims must be initiated by written notice. The responsibility for substantiating Claims shall rest with the Party making the Claim. All Claims submitted by Design/Builder must comply with the requirements of the False Claims Ordinance, Sections 70-300 et seq., of the City Code or shall be forfeited in accordance with the terms of the False Claims Ordinance and conclusively waived and released.

"Construction Change Directive" means a written order issued by the Contract Administrator or Project Coordinator which orders minor changes in the Work, but which does not involve an alteration in the Contract Price or Contract Time.

"Construction Documents" means those documents prepared by (or on behalf of) the Design/Builder which are actually used to construct the Project, including technical and other drawings, Shop Drawings, schedules, diagrams, and specifications, setting forth in detail the requirements for the construction of the Project. The Construction Documents shall set forth in full all details necessary to complete the construction of the Project in accordance with the Contract Documents. Construction Documents shall not be part of the Agreement, nor shall they constitute Contract Documents, until (a) the Design/Builder has submitted completed Construction Documents to the City and (b) they have been reviewed and approved by the City and any agencies having jurisdiction in accordance with the procedures as otherwise provided by the Contract Documents. However, approval by the City shall not in any way be construed, interpreted and/or deemed to constitute a waiver or excuse Design/Builder's obligations to ensure the Construction Documents are constructible, in compliance with all Applicable Laws and in accordance with the Contract Documents.

"Construction Phase" means that period set forth in the Project Schedule beginning on the effective date as set forth in a Notice to Proceed delivered by the City to the Design/Builder (NTP2), directing the Design/Builder to proceed with the construction activities necessary to complete the Project and ending on the date of Final Completion of the Project. The City shall issue the NTP2 in accordance with the Contract Documents provided Design/Builder has satisfied all requirements of the Contract Documents. However, the City is not obligated to immediately issue NTP2 on the date Design/Builder obtains all requisite permits and/or satisfies the specified conditions precedent for issuance of NTP2. The date of issuance of NTP2 shall be determined at the City's sole discretion once Design/Builder has obtained all required permits and otherwise satisfied all conditions precedent to issuance of NTP2. The Construction Phase shall include the period required to complete the Construction Documents following the issuance of NTP2, to the extent such documents remain incomplete.

“Construction Superintendent” means the Design/Builder’s representative who shall be responsible for continuous field supervision, coordination, and completion of the Work, and who shall maintain a full-time on-site, physical presence at the Project Site. The Construction Superintendent is responsible for management of the Project Site and tasks including, but not limited to, organization and coordination of the Work of Subcontractor employees; exercising control over rate of construction progress to assure completion of the Project within the Project Schedule; inspecting or observing the Work to enforce conformity to the Contract Documents; and supervising trades, subcontractors, clerical staff, and other personnel employed in the construction of the Project.

“Contract Administrator” means the **City’s Capital Improvement Projects (“CIP”) Office** Director or any other City department charged with administering the Project, or his or her designee.

“Contract Documents” means this Agreement (including all of the Appendices and Schedules attached hereto), completed Construction Documents, completed Design Documents (as defined herein), and any Amendments to any of the foregoing.

“Contract Price” means the lump-sum amount established in the Contract Documents as the total amount the City is obligated to pay for full and complete performance of all of the Work required by the Contract Documents including, but not limited to, all labor, equipment and materials to design, administer, coordinate, provide related certifications, install and otherwise construct and complete the Project within the Contract Time.

“CIP Inspector/PWD Field Observer” means a City employee charged with observing and documenting, for internal City purposes only, general observations and conditions of the Project including, without limitation, the weather conditions, the number of workers present at the time of observation, general type of work being performed and taking photographs regarding same. Design/Builder expressly waives any right to assert as a defense to any claim regarding the Project including, without limitation, any dispute between the City and Design/Builder, and Design/Builder and any third party, the presence or purported approval or consent of any CIP Inspector or other City employee conducting any field observations during the Project. The Design/Builder expressly acknowledges that the purpose of such City employee is to observe and document for internal purposes only general observations and conditions of the Project, and in no way is intended to, nor shall be treated as, a person with authority to approve or reject the Work on behalf of the City or any other entity, or to direct the Design/Builder’s Work in any way. Design/Builder expressly agrees to waive the presence of such CIP Inspector or other City employee performing field observations as a defense to any Claims involving the Project.

“Contract Time” means the number of days allowed for completion of all Work, as stipulated in the Contract Documents, and as may be amended by Change Order.

“Days” and/or all references to numbers of days in the Contract Documents, shall be construed to mean calendar days, unless specifically noted otherwise. The term "business days" means a day other than a Saturday, Sunday, Federal holiday or any day on which the principal commercial banks located in Miami, Florida are not open for business during normal hours.

“DCP” or **“Design Criteria Package”** shall mean those certain conceptual plans and specifications and performance oriented drawings or specifications of the Project, as prepared and sealed by the Design Criteria Professional, and in compliance with the requirements of Section 287.055, Florida Statutes.

"Design/Builder" means [REDACTED] and its successors and assigns, and is the entity selected to design and construct the Project pursuant to the Contract Documents, and is the entity which is responsible for compliance by all Consultants, Design Subconsultants and Subcontractors with the Contract Documents and shall be liable for the acceptable performance of the Work and payment of all debts pertaining to the Work.

"Design Criteria Professional" shall mean the individual or entity /which holds a current certificate as a registered engineer under Chapter 471, Florida Statutes, to practice engineering and who is employed by or retained by the City to provide professional services in compliance with the requirements of Section 287.055, Florida Statutes, and in connection with the preparation of the DCP; who shall review and provide recommendations regarding the Construction Documents prepared by the Design/Builder; and evaluate compliance of Project construction with the DCP. For this Project, the Design Criteria Professional is the [REDACTED].

"Design Documents" means all plans, drawings specifications, schematics and all other documents which set forth in full the design of the Project and fix and describe in detail the size, configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents including, without limitation, all architectural and engineering elements as may be appropriate. Design Documents shall not be part of the Agreement, nor shall they constitute Contract Documents, until (a) the Design/Builder has submitted completed Design Documents to the City and (b) they have been reviewed and approved by the City and agencies having jurisdiction in accordance with the procedures as provided by the Contract Documents. However, approval by the City shall not in any way be construed, interpreted and/or deemed to constitute a waiver or excuse Design/Builder's obligations to ensure the Construction Documents are constructible, in compliance with all Applicable Laws and in accordance with the Contract Documents.

"Design Phase" means that period beginning with the City's issuance of a Notice to Proceed for the Design Phase (NTP1), which notice shall be deemed issued by the City upon the complete execution of this Agreement during which phase the Design/Builder shall cause the Consultant to prepare the Design Documents and Construction Documents in accordance with the Contract Documents. If necessary, City may authorize certain construction Work or portions thereof to commence during the Design Phase in one or more Notices to Proceed (i.e. NTP 2-A, 2-B, etc.), at City's sole discretion, provided Design/Builder obtains all necessary permits that may be required in advance thereof and satisfies all requirements of the Contract Documents.

"Design Subconsultant" means any Subcontractor (including, but not limited to, the Consultant) who provides architectural, design, engineering or similar professional services, including the preparation of Shop Drawings, or any services incidental thereto for any part of the Work. The Design Subconsultant shall be a qualified and properly professionally licensed design professional in the State of Florida and as otherwise required by any entities, agencies, boards, governmental authorities and/or any other professional organizations with jurisdiction governing the professional practice area for which the design professional has been engaged by Design/Builder and/or its Consultant to perform professional design services in connection with the Project. No Design Subconsultant shall be replaced, nor will additional entities be added as Design Subconsultants, without the prior written consent of the Contract Administrator or City Manager. The Design/Builder shall be ultimately responsible for ensuring all Design Subconsultants' compliance with the requirements of this Section and any other provision of the

Agreement and other Contract Documents. The Design/Builder shall, upon the request of the City, submit to the City such documentation and information as the City reasonably requests to evidence the creation, standing, ownership and professional licensure of the Design Subconsultants, including organizational documents, operating agreements and professional licensure documentation. However, the City's failure to request such documentation or evidence and/or failure to enforce in any way the terms and provisions of this Section, the Agreement and/or any other Contract Documents during the Project does not excuse, waive and/or condone in any way any noncompliance with the requirements set forth therein including, without limitation, the professional licensure requirements.

"Effective Date of this Agreement" means the date this Agreement is fully executed by the Parties and attested to by the City Clerk.

"Final Completion" means the date upon which all conditions and requirements of the Contract Documents, permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by the City; any other documents required to be provided have been received by City; and the Work has been fully completed in accordance with the Contract Documents.

"General Conditions" means the direct and indirect costs and expenses for facilities or performance of Work by the Design/Builder for items which do not lend themselves readily to inclusion in a separate trade subcontract and which shall be included within the Contract Price, including, without limitation: (i) wages, salaries, benefits and costs for onsite and local office Project management staff, supervisory and other technical, administrative and clerical Project personnel engaged in supervision and management of the Work on the Project Site, including the Project Manager, Construction Superintendent, structural superintendent, assistant superintendent, shop drawing checker, secretary, layout foreman, consultants, estimators, cost controllers, accountants, office administrative personnel, time keepers, clerks, safety director, safety coordinator, safety labor, overall project schedule preparation, CPM scheduling and scheduler costs, cost of periodic site visits for supervisory, inspection, oversight, or management of the Project by specific "home office" personnel previously approved in writing by the City; (ii) field/onsite construction offices and supplies including transportation and set-up of onsite construction office trailers, construction of ramps and stairs for onsite construction office, interior build-out of onsite construction office, onsite construction office trailer rental, first aid supplies, reproduction services, monthly office supplies, Project reference manuals, field office postage, field office furniture, onsite construction office computer system and software, installation and equipment of field computer ISDN line, monthly cost for field ISDN/computer line, onsite construction office photocopier rental and supplies, plan printing (other than revisions) or document reproduction used for bidding or information purposes required by the Contract Documents, long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Design/Builder's jobsite office if incurred at the Project Site and directly and solely in support of the Work, Project Site photographs, field office express mail/courier charges, miscellaneous onsite construction office supplies, safety material and equipment, small tools, equipment or machinery, miscellaneous hand tool rental equipment (other than that of the subcontractors), hand tool purchase, hand tool repair, hand tool rental, job radios, jobsite cleaning labor and material, trash containers, final exterior and interior cleaning materials and labor other than subcontractors, miscellaneous cutting and patching, traffic control, off duty police officer(s), alarm system and monitoring for trailers; (iii) surveys, measurements and layout work reasonably required to perform the Work; (iv) retention/storage of Project records; (v) off-site secure storage space or facilities approved in advance by the City; (vi) miscellaneous expendable items, extended

jobsite General Conditions, interest on monies retained by the City, escalated costs of materials and labor, home office expenses or any cost incurred that may be allocated from offices of the Design/Builder or any of its Subcontractors; and (vii) any other items typically categorized in the construction industry as “general conditions” expenses.

“Milestone” means an element or elements of the Work which must be completed within a specified period of time as described in the Contract Documents or Project Schedule, and shall include the specific Milestones set forth in Appendix “D,” if any, and further delineated in the Project Schedule.

“Notice to Proceed” or “NTP” means a written letter or directive issued by the Contract Administrator to Design/Builder to commence and proceed with portions of the Work as specified therein or a specific task of the Project, and stating any further limitations on the extent to which Design/Builder may commence and proceed with the Work. Unless otherwise approved by the City at its sole discretion, City’s issuance of a Notice to Proceed for the Construction Phase (“NTP2”) or portions thereof shall be contingent upon Design/Builder’s obtaining all appropriate permits and satisfying all requirements of agencies having jurisdiction. However, the City is not obligated to immediately issue NTP2 on the date Design/Builder obtains all requisite permits and/or satisfies the specified conditions precedent for issuance of NTP2. The date of issuance of NTP2 shall be determined at the City’s sole discretion once Design/Builder has obtained all required permits and otherwise satisfied all conditions precedent to issuance of NTP2.

“Notice to Proceed Date” means the date on which the Notice to Proceed is issued to Design/Builder, or the date stated in the Notice to Proceed as being the Notice to Proceed Date, whichever is latest.

“Parties” means City and Design/Builder, and “Party” is a reference to either City or Design/Builder, as the context may indicate or require.

“Project” consists of, but is not limited to, the following improvements, all as more fully set forth and described in the Design Criteria Package attached hereto as Appendix H, and as is contemplated thereby or reasonably inferable therefrom, as described in Appendix A hereto.

“Project Coordinator” means the City employee designated in writing by the City Manager or Contract Administrator, who shall be the City’s authorized representative to coordinate and facilitate (on behalf of the City in its proprietary capacity as “Owner”) all matters related to the Project.

“Project Manager” means the authorized individual or firm which is the representative of Design/Builder and who will administer and manage the prosecution of all Work on behalf of the Design/Builder.

“Project Schedule” or “Schedule” means the City-approved and accepted detailed master schedule that Design/Builder develops and maintains for the Project, utilizing the latest version of Primavera software and in accordance with the specifications and other Contract Documents, and which includes the schedule for achieving the various Milestones, the phasing and performance of all aspects of the Work including, but not limited to, design, construction, construction engineering and observation services, testing, project closeout, warranty, City occupancy dates and all required updates to all of the foregoing, subject to the approval of the City as may be amended pursuant to a Change Order. At the request of the City, the

Design/Builder shall provide any additional information or further detailed breakdown as to components of the Work in the Project Schedule.

“Project Site” shall have the meaning ascribed to it in the Recitals.

“Punch list” means the list or lists prepared by the Consultant, incorporating input provided by the City and/or RPR, identifying matters that remain to be completed to achieve Substantial Completion and to be completed between achievement of Substantial Completion and Final Completion in order that Substantial Completion and Final Completion can be declared by City to have occurred.

“Resident Project Representative” or “RPR” shall have the meaning and duties ascribed to it in Section 4.7 hereof.

“RFP Proposal Submission” means the response to the RFP submitted by the Design/Builder during the selection process attached hereto as Exhibit [REDACTED], including its qualifications and experience and entity and of its key personnel to be assigned to the Project, and including other relevant items describing the Design/Builder’s capabilities and proposed approach to the Project. The RFP Proposal Submission is included for reference purposes only and shall not be incorporated as part of this Agreement, except with respect to Design/Builder’s representations regarding the qualifications and experience of Design/Builder and its key personnel, its commitment to provide the key personnel listed therein, and its capability to perform and deliver the Project in accordance with the Contract Documents and consistent with the all representations made therein.

“Schedule of Values” means a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, material, general conditions costs, and taxes of all elements comprising the Contract Price. The Schedule of Values shall be used to determine progress payments in accordance with Article 8.

“Shop Drawings” means drawings, diagrams and schedules, and other data specifically prepared by the Design/Builder or its Subcontractors, sub-Subcontractors, manufacturers, suppliers or distributors to illustrate some portion of the Work.

“Subcontractor” means any person or entity with whom the Design/Builder contracts to perform any part of the Work or to supply any labor and/or materials in relation to the Work. In addition, the term Subcontractor shall apply to subcontractors of any tier and suppliers and materialmen employed on or for the Project pursuant to a subcontract with a Subcontractor or lower-tier subcontractor.

“Substantial Completion” shall be deemed to have occurred when the Work, as certified in writing by the Consultant, and determined by the City in its sole discretion, has been developed, designed, engineered and constructed in accordance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the Project is ready for occupancy, utilization and continuous commercial operation for the uses and purposes intended by the City, without material interference from incomplete or improperly completed Work and with only minor punch list items remaining to be completed, all as reasonably determined by the City and evidenced by (1) the issuance of a Certificate of Occupancy or Certificate of Completion by the authority having jurisdiction; (2) the issuance of a Certificate of Substantial

Completion by the Consultant; and (3) acceptance of such Certificate of Substantial Completion by the City pursuant to Section 6.11 herein.

"Substantial Completion Date" means the date on which Substantial Completion of the Work is declared by City to have occurred.

"Surety" means the company which is bound by the performance bond and payment bonds with and for Design/Builder who is primarily liable and which surety company is responsible for Design/Builder's acceptable performance of the Work under the Contract Documents and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

"Vendor" or **"Supplier"** means any person who supplies machinery, equipment, materials, consumables, support services, utilities, etc. to Construction Manager or to any Subcontractor in connection with the performance of Construction Manager's obligations under the Contract, but who does not perform labor at the Project Site other than delivery.

"Work" means the design and construction of the Project as set forth in the Contract Documents including, without limitation, all design, architectural, engineering and other professional services, permitting services, demolition and construction services, testing and inspection services, supervision, administration and coordination services and the provision of all drawings, specifications, labor, materials, equipment, supplies, tools, machinery, utilities, fabrication, transportation, insurance, bonds, permits and conditions thereof, zoning approvals, building code changes and government approvals, licenses, tests, quality assurance and/or quality control inspections and related certifications, surveys, studies, and other items, work and services that are necessary or appropriate for the total design, construction, installation, furnishing, equipping, and functioning of the Project, together with all additional, collateral and incidental items, and work and services required for delivery of a completed, fully functional and functioning Project as set forth in the Contract Documents. The Work also includes training in the use and operation of the completed Project (and components thereof) and completion of any and all off-site work and improvements that are reasonably required in order for the Design/Builder to complete the Work (including, without limitation, off-site work which is not specifically identified in the DCP, but is reasonably inferable therefrom).

1.2. As used in the Contract Documents, (i) the singular shall include the plural, and the masculine shall include the feminine and neutral, as the context requires; (ii) "includes" or "including" shall mean "including, but not limited to" and "including, without limitation;" and (iii) all definitions of agreements shall include all amendments thereto in effect from time to time.

1.3. Whenever it shall be provided in this Agreement that the Design/Builder is required to perform a service or obligation "at its sole cost and expense" or words of substantially similar meaning, the Design/Builder shall not be entitled to reimbursement for such item and the cost of such service or obligation shall not be included in any Application for Payment.

1.4. Contract Documents shall be construed in a harmonious manner, whenever possible. The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Design/Builder.

1.5. The Contract Documents shall be taken as a whole and are complementary, and any item of Work called for in any Contract Document shall be as binding as if called for by all, so that any part of the Work shown or described in any of the Contract Documents, though not specifically referred to in other Contract Documents, shall be executed by Design/Builder and

binding as a part of the Contract Documents, as well as any Work which, in the sole opinion of City, may be fairly inferred from the Contract Documents or by normal industry practice.

1.6. Detailed plans shall take precedence over general plans for the same part of the Work. Specifications and detailed plans which may be prepared or approved by City after the execution of the Agreement and which may be fairly inferred from the original specifications and plans are to be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Project Schedule. With respect to conflicts between large-scale drawings and small-scale drawings, the larger scale drawing shall govern, unless otherwise dictated by Consultant.

1.7. Where compliance with two or more requirements is indicated in any of the enumerated Contract Documents and where these requirements within the Contract Documents conflict in quantity or quality, the Design/Builder shall comply with the most stringent requirement as determined by the City, unless specifically indicated otherwise in the Contract Documents.

1.8. As used in the Contract Documents, unless specifically indicated otherwise, references to an Article include all Sections, Subsections, and items within that Article; references to a Section include all Subsections and items within that Section; and references to a Subsection include all items within that Subsection.

1.9. Words which have a well-known technical or trade meaning are used herein in accordance with such recognized or well-known meaning, unless this Agreement otherwise specifically defines such word.

1.10. The Recitals, Appendices, Exhibits and Schedules attached hereto are expressly incorporated in and made a part of this Agreement as if fully set forth herein.

ARTICLE 2

INTENTION OF THE CITY AND PRIORITY OF CONTRACT DOCUMENTS

2.1. Intent. The DCP set forth herein and attached as Appendix H is comprised of documents that indicate the general scope and character of the Work in terms of all applicable architectural and engineering elements. However, the DCP does not indicate or describe all of the work required for full performance and completion of the Project. The sizes, quantities, areas and configurations of the Work, to the extent they appear in the DCP, are all subject to refinement, detail and modification during the Design Phase as part of the Work. During the Design Phase, the Design/Builder will, as part of the Work, develop, refine, detail and modify the design encompassed within the documents as set forth in the DCP as necessary to provide the City with a fully functional and functioning Project within the scope and intent of the Contract Documents and within the Contract Price and the Project Schedule. The Design/Builder shall include all such refinements, details and modifications in the Design Documents and Construction Documents. The Design/Builder expressly understands and acknowledges that the DCP is not intended to be treated as fully constructible, code compliant Construction Documents and that Design/Builder shall ensure that its refinements, details and modifications shall include any and all components necessary to comply with all Applicable Laws, regulations, ordinances and codes. It is the intent of the Contract Documents that the Design/Builder shall provide all items and services necessary for the proper design, construction, execution and completion of the fully equipped and functional Project in accordance with the Contract

Documents, including any and all such necessary items and services consistent with, contemplated by, and reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by any one shall be binding as if required by all.

2.2. Priority of Contract Documents. In the event of conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of the Contract Documents:

- a. Amendments to this Agreement (excluding the Design Documents and the Construction Documents);
- b. This Agreement and all Appendices attached hereto (excluding the Design Documents and the Construction Documents);
- c. Modifications or changes to the completed Construction Documents, as approved by the City;
- d. The completed Construction Documents, as approved by the City;
- e. Modifications or changes to the completed Design Documents, as approved by the City;
- f. The completed Design Documents, as approved by the City;
- g. The DCP and related documents as set forth in Appendix "H," and
- h. The RFP.

In the event of any conflict between the Agreement, as amended, and Division 1 of the Project Specifications, the provisions of the Agreement (or Amendment thereto) shall take precedence and control.

ARTICLE 3 **DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES**

3.1. Performance of Work. The Design/Builder covenants and warrants that it shall be responsible for performing and completing, and for causing all Consultants, Design Subconsultants and Subcontractors to perform and complete, the Work in accordance with the Contract Documents and all Applicable Laws relating to the Project Site and/or the Work, shall be responsible for completing the Project, shall achieve Substantial Completion by the Substantial Completion Date, as such date may be extended pursuant to the terms of this Agreement, and shall achieve Final Completion of the Project by the date established therefore in the Certificate of Substantial Completion, as such date may be extended pursuant to the terms of this Agreement. The Design/Builder shall provide all requested services according to the capabilities reflected in its RFP Proposal Submission. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as agreed to in writing between City and Design/Builder, the form and content of all systems, reports, forms and regular submittals by Design/Builder to City shall be subject to prior approval of the City, and Design/Builder shall submit such materials to the City for City's approval prior to

implementation. City's approval thereof shall not limit City's right to thereafter require reasonable changes or additions to approved systems, reports, forms and regular submittals by Design/Builder to City.

3.2. Scope. Design/Builder hereby agrees to complete the Project generally described by the DCP, including furnishing all preliminary study designs, drawings and specifications, job site inspection, administration of construction, engineering, architecture, landscape architecture, and land surveying services, labor, materials, equipment and other services necessary to perform, furnish and deliver all of the Work in strict and entire conformity with the Contract Documents, and in a satisfactory and workmanlike manner, within the Contract Time and for the Contract Price.

3.3. Professional Standard. The Work shall be performed in accordance with the professional standards applicable to projects, buildings, or work of complexity, quality and scope comparable to the Work and the Project. More specifically, in the performance of the professional services under this Contract, Design/Builder shall provide the care and skill ordinarily used by members of its profession practicing under similar conditions for projects of similar type, size and complexity at the same time and locality of the Project. Work shall be performed by the Design/Builder, Consultant, Design Subconsultants, Subcontractors and specific personnel referred to in the RFP Proposal Submission or elsewhere in the Contract Documents in accordance with their respective degrees of participation provided and represented to the City by the Design/Builder from time to time. The Design/Builder agrees that a Subcontractor shall not be replaced unless a substitute entity approved by the City is retained by the Design/Builder. The Design/Builder may add a Subcontractor as it deems necessary or appropriate in order to carry out its obligations under the Contract Documents, provided such entity shall be suitably qualified and shall be subject to the prior approval of the City. Nothing contained in this Agreement shall be construed to create any obligation or contractual liability running from the City to any such persons or entities, including to any Subcontractors.

3.4. Independent Contractor. Design/Builder is an independent contractor and is not an agent or employee of City or agent in performing the Work. Except as otherwise provided herein, Design/Builder shall maintain complete control over its own employees, agents and operations and those of its Consultant, Design Subconsultants, Subcontractors, Vendors and their respective employees and agents. Design/Builder hereby accepts complete responsibility as a principal for its agents, Consultant, Design Subconsultants, Subcontractors, Vendors, Suppliers, their respective employees, agents and persons acting for or on their behalf, and all others it hires to perform or assist in performing the Work.

3.5. Design Documents and Construction Documents.

a. Based upon the DCP, the other documents set forth in Appendix "H", and the other Contract Documents and all other information furnished by the City, upon receipt of the NTP1, the Design/Builder shall cause the Consultant (and any Design Subconsultants retained by the Consultant, if any) to prepare and submit Design Documents and Construction Documents to the City for the City's review and approval. The Design/Builder specifically acknowledges and agrees that (i) the Design Documents shall be consistent with, and develop in detail, the intent and scope of the DCP; and (ii) the Construction Documents shall, in turn, be consistent with and develop in detail the intent and scope of the approved Design Documents. The Construction Documents shall include all drawings and specifications as are necessary to obtain required permits and regulatory approvals, shall provide information customarily

necessary for the use of such documents by those in the building trades, and shall include all documents required for the complete and final construction of the Project, other than such detail as is customarily developed in Shop Drawings and otherwise during construction.

b. The City's review and approval of the Design Documents and Construction Documents shall be conducted in accordance with the procedures set forth in the Contract Documents. Such review and approval shall not relieve the Design/Builder, Consultant, Design Subconsultants, or the Subcontractors from any of its or their responsibilities or liabilities under this Agreement, or be deemed to be an approval or waiver by the City of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents unless such deviation or failure has been specifically identified by the Design/Builder in writing and approved by the City in an Amendment to the Agreement. Notwithstanding any provision herein to the contrary, the Design/Builder agrees and recognizes that the City, in reviewing, approving or rejecting any submissions by the Design/Builder or other actions of the Design/Builder, in no way assumes or shares any responsibility or liability of the Design/Builder or its Consultants, Design Subconsultants, and/or Subcontractors.

c. Design/Builder acknowledges and understands that the City selected the design/build method of project delivery in order to obtain the advantages associated with having the builder participate in the design process. Accordingly, throughout the Design Phase, the Design/Builder shall continually provide value engineering services, all of which services shall be performed to assist the City in reducing design, construction, operation and maintenance costs with respect to the Project while maintaining or enhancing the Project's quality, efficiency, integrity, artistic content, functional performance and aesthetics. Particular attention shall be given to possible economies and identification of options which would maximize the benefits the City would derive upon completion of the Work.

d. Any value engineering proposal submitted by the Design/Builder shall include, without limitation, the following: (i) a detailed description of the difference between the requirements of the Contract Documents (including the DCP) and the proposed changes and comparative advantages and disadvantages of each; (ii) itemization of aspects of the Contract Documents (including the DCP) affected by enactment of the value engineering proposal; (iii) a declaration that the proposed changes meet all applicable codes and laws and will be acceptable to all agencies having jurisdiction; (iv) impact of the proposal upon both the Contract Price and Project Schedule; (v) other information reasonably necessary to fully evaluate the value engineering proposal; and (vi) the date by which the City must accept the value engineering proposal in order for the Design/Builder's cost and time estimates to remain valid. The Design/Builder shall proceed with the performance of the Work as required by the Contract Documents and shall not implement any value engineering or other recommendations unless such recommendations are accepted by the City in writing in a Change Order or Construction Change Directive.

e. The Parties hereby acknowledge and agree that Design Criteria Professional will be acting as the City's design consultant throughout the performance of the Work and Design Criteria Professional pursuant to Section 287.055 of the Florida Statutes. In connection therewith, the Design/Builder acknowledges that Design Criteria Professional will not be the architect or engineer of record for the Project and will not be responsible for the preparation, adequacy or contents of the Design Documents and Construction Documents or for the performance of the Work. Further, nothing herein shall be construed as assigning Design Criteria Professional the responsibility for, or to control, direct or supervise

construction, or construction means, methods, techniques, sequences or procedures or safety measures or programs.

3.6. Permits and Compliance With All Applicable Laws.

a. The Design/Builder shall comply, and shall cause its Consultant, Design Subconsultants and Subcontractors to comply, with all existing and future Applicable Laws relating to the Project Site, the Project and the prosecution of the Work; shall obtain all requisite local, State and Federal licenses to perform the Work including, without limitation, all professional licenses mandated by the State of Florida to perform the design and construction services which comprise the scope of Work on the Project; shall timely prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work, the Project Site and/or the Project; and shall secure and pay for all building and other permits (and conditions or requirements thereof) and governmental fees, licenses, approvals, temporary Certificates of Occupancy or Certificates of Completion (and conditions or requirements thereof), Certificates of Occupancy or completion and inspections necessary for the proper execution of the Work and completion of the Project. The Design/Builder shall be responsible for providing all logs, inspections, documentation, record keeping, maintenance, remedial actions, and repairs required by Applicable Laws and/or permits including, without limitation, those relating to National Pollutant Discharge Elimination Systems (NPDES) requirements.

b. The Contract Price includes the cost of compliance with all Applicable Laws in effect as of the Effective Date of this Agreement in order to carry out the Work. In the event that after the date hereof there shall be a material change in any Applicable Laws relating to the Work that impact the Contract Time or Contract Price, the Project Site and/or the Project, and if as a result of any such change, the Design/Builder and its Consultant, Design Subconsultant and/or Subcontractors must institute changes in the design and/or construction of the Project or shall be required to incur additional costs in performing the Work in order to be in compliance therewith, then to the extent that any such change gives rise to a demonstrable increase in the time required to complete the Work and/or in the cost to the Design/Builder of completing the affected portion(s) of the Work, as evidenced by documentation reasonably acceptable to the City, the Design/Builder shall be entitled to an equitable adjustment in the Project Schedule and/or the Contract Price, as applicable, in accordance with the procedures set forth in Article 11 hereof. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Design/Builder shall not be entitled to an extension of the Substantial Completion Date, the Project Schedule, or an increase to the Contract Price in connection with any change or modification to any applicable building code, to the extent that such change or amendment to the applicable building code, as applicable to the Project, is enacted prior to the date the Design/Builder is issued the permit to construct the Project by the City.

3.7. Services, Facilities. The Design/Builder shall provide, or cause to be provided, everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design, engineering, demolition and construction services, supervision, fabrication, administration and coordination services, and the provision of all drawings, specifications, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, insurance and other facilities and services. Design/Builder shall also provide and pay for field engineering services required for the Project.

This work shall include the following elements: (i) survey work required in execution of the Project; (ii) civil, structural or other professional engineering, architectural, landscape architectural, or land surveying services specified, or required to execute the Design/Builder's construction methods.

a. **Coordination.** The Design/Builder shall coordinate design and construction requirements with government agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements of the Project. Design/Builder shall conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on streets, highways, sidewalks, or other public right of ways without the written consent of the proper authorities having jurisdiction including, without limitation, securing all applicable permits in connection therewith.

b. **Cooperation.** The Design/Builder shall cooperate with and assist the City's staff, the City's legal, financial, design and construction consultants and all other consultants or designated representatives of the City at all times during the development of the Project as necessary to complete the Project in a manner reasonably satisfactory to the City. Design/Builder agrees to meet with Contract Administrator, Project Coordinator and/or their designees at reasonable times and with reasonable notice.

c. **Management/Administration.** The Design/Builder shall be responsible for general management and administration of the Project and prosecution of the Work. Design/Builder shall be responsible for maintaining the Project plans and reports set forth in Appendix B. Design/Builder shall implement and use the City's e-Builder™ system for data warehousing and document management.

3.8. Means and Methods. The Design/Builder shall control and coordinate and is responsible for all construction means, methods, techniques, sequences and procedures relating to the Work. Nothing specified or included in the DCP shall be construed or interpreted to mean the City and/or Design Criteria Professional assumes such responsibility.

3.9. Reports. The Design/Builder shall prepare and submit to the City, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the City.

The electronic copy and up to two (2) hard copies of all monthly progress reports shall be submitted to the City at the time of each monthly Application for Payment (as defined in Article 8 hereof), but in no event later than the fifth (5th) day of each month during the period commencing with the first Application for Payment and ending with the Final Completion of the entire Project by the City. Following the first application for payment, such monthly progress report shall be submitted each month, even if no application for payment is submitted during that month. Each monthly progress report shall be a comprehensive and detailed narrative report on all aspects of the Project during the previous month, and shall include the areas of (i) Project cost control and Project Budget, (ii) Project Schedule control, (iii) quality assurance program, and (iv) safety program. The monthly progress report shall, in addition to describing the Work performed during the previous month, emphasize any problems encountered during the month and measures taken or to be taken to correct these problems. The Design/Builder shall update and submit monthly its "critical path method" ("CPM") progress chart to the City illustrating progress which has been made, by reference to such critical path method progress chart, and specifically identifying whether the Work is on schedule or behind schedule and

actions being taken to correct schedule delays or slippage. In addition, the Design/Builder's monthly progress report shall set forth scheduled and projected progress for the forthcoming month.

3.10. Design/Builder's Warranty.

a. **Warranty.** The Design/Builder warrants to the City that all design, engineering and other professional services, and all construction services, will be performed in accordance with the professional standards described in the Contract Documents, that all work and services provided under this Agreement will also be performed in a good and workmanlike manner, that all materials, supplies and equipment furnished under this Agreement will be of good quality and new, that the Work (including, without limitation, each item of equipment incorporated therein) will be of good and workmanlike quality and free from faults, defects and deficiencies in materials and workmanship, that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the City, and that the Work will conform with the requirements of the Contract Documents; provided, nothing specifically set forth in this Section 3.10.a shall be deemed a warranty of the design of the Project if such a warranty would render void or unenforceable any insurance applicable to the design services to be provided under this Agreement. The Design/Builder's warranty shall extend for a period of one year from the Substantial Completion Date of the Work, unless a greater warranty period is applicable; provided, however, that in the event that a Subcontractor Warranty provided pursuant to Section 3.10.b below shall extend for a term of longer than one year, such extended term shall be the term of the Design/Builder's warranty for the pertinent portion of the Work; and provided further, however, that in the event that the Design/Builder or any of its Subcontractors is required to repair or replace any warranted item pursuant to this Section 3.10, the warranty for such repaired or replaced item shall extend from the date of completion of the repair or replacement through a term equivalent in length to the term of the initial warranty.

b. **Subcontractor Warranties.** In addition to any requirements in the other Contract Documents, the Design/Builder shall use its best efforts to obtain additional warranties for the benefit of the Design/Builder and the City from material and equipment suppliers, vendors and Subcontractors in relation to their respective portions of the Work. Such warranties shall be in addition to, and not substitutes for, those warranties mandated to be obtained pursuant to the Contract Documents.

c. **Warranty of the DCP.** The Design/Builder warrants to City that it has thoroughly reviewed and studied the DCP, and has determined that it is in conformance with Applicable Laws, and is sufficiently complete and coordinated to perform the Work for the Contract Price and within the Project Schedule. Design/Builder warrants to City that the DCP is consistent, practical, feasible and constructible, and specifically warrants that the Work described in the DCP is constructible for the Contract Price and within the Project Schedule.

d. **Warranty of the Construction Documents.** **DESIGN/BUILDER HEREBY WARRANTS AND REPRESENTS THAT THE CONSTRUCTION DOCUMENTS ARE COORDINATED, CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. WITHOUT ANY CLAIM FOR ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE, DESIGN/BUILDER SHALL BE RESPONSIBLE FOR ALL COSTS AND EXPENSES ARISING FROM ANY AND ALL ERRORS AND/OR OMISSIONS IN THE CONSTRUCTION DOCUMENTS INCLUDING, BUT NOT LIMITED TO, CONFLICTS IN THE CONSTRUCTION DOCUMENTS; QUESTIONS OF CLARITY WITH REGARD TO THE CONSTRUCTION DOCUMENTS; AND INCOMPATIBILITY, OR CONFLICTS BETWEEN THE CONSTRUCTION**

DOCUMENTS AND THE REASONABLY ANTICIPATED EXISTING CONDITIONS, UTILITIES, AND CODE ISSUES.

e. **Design/Builder to Check Drawings and Data.** Design/Builder shall take measurements and verify all dimensions, conditions, quantities and details shown on the DCP and any other plans or specifications provided to Design/Builder including, but not limited to, the drawings, schedules, or other data. Failure to discover or correct errors, conflicts or discrepancies shall not relieve Design/Builder of full responsibility for unsatisfactory Work, faulty construction, or improper operation resulting therefrom, nor shall it relieve Design/Builder of its full responsibility for remediating such condition at Design/Builder's own sole expense. Design/Builder will not be allowed to take advantage of any error or omissions whether by way of seeking additional money or time.

f. **Design/Builder Responsible for Location of Utilities.** City does not guarantee that all utility lines are shown in the DCP or any other Contract Documents, or that the ones indicated are in their true location. It shall be the Design/Builder's sole responsibility to identify and locate all underground and overhead utility lines or equipment affecting or affected by the Project. The Design/Builder accepts all liability for and all risk arising out of or relating to the location of utilities and by execution of this Agreement waives any Claim against the City, Design Criteria Professional or any of their respective consultants or Subcontractors for any errors or omissions in the DCP or other Contract Documents with respect thereto.

i. The Design/Builder shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. Prior to the start of construction of any portion of the Work, Design/Builder shall be solely responsible for arranging for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Design/Builder shall be paid by the Design/Builder. All charges by utility companies for temporary support of its utilities shall be paid for by the Design/Builder. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. It shall be the Design Builder's sole responsibility to coordinate with such utilities, including arranging for payment, if applicable. The City may, but shall not be obligated to, provide reasonable assistance with respect to such coordination and, to the extent the City does attempt to assist or facilitate such coordination with utilities, it shall not in any way be construed or interpreted as the City's assumption of such responsibility which shall remain solely with the Design/Builder. No additional payment will be made to the Design/Builder for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines; provided, however, Design/Builder shall not be found to be in breach of this Agreement and may be granted by the City an extension of time provided for in accordance with Article 12 of this Agreement in order to complete Work, if Design/Builder's performance is delayed solely due to utility companies' negligent actions or omissions.

ii. The Design/Builder shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Design/Builder for any loss of time or delay.

g. **Primary Liability.** The Design/Builder shall have primary liability with respect to the warranties set forth in the Contract Documents, whether or not any defect, deficiency or other matter is also covered by a warranty of a Subcontractor or other third party, and the City need only look to the Design/Builder for corrective action replacement or reimbursement. In addition thereto, the Design/Builder's warranties expressed herein shall

not be restricted in any manner by any warranty of a Subcontractor or other third party, and the refusal of a Subcontractor or other third party to correct defective, deficient or nonconforming Work shall not excuse the Design/Builder from its liability as to the warranties provided herein.

3.11. Taxes. The Design/Builder shall pay and shall be responsible for, as part of the Contract Price, all existing and future applicable Federal, State, local and other sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work. The Contract Price includes all other Federal, State, local and/or other direct or indirect taxes which may apply. In the event the City elects to implement a direct purchase program for the purchase of materials and equipment to achieve Florida sales tax savings, Design/Builder shall comply with the provisions set forth in Appendix C with respect to any such City purchases.

3.12. Access by Others. The Design/Builder shall afford the City, Contract Administrator, Project Coordinator, and their authorized designees or representatives, safe access to the Project Site at all times. Access to the Project Site shall also be permitted at all times to all Federal, State, County and City safety, regulatory and inspection departments, personnel and agencies and other governmental entities having jurisdiction over the Work and the Project Site. Design/Builder shall provide proper facilities and construction for such access.

3.13. Use of Site. The Design/Builder shall, prior to any on-site testing and inspection activities and prior to on-site mobilization for demolition, excavation or construction, prepare a mobilization plan for the City's review and approval. The Design/Builder shall at all times confine its operations to the Project Site, or to any lesser area specified by laws, ordinances, permits or any other Contract Documents.

3.14. Correction of Defective Work. The Design/Builder shall correct Work which does not conform to the Contract Documents in accordance with the provisions of Article 13 hereof and the other Contract Documents.

3.15. Patents, Trademarks, Copyrights. The Design/Builder shall pay all royalties and other fees for any patents, trademarks, copyrights or other proprietary rights necessary for the execution and completion of the Work. The Design/Builder shall indemnify, defend and hold harmless the City from and against any and all losses, damages or expenses including, without limitation, court costs and reasonable attorneys' fees, arising or resulting from any claim or legal action that any materials, supplies, equipment, processes or other portions of the Work furnished by the Design/Builder under this Agreement, or the use thereof, constitutes an infringement and/or violation of any patent, trademark, copyright, trade secret, intellectual property right or other proprietary right. If any such item is held to constitute an infringement, and the use of such item is enjoined, the Design/Builder shall, at its sole expense (in addition to the Design/Builder's indemnification obligation described above and any other remedies the City may have under this Agreement), either procure the right to use the infringing item, or replace the same with a substantially equal but non-infringing item, or modify the same to be non-infringing, provided that any substitute or modified item shall meet all the requirements and be subject to all the provisions of this Agreement. The terms and provisions of this Section 3.15 shall survive the termination or expiration of this Agreement.

3.16. Rubbish; Debris; Cleaning. During the performance of the Work, the Design/Builder shall at all times, as part of the stipulated Contract Price, keep the Project Site and adjacent streets, properties and sidewalks free from waste materials, debris and/or rubbish, and shall

employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in any way as reasonably determined by the City, the Design/Builder shall promptly remove the same at its sole cost and expense.

a. The Design/Builder shall use its best efforts to assure that no burning of trash, debris or roofing bitumen containers by the Design/Builder or its Subcontractors occurs on the Project Site and that no dust or trash from Work in progress creates a public nuisance. In the event of any such occurrence, the Design/Builder shall promptly cause the abatement thereof. The Design/Builder shall remove all spillage and tracking arising from the performance of the Work from streets and sidewalks around the Project Site, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. If the Design/Builder fails, promptly after written notice from the City, to keep the Project Site and the surrounding properties clean, the City may thereafter perform any such cleaning services and deduct the cost of those services from amounts otherwise payable to the Design/Builder under this Agreement. No assumption by the City of such cleaning services shall waive any future obligation of Design/Builder to perform said services. Further, The City's deduction of the costs of those services from amounts otherwise payable to Design/Builder under the Agreement shall not constitute a waiver of the City's right to place Design/Builder in Default for such noncompliance.

b. Upon Substantial Completion of the Work, or any portion or component thereof acceptable to the City, the Design/Builder (i) shall remove from the Project Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish, and (ii) shall leave the Project Site, or applicable portion thereof, in a thoroughly clean condition, and perform any other cleaning services described in Division 1. The Design/Builder shall re-perform any such services after the Substantial Completion Date to the extent the same is necessary or appropriate due to any Work performed by the Design/Builder after such date.

c. All Work shall be cleaned using only specific materials recommended for the surfaces to be cleaned. Damage to any surfaces due to improper cleaning methods or materials used by the Design/Builder or its Subcontractors shall be repaired and replaced by the Design/Builder at its sole cost.

3.17. Members of Design/Builder's Team. The personnel and firms presented in the Design/Builder's RFP Proposal Submission shall staff key positions including, but not limited to, the Design/Builder, Consultant, Subconsultants, Project Manager and Construction Superintendent, if specified ("Key Personnel"). Such Key Personnel shall remain assigned to the Project through the duration of this Project and shall not be reassigned without the prior written approval of the Contract Administrator, unless the individual has left the employment of the Design/Builder. The City will not unreasonably withhold its consent to additions of or substitutions for, Key Personnel, with new personnel of comparable qualifications in the event of death, promotion, retirement, job changes, firing, failure to perform or other good cause shown. The Construction Superintendent and Project Manager shall be authorized to act on behalf of the Design/Builder to coordinate, inspect, and provide general direction of the Work in progress. The Design/Builder's Construction Superintendent shall be assigned to the Project on a full-time basis, on-site, for 100% of his/her time, with no allocations or commitments to other clients or projects, and shall be competent, and English-speaking.

a. **Responsibilities of Design/Builder's Project Manager.** Design/Builder herein represents that its Project Manager, at a minimum, will provide the following services:

i. If not selected earlier or identified as part of the RFP Proposal Submission, at least thirty (30) days prior to the commencement of the Construction Phase of the Project, the Design/Builder will identify and provide the qualifications of a suitably qualified and experienced Project Manager who will be full time, on site at the Project, for 100% of his/her time.

ii. Design/Builder will use reasonable efforts to have the same Project Manager on the Project full time to its conclusion, and any new proposed Project Manager shall first be approved in writing by Contract Administrator before permanent assignment; City's approval shall not be unreasonably withheld.

iii. The Project Manager will conduct weekly on-site meetings with the Design/Builder and its Subcontractors at regular times, as previously agreed upon and approved by the Project Coordinator, and shall issue weekly reports on the progress of the Work and the minutes of the previous weekly on-site meeting.

iv. Project Manager will be the lead representative of Design/Builder with the primary responsibility for the administration of all of Design/Builder's Work.

v. The Project Manager shall maintain and monitor the CPM Project Schedule, subject to Project Coordinator's prior written approval, and implement updates as required.

vi. The Project Manager shall coordinate the processing of shop drawings and material submittals.

vii. The Project Manager will endeavor to achieve satisfactory performance by Design/Builder and, if required by the Consultant or City, shall cause for corrections to Design/Builder's Work including, but not limited to, maintaining punch lists and observing testing.

viii. The Project Manager will monitor and maintain oversight of the cost of the Project, including payment applications and the preparation thereof, and keeping cost records on Work performed and materials supplied, controlling of costs in materials and wages.

ix. The Project Manager will assist in the preparation of record drawings or Construction Documents, and shall transmit to the Consultant requests for additional information concerning the design. The Project Coordinator shall be copied on these requests for monitoring purposes.

x. The Project Manager or assistants will observe testing and start-up activities of all equipment, machinery and utilities to ensure a fully operational Project.

xi. The Project Manager or assistants will secure all equipment brochures and warranties from the Design/Builder and Subcontractors.

xii. The Project Manager will coordinate the correction and completion of the Work including that required by any and all punch lists.

b. **Other Personnel.** At any time, the Contract Administrator has the reasonable right to request removal and replacement of any of Design/Builder's personnel. Once in place, the Design/Builder shall not change any person filling a position listed in the organizational charts without the prior written consent of the Contract Administrator unless the City requests it or unless the person is leaving the employ of the Design/Builder. The employee(s) of the Design/Builder and Subcontractors shall be considered to be at all times employee(s) of the Design/Builder or the Subcontractors, as applicable, and not an employee(s) or agent(s) of the City or any of its departments offices or divisions. The Design/Builder and Subcontractors agree to adjust staffing levels or to increase or replace any staff personnel if so requested by the Contract Administrator or its designees, should the Contract Administrator make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

c. **Responsibilities of Consultant.** Design/Builder herein represents that Consultant, at a minimum, will provide the following services:

i. Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project consistent with the DCP and in accordance with all requirements of the Contract Documents and Applicable Laws.

ii. Consultant shall design the Project so as to comply with Applicable Laws.

iii. Consultant shall prepare the Construction Documents, as well as obtain all required and necessary reviews and approvals (or take other appropriate action upon) for same, and/or other submittals including, but not limited to, Shop Drawings, product data, and samples.

iv. Consultant shall submit the Construction Documents to the Design Criteria Professional, with a copy to Contract Administrator, for the Design Criteria Professional's review and approval of the Construction Documents as being in general conformance with the DCP. Design Criteria Professional's confirmation of the Construction Documents as being in general conformance with the DCP shall not constitute acceptance of any design work which does not comply with Applicable Laws and/or the Contract Documents, nor shall it excuse any obligations of the Consultant to comply with the DCP, Applicable Laws and/or the Contract Documents.

v. Consultant shall assist in the administration of construction including, but not limited to, review and certification of all Applications for Payment for Work performed in compliance with the Contract Documents; the approval of materials, equipment, and apparatus used in the Work; and architectural and engineering inspections of all construction Work. Consultant's certification for payment shall constitute a representation to the City, based on the Consultant's observations at the Project site and on the data comprising the Design/Builder's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents, the DCP and/or any other applicable Contract Documents. The Consultant shall attend Project construction meetings to facilitate the prosecution of the Work.

vi. The Consultant shall have a representative at the Project Site to observe the progress and quality of the Work. On the basis of its on-site observations as an architect or as an engineer, the Consultant shall ensure (i) the faithful performance of the Contract Documents; and (ii) that the Work has been or is being installed in accordance with the Contract Documents before allowing it to be covered. The Consultant shall be obligated to provide the Design/Builder and the City with written notice of any defects or deficiencies in the Work observed by the Consultant within five (5) days from date of discovery. With respect to Work which requires inspection prior to covering under the Contract Documents, the Consultant shall not certify any such Work for payment if it has been covered prior to the Consultant's inspection and approval. If the Design/Builder does not, within a reasonable period of time, remedy to the reasonable satisfaction of the Consultant the defective or deficient conditions so reported to the Design/Builder, the Consultant shall provide both the Design/Builder and the City with written notice of the defective or deficient condition not remedied and the Consultant's recommendation of the actions that are necessary to remedy such condition with an estimated time period within which such actions could reasonably be performed.

vii. Consultant shall reject Work which does not conform to the Contract Documents, provided that the Consultant obtains the prior written consent of the Project Coordinator.

viii. Consultant may render interpretations (in writing or in the form of drawings) necessary for the proper execution of the Work and/or relating to interpretations of the requirements of the Construction Documents, on written request of the Resident Project Representative or Project Coordinator. All such written interpretations must be consistent with and conform to all requirements of the DCP and the Construction Documents.

ix. The Consultant shall review, approve, reject or take other appropriate action pertaining to construction-related inquiries and submittals, such as shop drawings, product data and samples. All of Consultant's actions related thereto shall conform to the DCP, the Construction Documents and Applicable Laws.

x. The Consultant shall prepare draft Change Orders for the City's review, with supporting documentation and data, subject to City's approval in accordance with the Contract Documents. If a Change Order is approved, Consultant shall prepare and finalize the updated Construction Documents required to implement the Work associated with the Change Order.

xi. Consultant shall prepare Construction Change Directives, if necessary, at no additional cost to City, and authorize minor changes in the Work, as provided in the Contract Documents.

xii. Consultant shall conduct inspections to assist the City in its determination of Substantial Completion, any Milestones (as applicable) and Final Completion, and shall receive and review for compliance with the Contract Documents all written warranties and related documents required pursuant to the Contract Documents to be assembled and furnished to the City upon Substantial Completion and Final Completion. Consultant shall not tender any Certificate of Substantial Completion to the City for its final determination of whether Substantial Completion has been achieved, unless and until the Consultant has determined to the best of its knowledge, information and belief that the Design/Builder has achieved Substantial Completion of the Work (or portion or component thereof covered by such

Certificate) in accordance with the Contract Documents which fall below the applicable standard of care.

xiii. The approved and permitted Construction Documents shall constitute a representation by Consultant to City that the Project, if constructed as required by the Contract Documents, will be fully functional, suitable and sufficient for its intended purposes. No action or omission by City shall waive or excuse Design/Builder's obligations under the Agreement and/or other Contract Documents and that Design/Builder shall remain liable for all work performed by Consultant including, without limitation, any design errors or omissions.

3.18. Records. At all times during the Design Phase and the Construction Phase, and for a period of five (5) years after Substantial Completion of the Project, the Design/Builder shall preserve, and the City shall have access during reasonable business hours to, all documents, books and records of the Design/Builder relating to the Project and covering the period from and after the Contract Date through the completed performance of this Agreement including, without limitation, all bids and bid documents received by the Design/Builder from Subcontractors, permitting records, plans and drawings, submittals and correspondence.

3.19. Construction Documents: As-builts: Surveys.

a. The Design/Builder shall maintain in good order at the Project Site at least one record copy of the Construction Documents (including drawings, specifications, and the like), addenda, product data, samples, Shop Drawings, Change Orders and other Amendments, marked currently to record changes made during construction. These shall be available to the City for inspection at all times. Upon completion of the Project, these record Construction Documents, addenda, product data, samples, Shop Drawings change orders and other Amendments shall be delivered to Contract Administrator.

b. City, through its Contract Administrator, shall have the right to require Design/Builder to modify the Construction Documents, to supplement same with additional plans, drawings, specifications, or additional information that are within the specific intent and stated scope of the Project and which do not cause increase in Contract Price or Contract Time, all of which shall be considered as part of the Contract Documents, at no additional cost to the City. All things which, in the opinion of the Contract Administrator, may reasonably be inferred from the Contract Documents including, but not limited to, the Construction Documents, shall be executed by Design/Builder under the terms of the Contract Documents. The Contract Administrator shall determine whether said Construction Documents conform to the Contract Documents.

c. Design/Builder shall be solely responsible for establishing and maintaining a line and grade in the field. Design/Builder shall maintain an accurate and precise horizontal and vertical record of the existing pavement conditions; final pavement conditions; and all pipe lines, conduits, structures, underground utility access portals, handholes, fittings, and similar items encountered or installed during construction. Design/Builder shall deliver these records in good order to the Contract Administrator as the Work is completed. These records shall serve as a basis for "as-built" drawings. The cost of all such field layout and recording work is included in the Contract Price.

d. Final "as-built" drawings which accurately reflect the "as-built" conditions of the new facilities shall be supplied on compact discs ("CD"), not compressed, in a multi-layered, manipulable, Autodesk AutoCAD Version 2010 format (or the most current format then being

used by the City) or other format specified by the City, and shall be delivered to the City upon Final Completion of the Project and prior to Final Progress Payment pursuant to Article 8, together with a final "as-built" critical path method schedule. If the Design/Builder or its Consultant prepares any of the Design Documents or Construction Documents on Building Information Modeling ("BIM") software, the Design/Builder shall furnish the City with such documents on CDs in multi-layered, manipulable format, along with notice of the specific version of the BIM software used to produce the documents. The verifiable evidence of progress with "as-built" information, as required by Article 8, shall be submitted on Mylar at least once a month to the Contract Administrator. These "as-built" drawings on Mylar and the latest version of the AutoCAD format media must be delivered and found to be acceptable to the City prior to the Final Progress Payment.

e. The City requires two (2) paper copies of the as-built drawings, three (3) sets of CDs with CAD files of the as-built drawings, and three (3) sets of CDs with pdf files of the as-built drawings all of which shall be clearly legible. A copy or copies of each such document shall also be retained by the Design/Builder. The Design/Builder shall also comply with all other documentation requirements set forth in the Contract Documents.

f. Within thirty (30) days of NTP1, the Design/Builder shall inspect the Project Site and furnish to the City a certified line and grade survey, prepared by a surveyor licensed in the State of Florida in accordance with the Minimum Standard Detail Requirements for Land Title Surveys adopted in 1999 by the American Land Title Association and the American Congress of Surveyors and Mappers, and a certified survey of the physical condition of the Project Site, prepared by a qualified engineering firm..

i. The line and grade surveys will locate and protect control points prior to starting site work, and will preserve all permanent reference points during construction. No changes or relocations will be made without prior written approval of the Contract Administrator. A written report shall be made to the Contract Administrator when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.

ii. The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by Florida law and any other Applicable Laws. Replacements shall be established based upon original survey control.

iii. In addition, as part of the Work, the Design/Builder shall within thirty (30) days of the Substantial Completion Date, furnish to the City another certified survey of the Project Site (with the Project located thereon) prepared by a surveyor licensed in the State of Florida in accordance with the Minimum Standard Detail Requirements for Land Title Surveys adopted in 1999 by the American Land Title Association and the American Congress of Surveyors and Mappers.

3.20. Number of Submittals. Certain Design Documents and Construction Documents are required pursuant to the Contract Documents. (to be submitted and/or provided by the Design/Builder to the City). In addition to the document submittal requirements set forth elsewhere in the Contract Documents, the Design/Builder shall submit the following documents to the City as soon as they are available and shall submit the minimum number of copies listed below:

a. **Drawings**: Submit one set of full-sized reproducible drawings in native AutoCAD format and one copy in .pdf format; one 11" x 17" set of reproducible drawings; one set of half-sized reproducible drawing one set; of half-sized blue-line drawings; and one electronic copy of the drawing so that the City may reproduce drawings as needed.

b. **Narratives**: For all narrative documents (including documents referenced in Appendix B and (the Project specifications), submit one paper copy and one electronic copy thereof.

c. **Progress Reports**: Design/Builder shall submit with at least one hard copy and at least one electronic copy (in both .pdf and native file format) of all reports specified in Appendix B, and Project Schedules and Updates thereto. . The City shall have no obligation to review and/or approve Progress Reports, Project Schedules and Updates or any such other documents, except as specifically set forth herein.

d. **Shop Drawings**: Provide quantities required pursuant to the terms of Division 1 of the Project specifications. The City shall have no obligation to review and/or approve Shop Drawings.

e. **Product Data**: Provide quantities required pursuant to the terms of Division 1 of the Project specifications. The City shall have no obligation to review and/or approve product data.

f. **Samples**: Provide quantities required pursuant to the terms of Division 1 of the Project specifications. The City shall have no obligation to review and/or approve samples.

g. **Quality Control and Testing Laboratory Reports**: Provide one paper and one electronic copy, both upon submittal to the Consultant, and upon return by the Consultant with its comments and directions. The City shall have no obligation to review and/or quality control and testing laboratory reports. The City's receipt, review and/or approval of such reports shall not in any way constitute approval or acceptance of the Work which is the subject matter thereof. The Design/Builder remains fully responsible for ensuring its receipt, review and approval of all such reports and the contents thereof to ensure the Work is in conformance with the Contract Documents.

h. **Contract Agreements**: Provide one paper and one electronic copy of all agreements by, between or among Design/Builder, Consultant, Design Criteria Professional Design Subconsultants, and any Subcontractors. The City shall have no obligation to review and/or approve any of the foregoing agreements.

i. **Guarantees and Warranties**: Provide, at a minimum, three (3) copies of all guarantees, warranties, maintenance instructions and manuals, operating manuals, catalogs and operational data that relate to the Project or its components. The City shall have no obligation to review and/or approve any of the foregoing materials.

If requested by the City, the Design/Builder shall also submit any of the preceding documents on compact disc (and in a format reasonably acceptable to the City).

In addition to the number of copies specified above in (a) through (i), the Design/Builder shall provide to the City six (6) copies of each document provided to the City (in its regulatory

capacity) and all other governmental bodies in their role as regulatory agencies, simultaneously with their delivery to the City or such other governmental bodies.

3.21. Availability of Project Site. Subject to the terms herein, the City shall deliver the Project Site or parcels thereof (as depicted in Appendix "A" attached hereto) to the Design/Builder for purposes of commencing demolition, excavation, remediation and construction activities on the date described in the appropriate Notice to Proceed.

a. Use of the Project Site or any other City-owned right-of-way for the purpose of storage of equipment or materials, lay-down facilities, pre-cast material fabrication, batch plants for the production of asphalt, concrete or other construction-related materials, or other similar activities, shall require advance written approval by the Project Coordinator. If approved by the City at its sole and absolute discretion, use of the Project Site or any other City-owned right-of-way for the foregoing storage purposes at any given point in time shall be expressly limited to equipment necessary for the then current and active prosecution of the Work and shall be comprised of no more than two (2) weeks' worth of materials or products to be incorporated as part of the Project within the next month, as noted in the most recent approved Project Schedule. The City may, at any time, in its sole and absolute discretion, revoke or rescind such approval for any reason. Upon notice of such rescission, Design/Builder shall, within twenty-four (24) hours, remove and relocate any such materials and equipment to a suitable, approved location.

b. Notwithstanding any other provision in the Contract Documents to the contrary, the conditions or requirements of right-of-way permits established by the authorities having jurisdiction including, without limitation any regulatory authorities of the City, shall take precedence over any provision in the Contract Documents that may provide any right whatsoever to use of the Project Site for staging, material and equipment storage, lay-down or other similar activities.

3.22. Testing and Inspection; Responsibility. In addition to the tests and inspections provided for below and elsewhere in the Contract Documents, the City shall have the right (but not the obligation) at any time to inspect or test any portion of the Work or the Project.

a. The Design/Builder shall perform and/or obtain all tests and inspections necessary to ensure the proper execution and completion of the Work including, without limitation, all tests and inspections provided for by the Contract Documents (including, but not limited, to any tests and inspections pursuant to Appendix E or by laws, ordinances, rules, regulations or orders of governmental authorities, including the City). The Design/Builder shall make arrangements for tests and inspections conducted by any independent testing laboratory engaged by the City, or tests or inspections conducted by any agency having jurisdiction. The City's direct engagement of any independent testing laboratory or agency shall in no way be construed, interpreted or deemed as the City's assumption of any obligations or requirements of Design/Builder to ensure such testing and inspections are performed, to review and analyze the results thereof and to properly address any portions of the Work which fail to meet the acceptable standards or requirements for which such test or inspection was conducted to evaluate. Rather, the City's engagement of such independent testing laboratory or agency should be interpreted as for convenience of payment purposes only. The Design/Builder shall give the City timely notice of when and where tests and inspections are to be made so the City and/or the Resident Project Representative may observe such procedures. Inspections shall be made promptly and, where practicable, at the source of supply. If Work should be covered up

without required inspection/approval, it must, if required by the Contract Administrator or Consultant, be uncovered for examination, and properly restored at Design/Builder's expense.

b. If the Contract Administrator determines that the Work, portions thereof, or goods, materials or components required as provided for by the Contract Documents, require additional testing or inspection not included under the above paragraph, the City may instruct the Design/Builder to make arrangements for such additional testing or inspection (including uncovering the Work) as part of the stipulated Contract Price by an entity acceptable to the City, and the Design/Builder shall give timely notice to the City of when and where such tests and inspections are to be made so the City may observe such procedures. The City's presence during any such testing or inspections shall in no way be construed, interpreted and/or deemed to constitute acceptance of such testing or inspection (including the procedures implemented) or the results thereof.

c. The Contract Administrator may order re-testing or re-inspection of Work (including uncovering thereof at any time in its sole discretion). If re-testing or re-inspection of Work is found to be in accordance with the Contract Documents, the City shall pay the cost of re-inspection, re-testing and replacement. If such Work is not strictly in accordance with the Contract Documents, Design/Builder shall pay such cost.

3.23. Local Conditions; Site Conditions.

a. **Local Conditions.** The Design/Builder represents and warrants that it has taken all steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Project, the performance of the Work and/or the Project Site including, but not limited to i) conditions bearing upon transportation, disposal, handling, and storage of materials; ii) the availability of labor, water, electric power, and roads; iii) uncertainties of weather and observable physical conditions at the Project Site or otherwise affecting the Project, including sub-tropical and/or coastal conditions in South Florida; iv) the adequacy of the Project Site for lay-down, storage and parking in accordance with Applicable Laws and permit requirements of agencies having jurisdiction; and v) the character of equipment and facilities needed prior to and during the performance of the Work. The Design/Builder agrees that it bears all risk associated with any general or local condition that can affect the Project, the Project Site and/or the performance of the Work. Any act or omission by the Design/Builder with respect to the actions described and acknowledged in this subsection will not relieve the Design/Builder from responsibility for properly estimating the difficulty and cost of successfully performing the Work, or as time is of the essence for proceeding to successfully perform the Work within the Project Schedule and the Contract Price. In confirmation and furtherance of the foregoing, the Design/Builder acknowledges and agrees that it shall not be entitled to an adjustment in the Project Schedule, the Substantial Completion Date or the Contract Price, based on general or local conditions affecting the Project, the Project Site and/or the performance of the Work, and the Design/Builder hereby waives and releases City from any and all Claims associated therewith, except for a Force Majeure event which, if it occurs, shall entitle the Design/Builder to a non-compensable extension of time in accordance with Article 12.

b. **Site Conditions.** The Design/Builder acknowledges and agrees that it has satisfied itself as to what the Design/Builder anticipates will be the character, quality and quantity of soil, surface and subsurface materials or obstacles that may be encountered by the Design/Builder at the Project Site including, but not limited to, the nature or amount of any kind of soil material, the location of any utilities or structures on the Project Site, the composition or

condition of any utility or structure and its contents, the fitness of any material for use as fill or drainage, or the amount of water to be expected, and that the entire cost risk of such matters, as well as any soil, surface, subsurface/underground, concealed, unknown, known, latent or other conditions (collectively, the "Site Conditions"), shall be borne by the Design/Builder as part of the Contract Price unless such conditions could not have reasonably been identified upon reasonable investigation by the Design/Builder, in which case, they shall be borne by the City in accordance with, and subject to, the conditions of, this Section 3.23(b)(i) through (iv) and other applicable provisions of the Contract Documents. City makes no representations or warranties whatsoever as to the Site Conditions. Any information provided by City relating to Site Conditions is provided as advisory only, as Design/Builder recognizes and agrees that Site Conditions may vary from those observed by City. Without limiting the generality of the foregoing, but rather in confirmation and furtherance thereof, the Design/Builder agrees that it shall have no Claim for any increase in the Contract Price in the event that Site Conditions are encountered or discovered at the Project Site in the performance of the Work where such conditions could reasonably have been identified upon reasonable investigation thereof. The Design/Builder expressly acknowledges and agrees that its pricing of the Work and the determination of the Contract Price were expressly based upon the Design/Builder's assuming the foregoing cost risks of Site Conditions.

i. If Site Conditions that could not have reasonably been identified by Design/Builder upon prior investigation are encountered at the Project Site that are materially differing from those indicated in the Contract Documents, or if unknown physical conditions of an unusual nature differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents are encountered at the Project Site, Design/Builder shall promptly notify the City within two (2) business days of the specific materially differing Site Conditions before the Design/Builder disturbs the conditions or performs the affected Work.

ii. Upon receipt of written notification of differing Site Conditions from the Design/Builder, the City will investigate the Site Conditions and, if it is determined that the Site Conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work, an equitable adjustment may be made in accordance with Article 11 herein and the other Contract Documents. An adjustment for differing Site Conditions shall not be allowed, and any Claim relating thereto shall be deemed conclusively waived, if the Design/Builder has not provided the required written notice within two (2) business days of discovery of the Site Conditions, or has disturbed the Site Conditions prior to City's examination thereof. Should the City determine that the Site Conditions of the Project Site are not so materially different to warrant a change in the Contract Price or Contract Time or any other terms of the Contract Documents, Design/Builder shall be notified of the reasons in writing, and such determination shall be final and binding upon the Parties hereto for purposes of the administration of the Project, subject to Design/Builder's right to submit a Claim pursuant to Article 15 and other applicable provisions of the Contract Documents.

iii. For purposes of this Section 3.23, a "materially differing" Site Condition is one that (1) is not identified in the Contract Documents and is not reasonably inferable therefrom; (2) could not have reasonably been identified by Design/Builder upon prior investigation, provided Design/Builder reasonably undertook such prior site investigation; and (3) requires a change to the Work that increases Design/Builder's costs and/or impacts the critical path for completion of the Work.

iv. Where Site Conditions delay the Project, and said delay could have been avoided by reasonable investigations of the Project Site at any time prior to commencement of the Work in question, such delay shall not be considered to be an Excusable Delay beyond the control of the Design/Builder, and no time extension shall be granted pursuant to Article 9. No request for an equitable adjustment or change to the Contract Time for differing Site Conditions shall be allowed if made after the date certified as the Substantial Completion Date.

3.24. Subcontractors; Design Subconsultants. Design/Builder agrees to bind specifically every Consultant, Subcontractor and Design Subconsultant to the terms and conditions of the Contract Documents for the benefit of the City, and shall incorporate all applicable terms and conditions of the Contract Documents into any and all Consulting Agreement, Design Subconsulting Agreements and Subcontracts, to the full extent of the Work to be performed by each Consultant, Design Subconsultant and Subcontractor. Design/Builder shall submit a copy of each Consulting and Design Subconsulting Agreement and Subcontract at all tiers to the City for its examination and approval, which the City shall not unreasonably withhold, prior to the execution of such Consulting or Design Subconsulting Agreement or Subcontract. The City shall complete its review and advise of its approval within fourteen (14) days of submission of the applicable contract or agreement.

a. The Design/Builder shall make available to each proposed Consultant, Design Subconsultant and Subcontractor, prior to execution of the Subcontract, Consulting or Design Subconsulting Agreement, copies of the Contract Documents to which the Consultant, Design Subconsultant or Subcontractor will be bound, and require that each Consultant, Design Subconsultant and Subcontractor shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

b. The City will not unreasonably withhold its consent to substitute a Consultant, Design Subconsultant or Subcontractor in the case of: a matured and uncured default by such entity in its contract with the Design/Builder resulting in termination of the Design/Builder's contract with such entity, impossibility of performance or other good cause shown, provided, however, that with respect to the Consultant, any such substitution pursuant to this Subsection may only apply after issuance of NTP1. Any substitute party, however, must possess comparable experience, skill, and character to that of the entity being replaced.

c. **Conditional Assignment.** Design/Builder conditionally assigns to the City all the rights, title and interest of Design/Builder in, to and under any and all Consulting and Design Subconsulting Agreements and Subcontracts. The assignment is exercisable by the City, at its election, in the event that the City has exercised its right to terminate this Agreement for any reason in whole or in part or to take control of, or cause control to be taken of, the Work or any portion thereof. The City may reassign the Consulting and Design Subconsulting Agreements and Subcontracts to another contractor, design professional, or any other qualified person or entity, (as the case may be) and such assignee may exercise the City's rights in the Consulting and Design Subconsulting Agreements and Subcontracts. Each Design Subconsultant or Subcontractor shall, upon written notice that the City has exercised its rights under the Contract Documents (or the portion thereof applicable to the materials or services being furnished by such Design Subconsultant or Design Subconsulting Agreement or Subcontractor), continue to perform all of its obligations, covenants and agreements under such Subcontract for the benefit of the City.

d. The Design/Builder's Consulting Agreement with the Consultant and the Design Subconsulting Agreements with the Design Subconsultants, respectively, shall also set forth the Consultant's and/or Design Subconsultants acknowledgment and agreement that (i) the Consultant shall at all times during on-site construction activities have a representative at the Project Site to observe the progress and quality of the Work; (ii) the Consultant shall, pursuant to such on-site observations as a Consultant, endeavor in good faith to guard against defects and deficiencies in the Work; (iii) the Consultant shall be obligated to provide the Design/Builder and the City with written notice of any defects or deficiencies in the Work observed by the Consultant; (iv) if the Design/Builder does not within a reasonable period of time remedy to the reasonable satisfaction of the Consultant the conditions so reported to the Design/Builder, the Consultant shall provide both the Design/Builder and the City with written notice of the condition not remedied and the Consultant's recommendation of the actions that are necessary to remedy such condition; and (v) the Consultant shall conduct inspections to assist the City in making its final determination of whether the Design/Builder has achieved, Substantial Completion of the Project, or any applicable portion thereof, and shall not tender any Certificate of Substantial Completion to the City unless and until the Consultant has determined to the best of its knowledge, information and belief that the Design/Builder has achieved Substantial Completion of the Work (or portion or component thereof covered by such certificate) in accordance with the Contract Documents.

3.25 UNLESS SPECIFICALLY PROVIDED FOR IN THE CONTRACT DOCUMENTS, THE CITY HAS NO OBLIGATION TO ASSIST, FACILITATE AND/OR PERFORM IN ANY WAY THE DESIGN/BUILDER'S OBLIGATIONS UNDER THE AGREEMENT OR OTHER CONTRACT DOCUMENTS. THE CITY'S PARTICIPATION, FACILITATION AND/OR ASSISTANCE TO THE DESIGN/BUILDER SHALL BE AT ITS SOLE DISCRETION AND SHALL NOT, IN ANY WAY, BE CONSTRUED, INTERPRETED AND/OR CONSTITUTE AN ASSUMPTION BY THE CITY OF DESIGN/BUILDER'S OBLIGATIONS, A WAIVER OF DESIGN/BUILDER'S OBLIGATIONS AND/OR EXCUSE ANY BREACH BY DESIGN/BUILDER OF ITS OBLIGATIONS UNDER THE CONTRACT DOCUMENTS. THE PARTICIPATION IN THE PERFORMANCE OF ANY OF DESIGN/BUILDER'S OBLIGATIONS SHALL NOT PRECLUDE THE CITY FROM DECLARING DESIGN/BUILDER IN DEFAULT FOR DESIGN/BUILDER'S FAILURE TO PERFORM SUCH OBLIGATION, NOR SHALL IT LIMIT, IN ANY WAY, THE CITY'S RIGHTS AND REMEDIES IN CONNECTION THEREWITH. UNLESS SPECIFICALLY PROVIDED FOR IN THE CONTRACT DOCUMENTS, THE DESIGN/BUILDER EXPRESSLY ACKNOWLEDGES AND AGREES NOT TO RAISE OR ASSERT AS DEFENSE TO ANY CLAIM, ACTION, SUIT AND/OR OTHER PROCEEDING OF A SIMILAR NATURE, THE CITY'S PARTICIPATION, ASSISTANCE AND/OR FACILITATION IN THE PERFORMANCE OF DESIGN/BUILDER'S OBLIGATIONS. INCLUDING, WITHOUT LIMITATION, ASSISTING WITH OBTAINING PERMITS OR WITH COORDINATION WITH UTILITIES, OR OTHER MATTERS RELATED TO THE PROJECT. IN THE EVENT OF ANY CONFLICT BETWEEN THIS SECTION AND/OR ANY OTHER PROVISION OF THIS AGREEMENT OR OTHER CONTRACT DOCUMENTS, THIS SECTION SHALL GOVERN.

ARTICLE 4

CITY'S DUTIES AND RESPONSIBILITIES

4.1. City Representatives. The City shall designate, from time to time, one or more representatives authorized to act on its behalf with respect to the Project. No representative or

designee of the City shall have any authority to adjust the Contract Price or the Substantial Completion Date unless memorialized in a duly executed Change Order. The City shall examine documents submitted by the Design/Builder and shall utilize its reasonable efforts to render necessary decisions pertaining thereto in accordance with the Project Schedule.

a. The Contract Administrator and Project Coordinator shall have the authority to issue directives and notices on behalf of the City. The Contract Administrator and Project Coordinator shall have the authority to issue Construction Change Directives.

b. Approval of Change Orders/Amendments. The City Manager or Contract Administrator may approve Change Orders or other Amendments to the Contract Documents involving extensions to the Contract Time and/or adjustments to the Contract Price, up to an amount equal to the total amount remaining in the City's Contingency.

i. The City Commission may approve any Change Order or other Amendment to the Contract Documents.

ii. Change Orders exceeding any available amounts in the City's Contingency shall require the advance approval of the City Commission.

4.2. City's Project Coordinator. The Project Coordinator shall serve as the person designated by the City to provide direct communication with the Design/Builder with respect to the City's responsibilities or matters requiring the City's approval, in its proprietary capacity as Owner, under the Contract Documents. The Project Coordinator shall have full authority to require the Design/Builder to comply with the Contract Documents. However, any failure of the Project Coordinator to identify any noncompliance, or to specifically direct or require compliance, shall in no way constitute a waiver of, or excuse, the Design/Builder's obligation to comply with the requirements of the Contract Documents. The City's Project Coordinator will be responsible for the following:

a. Review of draft and completed Applications for Payment and coordination of the processing thereof with the City.

b. Monitoring of all aspects of the Work, Project Site, and Project Schedule including, but not limited to, attending Project-related meetings and reviewing and observing the Work and testing thereof for general conformance and compliance with the intent of the DCP and Contract Documents, provided, however, that Project Coordinator's failure to monitor any aspect of the Project shall not relieve Design/Builder of its obligations to perform and deliver the Project in accordance with the Contract Documents.

c. Tracking, logging and reviewing all required Project-related documents and serving as the day-to-day City liaison for addressing Project-related issues with the Design/Builder.

4.3. Communications. In communications relating to the Project, the City shall communicate with Subcontractors, and such Subcontractors shall communicate with the City, only through the Design/Builder's Project Manager. Nothing herein shall preclude City or Subcontractor from directly communicating with each other with respect to any default of the Design/Builder or other matter of public concern.

4.4. Cooperation. Whenever the City's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the City agrees that it shall act in good faith in so cooperating with the Design/Builder.

4.5. City Information. Any information provided by the City to the Design/Builder, its Consultant, Design Subconsultants or Subcontractors relating to the Project and/or existing conditions upon, about, beneath or adjacent to the Project Site including, without limitation, any geotechnical or environmental reports, or other information pertaining to subsurface exploration and conditions, borings, test pits, tunnels, as-built drawings and other conditions affecting the Project Site, whether or not included in the DCP, are provided only for the convenience of the Design/Builder and the Subcontractors. The City makes no representations or warranties as to, and assumes no responsibility whatsoever with respect to, the sufficiency, completeness or accuracy of such information and makes no guarantee, either express or implied, that the conditions indicated in such information or independently found by the Design/Builder, its Consultant, Design Subconsultants or the Subcontractors as a result of any examination, exploration or testing, are representative of those existing throughout the performance of the Work or the Project Site, and there is no guarantee against unanticipated or undisclosed conditions.

4.6. City's Reviews and Comments. The City's review, evaluation, or comment as to any documents prepared by or on behalf of the Design/Builder shall be solely for the purpose of the City's determining for its own satisfaction the suitability of the Project, or portions thereof, detailed in such documents for the purposes intended therefor by the City, and may not be relied upon in any way by the Design/Builder, any Consultant, Design Subconsultant, Subcontractor or any other third party as a substantive review thereof. The City, in reviewing, evaluating, commenting on or monitoring any progress of the Work, shall have no responsibility or liability for the accuracy or completeness of the Work, for any defects or inadequacies therein, or for any failure to comply with the requirements set forth in the Contract Documents, the responsibility for all of the foregoing matters being the sole obligation of the Design/Builder; nor shall the City's review or monitoring of the Work constitute acceptance of the Work or in any way excuse or limit the obligations of the Design/Builder to comply with the Contract Documents as set forth therein.

4.7. Resident Project Representative. The City may retain an independent professional engineering firm or other firm duly qualified and licensed to serve as Resident Project Representative and assist the City with observing, reviewing , and documenting construction activities on the Project. The Resident Project Representative shall monitor Design/Builder's progress and performance in accordance with the Contract Documents. The Resident Project Representative shall have the authority to assist the City with the following:

a. Reviewing Design/Builder's Project Schedule submissions and confer with the Design/Builder and/or Consultant regarding acceptability thereof;

b. Reviewing draft Applications for Payment, forwarding comments and recommendations to the Consultant, and approving Applications for Payment as complying with the requirements of the Contract Documents following Consultant's certification of such Applications for Payment;

c. Observing all aspects of the prosecution of the Work including, but not limited to, verifying that Work has been completed and that material and equipment certificates,

operation and maintenance manuals, guarantees and warranties and any other data or documents required by the Contract Documents have been provided to the City;

d. Participating in inspections and testing required by the Contract Documents, including Substantial Completion and Final Completion inspections, and assisting City in connection with its determination of Substantial Completion, any applicable Milestones and Final Completion.

The role of the Resident Project Representative is to facilitate information to the City and Consultant. In no event shall the Resident Project Representative be authorized to approve substitutions or deviations from the Contract Documents; to undertake any of the obligations and responsibilities of Design/Builder; direct the means and methods of Design/Builder; or to advise on, issue direction on, or assume control over safety practices of the Design/Builder. If no RPR is appointed or assigned to the Project, the duties of the RPR shall be performed by the Design Criteria Professional, or Contract Administrator (or his or her designee).

4.8. Design/Builder Not Relieved By City, Project Coordinator or Resident Project Representative Activity. The responsibility of the Design/Builder for faithful performance of the Contract Documents shall not be relieved or affected in any respect by the presence, inspections, or approvals by the City (whether in its proprietary or regulatory capacity), Project Coordinator or Resident Project Representative or their designees.

4.9. Permitting & Code Inspections. The City may retain a threshold inspector, if required by Chapter 553, Florida Statutes, and any other inspectors as the City deems necessary, provided, however, the failure of the City, threshold inspector, or any other inspector to identify any noncompliance, or to specifically direct or require compliance, shall in no way constitute a waiver of, or excuse, the Design/Builder's obligation to comply with the requirements of the Contract Documents.

ARTICLE 5

EMPLOYMENT CONDITIONS

5.1. No Discrimination; Affirmative Action. The Design/Builder shall not discriminate against any workers, employees, or applicants, or any member of the public, because of race, creed, color, religion, age, sex, sexual orientation or national origin, nor otherwise commit an unfair employment practice. The Design/Builder shall take affirmative action to ensure that applicants are granted or denied employment, and that employees are treated during employment, without regard to their race, creed, color, religion, age, sex, sexual orientation or national origin. Such affirmative action shall relate to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design/Builder shall post (or cause to be posted) in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Design/Builder further agrees that this clause will be incorporated in all contracts entered into with Consultant, Design Subconsultants, Subcontractors and all labor organizations furnishing skilled, unskilled and craft labor or performing any such labor in connection with the Work.

5.2. Civil Rights Act. The Design/Builder shall comply with, and shall require all Subcontractors to comply with, all Federal, State, and local laws, rules, regulations and ordinances relating to employment and the design and construction of the Project, including without limitation the Civil Rights Act of 1964, Pub. L. 88-352, July 2, 1964, 78 Stat. §701 et seq., as amended; the Americans With Disabilities Act of 1990, Pub. L. 101-336, July 26, 1990; and the City's Human Rights Ordinance, as same may be amended.

5.3. Equal Benefits. Design/Builder certifies and represents that it shall comply with all applicable provisions of Section 2-373 of the City Code, as same may be amended from time, with regard to equal benefits for domestic partners of employees. The failure to comply with this Section shall constitute a material event of default of this Agreement.

5.4. Compliance Reports. To demonstrate compliance with the foregoing, the Design/Builder shall furnish, and shall cause its Subcontractors to furnish, such reports and information and in such form and substance as may be reasonably requested by the City or any other governmental body or agency requesting the same.

5.5. Prevailing Wages. If specified as applicable to this Project in the RFP, the Design/Builder shall comply with, and shall require all Subcontractors to comply with, Sections 31-27 through 31-30 of the City Code, as same may be amended from time to time, with regard to minimum hourly wage rates for all employees who provide services pursuant to this Agreement, as follows:

a. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register. All mechanics, laborers, and apprentices, employed or working directly upon the site of the Work shall be paid in accordance with the above referenced wage rates. Design/Builder shall post notice of these provisions at the site of the Work in a prominent place where it can be easily seen by the workers.

b. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Parties shall submit the question, together with its recommendation, to the City Manager for final determination.

c. In the event it is found by the City that any laborer or mechanic or apprentice employed by Design/Builder, or any Subcontractor directly on the site of the Work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the City may (i) by written notice to Design/Builder terminate its right to proceed with the Work or such part of Work for which there has been a failure to pay said required wages; and (ii) prosecute the Work or portion thereof to completion by contract or otherwise. Whereupon, City and its sureties shall be liable to City for any excess costs occasioned to City thereby.

d. Design/Builder shall maintain payrolls and basic records relating thereto during the course of the Work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the Work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

e. Design/Builder shall be required to submit, with each requisition for payment, any signed and sworn statement of compliance with the prevailing wage rate ordinance, as may be required by the City. Design/Builder shall submit certified payrolls for each requisition period. Certified payrolls should include employee name, address, labor classification, hours worked, hourly base rate, hourly fringe rate and hourly benefit rate.

f. The City may withhold or cause to be withheld from Design/Builder so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and guards employed by Design/Builder or any Subcontractor on the Work, the full amount of wages required by the Contract Documents or terms of the applicable subcontract.

g. If Design/Builder or any Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the Work all or part of the wages required by the Contract Documents or terms of the applicable subcontract, the City may, after written notice to Design/Builder, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

ARTICLE 6

PROJECT SCHEDULE AND BREAKDOWN OF PROJECT COSTS

6.1. Project Schedule. TIME IS OF THE ESSENCE THROUGHOUT THIS AGREEMENT. Design/Builder shall complete the planning, design, development, construction, and completion of the Work and the Project in accordance with the approved Project Schedule and within the Contract Time, which schedule defines major design and construction Milestones, Substantial Completion, their sequences, and Final Completion as determined from the date of the first Notice to Proceed. The Parties hereto recognize and acknowledge that the Project Schedule has been established in order to meet the requirements of the Parties hereto for the design, development, construction and completion of the Project and to coordinate the design, development, construction and completion of the Project. Design/Builder shall be instructed to commence the Work by written instruction issued by the City in the form of one or more Notices to Proceed for the Design Phase, as further delineated in Subsection 6.2(a) ("NTP1") and Notices to Proceed for Construction Phase, as further delineated in Subsection 6.2(b) ("NTP2").

6.2. Time For Completion. DESIGN/BUILDER SHALL ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN _____ (____) DAYS FROM THE DATE SPECIFIED IN NTP1 (AS DESCRIBED IN SECTION 6.2), AND COMPLETED AND READY FOR FINAL PROGRESS PAYMENT IN ACCORDANCE WITH ARTICLE 8, WITHIN SIXTY (60) DAYS FROM THE DATE CERTIFIED BY CONTRACT ADMINISTRATOR AS THE SUBSTANTIAL COMPLETION DATE.

a. **NTP1.** NTP1 will not be issued until Design/Builder's submission to City of all required documents and after execution of the Agreement by both Parties. However, the submission to City of all required documents and execution of the Agreement shall not automatically mandate any obligation of the City to issue NTP1 or NTP2. The issuance of NTP1 and NTP2 shall be in the City's sole discretion.

i. Design/Builder shall complete all Work for the Design Phase and permitting of the Project associated with NTP1, within _____ (____) days from the issuance of NTP1.

ii. As part of NTP1 or through a separate Notice to Proceed, the City may authorize certain preconstruction Work subject to the advance written approval of the Contract Administrator as may be authorized in the Notice to Proceed, to permit Design/Builder to perform certain utility relocations, remedial actions and other preliminary or preparatory activities or site work, as described in the Project Schedule.

b. **NTP2 – Construction Phase.** The “NTP2” shall be the second Notice to Proceed to Design/Builder authorizing commencement of the balance of the Work. Design/Builder shall achieve Substantial Completion of the Work within [REDACTED] days from the first issuance of NTP1. Following Substantial Completion, the Final Completion of all Work shall be achieved no later than sixty (60) days after issuance of a Certificate of Substantial Completion by the Contract Administrator. As a condition precedent to issuance of NTP2, Design/Builder shall submit to City all of the following items for City’s review and approval:

i. A proposed Project Schedule in compliance with the requirements of the Contract Documents;

ii. A preliminary schedule of Shop Drawing submissions;

iii. A preliminary Schedule of Values in sufficient detail to serve as the basis for progress payments during the Construction Phase. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

iv. Utility coordination schedule: Design/Builder shall meet with all utility owners and secure from them a schedule of utility relocation. City shall not be responsible for the nonperformance of utility relocation or any other failure to cooperate or coordinate by the utility owners. Any efforts by the City to facilitate such coordination or cooperation by or with the utility owners shall be solely at the City’s discretion and shall not in any way be construed or interpreted as the City’s assumption of such obligation, which obligation shall, at all times, remain the full responsibility of the Design/Builder.

v. All permits required by authorities having jurisdiction, unless otherwise provided by the Contract Documents.

vi. Identity and location of storage yard for storage of materials and equipment relating to the Project.

c. **Phased Permitting at Discretion of City.** The City may issue phased (i.e. multiple) Notices to Proceed for the Construction Phase based on the receipt of permits from the respective regulatory agencies, subject to Design/Builder’s satisfaction of all of the foregoing conditions precedent to issuance of a Notice to Proceed to mobilize on the Project Site and commence with physical construction work, as set forth in this Article 6.

d. Except for Design Phase fees and the reimbursement of permit application fees as may be provided in the Contract Documents or as expressly authorized pursuant to NTP1, Design/Builder shall not be entitled to compensation of any kind until issuance of NTP2. Delivery of all items, and completion of all activities required by NTP1 shall be a condition precedent to the issuance of NTP2. Design/Builder shall bear the responsibility for re-performing any Work, including design and permitting costs, should the respective regulatory agencies require changes thereto. The Design/Builder expressly acknowledges and agrees

that its pricing of the Work and the determination of the Contract Price were expressly based upon the Design/Builder's assuming the foregoing cost risks of taking all steps that may be necessary to sequence and prosecute the Work as contemplated by the Project Schedule.

6.3. Preconstruction Schedule. Within thirty (30) days after receiving the NTP1, the Design/Builder shall (without altering, revising or otherwise changing the Substantial Completion Date) submit to the City for review a detailed preconstruction schedule by developing the Project Schedule. This revised Project Schedule shall be based on the critical path method in accordance with all requirements in Division 1 of the Project Specifications, shall show in complete detail the starting and completion time sequence of design, development and contract award activities of the Design/Builder and its Consultant, Design Subconsultants and Subcontractors, shall identify all interface Milestone events of the City (if any), and shall otherwise comply with the requirements identified in Division I of the Project Specifications. Provided the expanded schedule has been approved by the City, such revised Project Schedule shall be incorporated into this Agreement pursuant to an Amendment in substitution of the schedule attached as Appendix "D" hereto.

a. City shall have fourteen (14) days from Design/Builder's submission to City of the Construction Documents, at the 30%, 60%, and 90% completion stages, respectively, to review and comment on the Construction Documents (in its proprietary capacity as Owner of the Project). Design/Builder shall incorporate such City review periods into its Project Schedule, so as to achieve Substantial Completion of the Work within 360 days following NTP1. If the City's reviews take longer than the fourteen (14) day periods set forth herein, Design/Builder must immediately request an extension of time and comply with the notice and other requirements of Article 12. Time extensions for such delays shall not be automatic and must be requested in accordance with the Contract Documents.

b. In accordance with the requirements set forth in Division 1 of the Project Specifications, this Project Schedule shall also identify the total schedule float for the Project and how that float is allocated to items of Work on the critical path. During the Design Phase, any float set forth from time to time shall be available to the Design/Builder and the City at such times as either party may need it. Each month during the Design and Construction Phases, the Design/Builder shall, in its computer-generated reports submitted to the City pursuant to Section 6.7 hereof, provide the City with the Design/Builder's then current assessment of the amount of float available in the Project Schedule and, to the extent relevant, whether and to what extent such float was generated by the Design/Builder or the City. Nothing in this Agreement shall prohibit the Construction Phase from beginning prior to the Design Phase being completed, provided that the City has issued the applicable Notice to Proceed.

c. Pre-construction Meeting. At a time specified by City, but before Design/Builder commences the Work at the Project Site, a conference attended by Design/Builder, City and others, as deemed appropriate by Contract Administrator, will be held to discuss the Project plans; submission of all schedules and reports required by the Contract Documents; procedures for handling Shop Drawings and other submittals; procedures for processing Applications for Payment; and to establish a working understanding among the Parties as to the Work.

d. Within five (5) business days prior to the pre-construction meeting described in Subsection 6.3(c) herein, Design/Builder shall submit the following to City, for City's review and approval:

i. A critical path method ("CPM") Project "Base Line" Schedule in accordance with Division 1 of the Project Specifications, one (1) electronic copy on a CD in native Primavera format and .pdf format, and one (1) hard copy, with activities arranged in a "waterfall", in the indicated form for final review and approval, including: bar chart; modified CPM and computerized CPM using the latest edition of the Primavera software; "Early Start" and "Early Finish" dates for each activity; input that encompasses all submittal approvals; delivery durations for important materials and/or equipment; logic relationships of activities, including physical and Project Site restraints; and clearly identifying the Project's critical path. CPM shall have the meaning and detail as outlined in the most recent edition of the Association of General Contractors (AGC) publication, "The Use of CPM in Construction." The preliminary CPM Project "Base Line" Schedule, when submitted, shall have attached a program-generated error report stating that no errors exist in the schedule.

ii. Design/Builder shall submit on a monthly basis, with each Application for Payment, an update of the CPM Project Schedule (with a program-generated error report stating that no errors exist in the schedule and that does not revise the CPM Project "Base Line" Schedule's Substantial Completion Date or Final Completion Date) showing the progress for the month. DESIGN/BUILDER SHALL SUBMIT ONE HARD COPY AND ONE ELECTRONIC COPY (in both pdf and native file format). In addition to the CPM Project "Base Line" Schedule, Design/Builder shall include a narrative report of the month's progress, an explanation of any delays and/or additions/deletions to activities. If City waives the requirement for the submission of any portion of an Application for Payment, or waives the requirement for submission of an Application for Payment in any given month, Design/Builder shall nevertheless submit the monthly update of the CPM Project Schedule specified in this Section.

iii. It is strongly recommended that Design/Builder hire a seasoned professional in the use of Primavera, to develop and update the Primavera CPM Project "Base Line" Schedule.

iv. Design/Builder shall attend weekly progress meetings and provide an updated two (2) week look ahead schedule for review and discussion, Design/Builder shall, on a monthly basis, be prepared to discuss at a weekly progress meeting: (i) any proposed changes to the CPM Project "Base Line Schedule"; (ii) explain and provide a narrative for reasons why logic changes should be made; (iii) update to individual Subcontractor activities; and (iv) integration of changes into the schedule.

v. The CPM Project "Base Line" Schedule shall be the basis of the Design/Builder's Work and shall be complied with in all respects.

vi. After award, but prior to the submission of the final CPM Project "Base Line" Schedule, City's Project Coordinator and/or Contract Administrator and Design/Builder shall meet with all utility owners and secure from them a schedule of utility relocation; provided, however, that City shall not be responsible for non-performance of utility relocation or any other failure to cooperate or coordinate by the utility owners. Any efforts by the City to facilitate such coordination or cooperation by or with the utility owners shall be solely at the City's discretion and shall not in any way be construed or interpreted as the City's assumption of such obligation, which obligation shall, at all times, remain the full responsibility of the Design/Builder.

vii. A preliminary schedule of Shop Drawing submissions; and

viii. A preliminary Schedule of Values for all of the Work which will include items aggregating the Contract Price and which may subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during the Construction Phase.

e. Within twenty (20) days following the pre-construction meeting referenced in Subsection 6.3(c), Design/Builder shall revise its original preliminary Project Schedule submittal, Shop Drawings schedule submittal, and its proposed Schedule of Values to address all review comments received from the City, and shall resubmit the revised Schedules for Project Coordinator review and approval. The final CPM Project "Base Line" Schedule will be accepted by Project Coordinator only if it provides for the orderly progression of the Work to completion within the Contract Time; provided, however, that any such acceptance shall not constitute acceptance by City of the means or methods of construction or of the sequencing or scheduling of the Work, and shall not relieve Design/Builder from full responsibility to perform and complete the Work within the Contract Time in accordance with the Contract Documents. The finalized schedule of Shop Drawing submissions must be acceptable to Project Coordinator as providing a workable arrangement for processing Shop Drawings. The finalized Schedule of Values must be acceptable to the Project Coordinator as to form and substance. However, nothing contained herein shall prevent City from requesting modifications to the aforementioned submittal Schedules, Project Schedule or Schedule of Values.

6.4. Manpower Forecast. Within thirty (30) days after receiving the Notice to Proceed With Design, the Design/Builder shall submit a manpower forecast by trades and their availability in the Miami-Dade County, Florida area. The Design/Builder shall update this manpower forecast at semi-annual intervals, or at such other intervals as the City may direct.

6.5. Construction Schedule. At such time as the Construction Documents are sixty percent (60%) complete (as determined by the City), the Design/Builder shall (without altering, revising or otherwise changing the Substantial Completion Date) submit to the City for incorporation into the Contract Documents a detailed, Project construction schedule by expanding the overall Project Schedule. This schedule shall be based upon the critical path method, shall show in complete detail the starting and completion times of activities for each of the various trades, the sequence of the Work and all significant activities (with the critical path clearly delineated), shall include monthly updates of data dates, and shall otherwise comply with the requirements identified in Division 1 of the Project Specifications. Provided the Project Schedule has been approved by the City, such revised Project Schedule shall be incorporated into this Agreement pursuant to an Amendment in substitution of the schedule then attached as Appendix "D" hereto.

6.6. NOT USED.

6.7. Computer-Generated Reports. As a condition to the Design/Builder receiving each monthly progress payment identified in Article 7, the Design/Builder will submit to the City a report identifying the progress of the Work in comparison with the Project Schedule, which report shall be computer-generated. The report shall clearly delineate the critical path and shall reflect the current status of all float time in the Project Schedule. In addition, the Design/Builder shall prepare a report (which shall be updated on a monthly basis) showing for each month the monthly progress payments in relationship to the Project Schedule.

6.8. Contents of Reports. The computer-generated reports provided for in Section 6.7 above will consist of the following:

- a. Summary Trade Schedule in Bar Chart Format;
 - b. Detailed Activities - Reports showing starting and completion floats;
 - c. Detailed Critical Activity Report;
 - d. Buyout Report of Long Lead Equipment and Contracts;
 - e. A written report showing actions taken to correct any Project Schedule slippages;
- and
- f. An updated Project Cash Flow Report.

6.9. Progress in Accordance with Schedule/ Recovery Schedule. The Project Schedule and Substantial Completion Dates shall not be modified except by an Amendment to this Agreement. The Design/Builder shall prosecute the Work, and shall cause all Consultants, Design Subconsultants and Subcontractors to prosecute the Work, so that the delivery of the Project by the Substantial Completion Date shall be in accordance with the approved Project Schedule.

a. If the Work on any critical path item or activity delineated in the Project Schedule is delayed for a period which exceeds 5% of the days remaining until a completion deadline for an item in the Project Schedule (including delays for which Design/Builder may be entitled to a time extension under Article 13), and it reasonably appears that the Design/Builder will be unable to meet the deadlines of the Project Schedule, the City may notify the Design/Builder of the same and, in such event, the Design/Builder shall have the right to demonstrate Design/Builder's proposed recovery plan to regain lost schedule progress and to achieve such progress in accordance with the Contract Documents ("Recovery Schedule"), after taking into account Excusable Delay (as hereinafter defined) and permitted extensions of the Project Schedule.

b. City shall notify Design/Builder within five (5) business days after receipt of each Recovery Schedule, whether the Recovery Schedule is deemed accepted or rejected. Within five (5) business days after City's rejection of any Recovery Schedule, Design/Builder will resubmit a revised Recovery Schedule incorporating City's comments. If the City accepts Design/Builder's Recovery Schedule, Design/Builder shall, within five (5) business days after City's acceptance, incorporate and fully include the Recovery Schedule into the Project Schedule and deliver same to City.

c. If the Design/Builder fails to provide an acceptable Recovery Schedule, as determined by City in its sole discretion, that demonstrates Design/Builder's follow the Project Schedule, the City may, without prejudice to any other rights and remedies available to the City hereunder or otherwise, order the Design/Builder to employ such extraordinary measures, including acceleration of the Work, and other measures, including substantially increasing manpower and/or necessary equipment, as may be necessary to bring the Work into conformity with the Project Schedule.

6.10. Substantial Completion. As a condition of Substantial Completion, all of the following must occur:

a. All Work affecting the operability of the Project or safety has been completed in accordance with the Contract Documents;

b. If applicable, all Pre-commissioning activities, including alignment, balancing, lubrication and first-fill, have been completed;

c. The Work may be operated within manufacturers' recommended limits, in compliance with Applicable Laws, and without damage to the Work or to the Project;

d. Design/Builder has corrected all defects, deficiencies and/or discrepancies to the entire Work as identified by RPR and RPR confirms such corrections have been made in writing;

e. When Design/Builder believes it has achieved Substantial Completion, Design/Builder shall request an inspection by the City and the RPR, and shall provide the City with evidence supporting its assessment of Substantial Completion, including any specific documents or information requested by the City to assist in its evaluation thereof. Design/Builder shall, prior to said inspection, develop its preliminary Punch List for input and comment by the City and the RPR. Once the preliminary Punch List is submitted to the City and RPR, the City and its representatives shall then schedule a walk-through of the Project with Design/Builder and the Consultant. Following the walk-through, Design/Builder shall develop and provide City with the list of all remaining items of Work to be completed or corrected, and which incorporates items and comments identified or provided by the City and RPR comments and is certified for completeness and accuracy by the Consultant ("Substantial Completion Punch List"), provided, however, that failure to include any items on such Substantial Completion Punch List does not alter the responsibility of the Design/Builder to complete all Work in accordance with the Contract Documents; and

f. With respect to any Project for which a right-of-way permit is required from the City of Miami Beach's Public Works Department, including this Project, in no event shall Substantial Completion occur prior to the final lift of asphalt and acceptance thereof by the agencies having jurisdiction (including, without limitation, the City's Public Works Department).

6.11. Certificate of Substantial Completion. Any determination by the Consultant and the Design/Builder of Substantial Completion shall not be binding on the City, and the ultimate determination of Substantial Completion shall rest with the City and shall be evidenced by the City's executing and returning to the Design/Builder its Certificate of Substantial Completion (or Notice of Partial Substantial Completion, as applicable).

a. When the City, on the basis of an inspection, determines that the Work or designated portion thereof, is substantially complete, and when the Design/Builder has complied with all other conditions precedent to Substantial Completion provided for in Section 6.10 and the other Contract Documents, the City will then prepare a Certificate of Substantial Completion which shall establish the Substantial Completion Date, shall state the responsibilities of Design/Builder, if any, for security, maintenance, heat, utilities, damage to the Work, and insurance, and Design/Builder shall complete the items listed in the Substantial Completion Punch List within sixty (60) days following the Substantial Completion Date. If the City issues a Certificate of Substantial Completion on the basis of partial completion of the Project, or upon the basis of a partial or temporary certificate of occupancy or certificate of completion, as applicable, City may include such additional conditions, as it deems appropriate to protect its

interests pending substantial completion of the entire Project or issuance of a permanent certificate of occupancy or certificate of completion, as applicable.

b. The City shall not unreasonably withhold or condition acceptance and execution of a Certificate of Substantial Completion (or a Notice of Partial Substantial Completion); provided, however, the Project shall not be deemed Substantially Complete and the City shall not execute a Certificate of Substantial Completion until all of the criteria for achieving Substantial Completion as identified in Section 6.10 and any other Contract Documents have been satisfied.

6.12. Partial Substantial Completion. Partial Substantial Completion of the Work shall occur when the City determines that a portion of the Work, as defined in the Contract Documents and/or otherwise by logical boundaries, is Substantially Complete in accordance with the Contract Documents. The City may (but shall not be obligated to) agree that a portion or component of the Work, acceptable to the City in its sole discretion, may be certified as Substantially Complete provided that:

i. The requirements provided under Sections 6.10 and 6.11 above for issuance of a Certificate of Substantial Completion are complied with for the portion of the Work for which a Certificate of Partial Substantial Completion is being sought;

ii. Such portion and any and all appurtenances, utilities, transportation arteries and any other items required under the Contract Documents and necessary to serve that portion of the Work are sufficiently completed, a temporary certificate of completion or Certificate of Occupancy, as applicable, is issued for the portion of the Work for which a Certificate of Partial Substantial Completion is being sought and/or all conditions or requirements of authorities having jurisdiction are complied with, to permit the City to utilize and occupy that portion for its intended use in accordance with the Contract Documents without material interference from any incomplete or improperly completed items of Work;

iii. The City is fully able to use and occupy the portion of the Work for the purposes intended and the Design/Builder separates the portion of the Work which is Substantially Complete from non-complete areas of the Project in order to prevent noise, dust and other construction disturbances which would materially interfere with the use of such portion for its intended use in accordance with the Contract Documents and to assure the safety of those entering, exiting and occupying the Substantially Completed portion of the Work; and

iv. Partial Substantial Completion shall not constitute Final Completion of the Work or Substantial Completion of the Project, nor shall it relieve the Design/Builder of any responsibility for the correction of Work (whether or not included in portion of Work Substantially Complete) or for the performance of Work not complete at the time of Partial Substantial Completion.

6.13. Beneficial Occupancy. If applicable, Beneficial Occupancy shall occur when the City determines, at its sole and absolute discretion, that the Work or a portion thereof may be occupied prior to Substantial Completion. City may take Beneficial Occupancy in accordance with the provisions of the Contract Documents.

a. Prior to the anticipated date of Beneficial Occupancy, Design/Builder shall separate the portion of the Work to be occupied from non-complete areas of the Project in order to prevent

noise, dust and other construction disturbances which would materially interfere with the use of such portion for its intended use in accordance with the Contract Documents and to assure the safety of those entering, exiting and occupying the completed portion to be occupied.

b. Beneficial Occupancy shall not constitute Substantial Completion or Final Completion of the Work, nor shall it relieve the Design/Builder of any responsibility for the correction of Work (whether or not included in the portion of Work to be occupied) or for the performance of Work not complete at the time of Beneficial Occupancy.

c. Design/Builder's insurance on the unoccupied or unused portion or portions of the Project Site shall not be canceled or lapsed on account of such Beneficial Occupancy.

d. Design/Builder shall be responsible to maintain all utility services to areas occupied by the City until Final Completion.

6.14. Final Completion. Final Completion of the Project shall be deemed to have occurred if all the following have occurred:

- a. Substantial Completion of the entire Project has occurred;
- b. The Work can be used and operated in accordance with Applicable Laws and applicable permits;
- c. All spare parts and special tools purchased by Design/Builder as part of Vendor supplies shall have been delivered to City and clear of all Liens;
- d. All items on the Substantial Completion Punch List shall have been completed by Design/Builder to City's satisfaction and all final inspections have been performed;
- e. Design/Builder has satisfied the additional conditions prescribed by the City in conjunction with a Certificate of Substantial Completion issued on the basis of Partial Substantial Completion of the Project, or a partial or temporary Certificate of Occupancy or Certificate of Completion, as applicable;
- f. Design/Builder has delivered evidence to the City that all permits have been satisfied and closed, and that a certificate of completion and/or certificate of occupancy (as applicable) has been issued by the authority having jurisdiction, and the Project or designated portion thereof is sufficiently complete in accordance with the Contract Documents and can be used for its intended purpose for uninterrupted operation including, without limitation, acceptance if completed as-builts if required by the agency having jurisdiction;
- g. Design/Builder shall have provided to City final releases and complete and unconditional waivers of liens for all Work performed by Design/Builder and each Subcontractor Supplier where the applicable contract price or purchase order value exceeds \$10,000;
- h. Design/Builder shall have delivered to City a certification identifying all outstanding Claims (exclusive of any Liens or other such encumbrances which must have been discharged) of Design/Builder (and of its Subcontractors, Suppliers and any other party against Design/Builder) with written documentation reasonably sufficient to support and/or provide detail to substantiate such Claims;

g. Operational testing, whether by Subcontractor, Manufacturer, Supplier and/or Design/Builder, has been successfully completed;

i. Design/Builder shall have made a written assignment to City of all warranties and guarantees which Design/Builder received from Subcontractors, Vendors, and Suppliers

j. Design/Builder shall have delivered to City a complete set of as-built documents and Project Records prepared in accordance with the Contract Documents;

k. Design/Builder has delivered to City all other submittals required by the Contract Documents including, but not limited to, all installation instructions, operations and maintenance manuals for equipment furnished by Design/Builder and all product data sheets for all materials furnished by Design/Builder;

l. All rubbish and debris have been removed from the Project Site;

m. All Construction aids, equipment and materials have been removed from the Project Site; and

n. Design/Builder has delivered to the City all executed warranties and guarantees required by the Contract Documents.

Final Completion of the Work shall be achieved no later than sixty (60) days after issuance of a Certificate of Substantial Completion by the Contract Administrator. City shall deliver to Design/Builder a Certificate of Final Completion as soon as practicable following declaration by City that Final Completion has occurred. Final Completion is a condition precedent to Final Progress Payment.

6.15. Liquidated Damages.

a. The failure of the Design/Builder to meet the Milestones or complete the Project by the Substantial Completion Date (as such date may be extended in accordance with the terms of this Agreement) will deprive the City and the residents and visitors of the City of a valuable asset. Therefore, the Design/Builder agrees that the Design/Builder shall begin the Project in conformity with the provisions set forth herein and shall prosecute the same with all due diligence and adequate manpower, so as to timely achieve the Milestones (if any) and Substantial Completion of the entire Project (as such date may be extended in accordance with the terms of this Agreement). Failure to achieve Substantial Completion and/or Final Completion, shall be cause for the City to deduct from monies otherwise due the Design/Builder the liquidated amounts as set forth below:

1. Substantial Completion. Upon failure of Design/Builder to achieve Substantial Completion of the Project within the time specified for Substantial Completion, plus approved time extensions, City shall deduct from monies otherwise due the Design/Builder a liquidated amount assessed daily until Substantial Completion of the Project, in the amount of \$ [REDACTED] per day, commencing on the first day following the date Design/Builder was to achieve Substantial Completion of the Work, pursuant to the approved and updated Project Schedule.

2. Final Completion. After Substantial Completion, should Design/Builder fail to complete the remaining Work within the time specified for Final Completion, plus approved

time extensions, City shall deduct from monies otherwise due the Design/Builder a liquidated amount assessed daily until Final Completion, in the amount of \$ [REDACTED] per day, commencing on the first day following the date Design/Builder was to achieve Substantial Completion of the Work, pursuant to the approved and updated Project Schedule.

b. Design/Builder acknowledges and agrees that the foregoing Liquidated Damages amounts are not penalties and have been set based on an evaluation by City of damages to City and the public caused by Design/Builder's untimely performance. Such damages may include, without limitation, additional costs of administering this Agreement (including Project staff, legal, accounting, consultants, overhead and other administrative costs). Design/Builder and City have agreed to such Liquidated Damages in order to fix Design/Builder's costs and to avoid later disputes over which items are properly chargeable to Design/Builder as a consequence of Design/Builder's delays, in view of the Parties' recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of such delay. By entering into this Agreement, Design/Builder acknowledges that the amounts established for Liquidated Damages are fair and commercially reasonable. Such Liquidated Damages shall apply separately to each Milestone containing the right to assess Liquidated Damages.

c. Liquidated Damages shall be deducted from monies otherwise due Design/Builder, whether or not the City terminates Design/Builder for cause and whether or not Surety completes the Project after a Default by Design/Builder. Design/Builder further acknowledges and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

d. Liquidated Damages shall apply solely to Claims arising from delay in timely achieving any Milestone for which the right to assess Liquidated Damages is specified, including, without limitation, Substantial Completion or Final Completion, in accordance with the Contract Documents, for which the foregoing Liquidated Damages amounts are set, and are not intended to, and do not, liquidate Design/Builder's liability under any other provision of this Agreement or for other events for which no liquidated damage amount is set. Liquidated Damages shall not liquidate Design/Builder's liability under the indemnification provisions of this Agreement.

e. Design/Builder, in addition to reimbursing City for Liquidated Damages for untimely performance, shall reimburse City for all costs incurred by City to repair, restore, and/or complete the Work. All such costs shall be deducted from the monies otherwise due Design/Builder for performance of Work under this Agreement by means of unilateral credit or deductive Change Orders issued by City.

ARTICLE 7

DESIGN/BUILDER'S COMPENSATION

7.1. Contract Price. In full consideration of the complete performance of the Work and all other obligations of the Design/Builder under the Contract Documents, City agrees to pay the Design/Builder the aggregate fixed **lump sum** amount stipulated herein in the amount of [REDACTED] Dollars (\$ [REDACTED]) ("Contract Price"), which consists of the total compensation payable to Design/Builder for performance of the various components of the Work as follows:

Design Phase Work:**Lump Sum Price:**

100% Design Documents

\$

Construction Documents ("CDs")

A. 30% Completion of CDs

\$

B. 60% Completion of CDs

\$

C. 100% Completion of CDs

\$

Construction Phase Work:

\$

TOTAL CONTRACT PRICE (LUMP SUM)

\$

7.2. Schedule of Values and Payments. The sum of all amounts in the Schedule of Values shall equal the Contract Price. The schedule of values shall have two separate professional service fees, one for the Design Phase (including permitting) and the other for the Construction Phase. The portion of the Contract Price allocated to Design Phase Work shall be paid based on Design/Builder's achievement of each of the completion Milestones for Design Documents and Construction Documents described above in Section 7.1, or shall otherwise be paid in accordance with payment schedules approved by the Contract Administrator in accordance with the Contract Documents. Upon achievement of each such Milestone for Design Phase Work, Design/Builder shall submit an Application for Payment with appropriate back-up documentation in accordance with the requirements of Article 8.

7.3. No Adjustments to the Contract Price during the Design Phase. As the Construction Documents will not be finished at the time the Contract Price is established, the Design/Builder shall provide for in the Contract Price all development of the Construction Documents by the Consultant, consistent with the DCP and the Contract Documents and/or reasonably inferable therefrom. Such further development does not include Scope Changes pursuant to Article 11 which, along with any adjustment to the Contract Price as may be required, shall be incorporated by Change Order at the City's sole discretion.

7.4. No Compensation Prior to Notice to Proceed. Prior to the City's issuance of any Notice to Proceed, the Design/Builder shall not incur any cost to be reimbursed as part of the Project, except as the Contract Administrator may specifically authorize in writing.

7.5. City's Contingency. The City's Contingency is available at the sole discretion of the Contract Administrator to cover and/or defray additional expenses relative to design and construction of the Project not included in or reasonably inferable from the DCP or Design/Builder's scope of Work, or for additional changes or adjustments to Work items deemed desirable by the City to be included as part of the Contract Documents, or for additional costs expressly chargeable to the City or for which the City is responsible pursuant to the Contract Documents.

a. Design/Builder shall have no entitlement whatsoever to any amounts in the City's Contingency, and City is under no obligation to assign any monies from the City's Contingency to the Design/Builder. Use of funds from City's Contingency shall be requested through the Change Order process in Article 11 and must be approved in writing by the Contract Administrator or City Manager prior to the prosecution of the related Work, through a Change Order. Failure to obtain such prior authorization in accordance with the Contract Documents shall be grounds for non-payment of any expenses incurred in connection with such unauthorized Work.

b. Any unused amounts in the City's Contingency shall accrue solely to the City. Design/Builder shall have no entitlement whatsoever to any unused Contingency amounts.

7.6. Design/Builder shall not be entitled to any compensation for the completion of all Work beyond the Contract Price stipulated herein, as may be adjusted pursuant to the Contract Documents. Costs which would cause the Contract Price to be exceeded shall be paid by the Design/Builder without reimbursement by the City.

7.7. The total maximum contract amount shall be subject to such additions and deductions as may be provided in the Contract Documents. Retainage shall be withheld on the entire Contract Price in accordance with the provisions of Article 8. Partial and final payments shall be made in accordance with the provisions of the Contract Documents.

ARTICLE 8

APPLICATIONS FOR PAYMENT

8.1. Applications for Payment. The Design/Builder shall deliver to the City on a monthly basis, and review with the City in person in order to obtain the City's approval, itemized Applications for Payments (each, an "Application for Payment"). Each Application for Payment shall be submitted to the City and RPR immediately after the end of the expiration of the period (i.e., the month) (herein each called a "Payment Period") covered by such Application for Payment. The Schedule of Values shall be allocated to the various portions of the Work. Payment during the Construction Phase will be based upon percentage of Work completed for each item in the approved Schedule of Values. Applications for Payment shall be in a form and substance reasonably satisfactory to the City. The requirements of this Article 8 shall take precedence and control over any conflicting requirements in the Project Specifications or other Contract Documents.

a. **Form of Application: Projected Payment Schedule.** The Design/Builder shall make each Application for Payment on a form approved by the City, which incorporates the approved Schedule of Values. Design/Builder shall provide at least three (3) hard copies of each Application for Payment, including supporting documentation, and one electronic copy in native and .pdf format.

b. **Supporting Documentation.** Together with each Application for Payment, the Design/Builder shall submit the monthly progress report required by Section 3.9 to the City. Payment will be made on the basis of approved Applications for Payment certified by the Consultant and recommended for payment by the Resident Project Representative and/or the City and such supporting documentation as the City may reasonably require including, without limitation, any Design/Builder and Subcontractor lien waivers/releases of claims and consents of surety releasing the City from any and all present or future liability for payment which accrued or

may accrue against the City on account of the Work that is the subject of the Application for Payment (conditioned only on payment); provided, however, such lien waivers from Subcontractors need only cover the immediately preceding Application for Payment period. Such supporting documentation will include, but shall not necessarily be limited to, the following:

i. The Design/Builder's payroll records or certified copies thereof, pertinent to the Work for which payment is requested, if applicable to the Project pursuant to the terms of the RFP (i.e. to address federal grant requirements and the like) . The Design/Builder's payroll records shall contain the name, address and social security number of each employee, his or her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid, with hourly base rate, hourly fringe rate and hourly benefit rate clearly indicated.

ii. An updated progress schedule acceptable to City as required by Article 6 of this Agreement;

iii. A list of Subcontractors that worked during the Application for Payment period;

iv. A release of lien/claims from the Design/Builder in favor of the City, and releases of Liens/Claims from each Subcontractor in favor of the Design/Builder and the City, relative to the Work which was the subject of previous Applications for Payment

v. A Consent of Surety relative to the Work which is the subject of the pending Application for Payment;

vi. Aerials and photographs of the areas of Work for the period that is the subject of the pending Application for Payment, dated within its NATIVE DIGITAL/media format;

vii. Verifiable evidence of updated as-built information for Work performed during the payment period in CAD format;

viii. A LEED certification status report, if applicable, including documentation of compliance with specifications for Work items that have been designated as intended to support the City's application for LEED certification; and

ix. Any other documentation requested by the Contract Administrator Project Coordinator RPR or any other City designee, to assist in the City's review of applications for payment, including, without limitation, cancelled checks for prior payment periods covered by prior Applications of payment if requested by Contract Administrator, Project Coordinator or any other City designee.

Contract Administrator may elect to waive submission of any particular supporting document on a case-by-case basis if Design/Builder demonstrates extraordinary extenuating circumstances for being unable to provide the required documentation, and provided further that any such waiver in any specific instance shall not in any way constitute a waiver of the requirement to provide all supporting documentation in every other instance, including any other Application for Payment.

c. **Review Process.** Pencil copy draft Applications for Payment shall be submitted to Design/Builder by Subcontractors and Sub-consultants on the 20th of each month. Design/Builder will review and have a draft pencil copy ready for City's and RPR's review and conduct each field walk ("Project Site Walk-through") with Consultant and/or Resident Project Representative as soon as possible thereafter. City, Resident Project Representative, and Consultant shall submit all final comments to Design/Builder within five (5) business days after the Project Site Walk-through /pencil copy review. Design/Builder will then submit completed, certified and corrected final edits with all backup to the City or the City's agent (the Resident Project Representative) no later than the first day of the following month. City acceptance of Applications for Payment will occur and will only be considered effective after all of the following have been completed; i) Application for Payment is certified by the Consultant; ii) Application for Payment is approved and/or certified by the Resident Project Representative; iii) all releases of liens/claims are properly notarized and submitted to the City; iv) all required supporting documentation in accordance with Section 8.1(b) of this Agreement and as may be otherwise required by the other Contract Documents, is submitted; and v) comments provided by City, Resident Project Representative, and Consultant from draft review are satisfactorily addressed. Applications for Payment shall be subject to final approval by the City. Failure to furnish supporting evidence for amounts invoiced shall result in a reduction of the amount otherwise due to Design/Builder. Incomplete Applications for Payment will not be processed. Design/Builder must submit an Application for Payment once each Payment Period, with the exception of Applications for Payment for release of retainage only, which Design/Builder must submit separately from Applications for Payment for Work performed during a Payment Period.

8.2. Right to Withhold Payments. Notwithstanding any provision hereof to the contrary, the City may withhold payments to the Design/Builder in the following circumstances:

a. In addition to the Performance Bond and Payment Bond and any other security or retainage then being held by the City, the City may withhold from any payment due or to become due to the Design/Builder, amounts sufficient to reimburse the City for its expenditures incurred or that may be incurred on account of the Design/Builder or to secure the following:

i. correction or re-execution of Work which is defective or has not been performed in accordance with the Contract Documents and which the Design/Builder has failed to correct in accordance with the terms of this Agreement or any other Contract Documents;

ii. past due payments owed to Subcontractors for which City has not been provided an appropriate release of lien/claim (whether or not the Work in question is the subject of any dispute);

iii. the City's remedies arising from any failure to perform the Contract Documents' requirements or uncured Default of this Agreement by the Design/Builder;

iv. damage to another contractor or third-party (including, without limitation, the property of any resident or business in the area surrounding the Project Site) which has not been remedied or, damage to City property which has not been remedied;

v. liquidated damages;

vi. failure of Design/Builder to provide any and all material documents required by the Contract Documents including, without limitation, the failure to maintain as-built drawings in a current and acceptable state; and

vii. pending or imminent Claims of the City or others including, without limitation, Claims which are subject to Design/Builder's indemnity obligation under Article 14 hereof, for which the Design/Builder has not posted bonds or other additional security reasonably satisfactory to the City.

Except as otherwise specifically provided in this Agreement, in no event shall any interest be due and payable by the City to the Design/Builder or any other party on any of the sums retained by the City pursuant to any of the terms or provisions of any of the Contract Documents.

8.3. NOT USED

8.4. Effect of Application. In presenting an Application for Payment to the City, the Design/Builder warrants that:

a. Title to the Work, including all materials and equipment, covered by such Application for Payment will pass to the City, free and clear of any and all liens, claims, security interests or other encumbrances (for purposes of this Article 8, hereinafter referred to as "Liens"), either by incorporation in construction or upon receipt of payment by the Design/Builder, whichever occurs first, and such Work shall not give rise to any valid Claims against the Performance and Payment Bond furnished by the Design/Builder. The Design/Builder shall provide evidence demonstrating the above facts to the reasonable satisfaction of the City upon the City's request;

b. No Work, or any materials or equipment constituting a portion of the Work, covered by such Application for Payment will have been acquired by the Design/Builder, or any other person performing work at the Project Site or furnishing materials or equipment for the Project, subject to an agreement under which a Lien is retained by the seller or otherwise imposed by the Design/Builder or such other person;

c. The design and construction have progressed to the point indicated in the Application for Payment; the quality of the Work and any goods and materials covered by such Application for Payment are in accordance with the Contract Documents and Applicable Laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Project; and the Design/Builder is entitled to payment in the amount requested; and

8.5. Payments to Consultant, Design Subconsultants, and Subcontractors. No Application for Payment shall include any request for payment of amounts that the Design/Builder or the Consultant does not intend to pay to a Subcontractor or Design Subconsultant because of a dispute or for any other reason. The Design/Builder shall pay each Consultant and Subcontractor, except for payments already made directly by the Design/Builder, promptly out of the amount paid to the Design/Builder on account of such Consultants and/or Subcontractor's work, goods and/or materials, the amount to which said Consultant and/or Subcontractor is entitled in accordance with the terms of the Design/Builder's contract with such Consultant and/or Subcontractor. The Design/Builder shall, in its agreement

with each Consultant and Subcontractor, require each Consultant and Subcontractor to make payments to its Design Subconsultants and Sub-subcontractors in similar manner. The City shall have the right to withhold from payments to the Design/Builder amounts that the City reasonably believes are owing to a Consultant and/or Subcontractor (from City's past payments) unless the Design/Builder explains the circumstances of such nonpayment to the satisfaction of the City. Notwithstanding the foregoing, the City shall have no obligation to pay or to be responsible in any way for payment to any Consultant, Design Subconsultant and/or Subcontractor.

8.6. Subcontractors' Rights/ No Mechanics' Liens. The rights of all persons supplying labor, materials and supplies, used directly or indirectly in the prosecution of the Work covered by the Contract Documents, are governed by the provisions of Section 255.05, Florida Statutes. Nothing in the Contract Documents shall be construed to confer any benefits or rights or to create any relationships whatsoever between the City and any Subcontractor, supplier, laborer or any other party except as same may be granted, conferred or created by Section 255.05 of the Florida Statutes.

a. If any Subcontractor, supplier, materialman, or laborer, of any tier, or any other person files or provides notice of a Lien, demand or Claim relating to the Work, or any part thereof or any interest therein, or any improvements thereon, or against any monies due or to become due to the Design/Builder on account of any Work, labor, services, materials, machinery, equipment or other items performed or furnished for or in connection with the Work, the Design/Builder shall cause such Liens or Claims to be satisfied, released or discharged within thirty (30) days from the date of filing or notice thereof; provided, however, that the City may extend the thirty (30) day period if the Design/Builder demonstrates to the satisfaction of the City that such Lien or Claim cannot be so satisfied, released or discharged in such time period and that the Design/Builder is proceeding diligently to cause such Liens or Claims to be satisfied, released or discharged. The City will withhold the amount of the Lien or Claim from payments to be made to the Design/Builder, pending the satisfaction, release or discharge of the Lien or Claim, in accordance with all requirements of Florida law including, but not limited to, Sections 255.05 and 255.078, Florida Statutes.

b. To the fullest extent permitted by law, the Design/Builder shall defend, indemnify and hold the City harmless against any and all Liens Claims, suits, judgments, costs or expenses, including reasonable attorneys' fees (including those of its in-house attorneys and outside counsel) arising from, by reason of, or in connection with any such Liens, Claims, suits or judgments. The City shall have the right, at its sole option, to participate in the defense or resolution of any such Liens or Claims, suits or judgments, without relieving the Design/Builder of its obligations hereunder or waiving any rights and remedies the City may have in connection therewith.

8.7. Retainage. The City shall withhold from each progress payment made to the Design/Builder retainage in the amount of ten percent (10%) of each such payment until fifty percent (50%) of the Work has been completed and certified by the Consultant, RPR and the City. The Work shall be considered 50% complete at the point at which the City has expended 50% of the Contract Price together with all costs associated with existing Change Orders or other additions or Amendments to the construction Work provided for in this Agreement.

Thereafter, the City shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the Design/Builder, until Substantial Completion as provided in Section 6.10 herein. Any reduction in retainage below five percent (5%) shall be at the sole discretion of the City after written request by Design/Builder.

All requests for release of retainage shall be made in accordance with, and shall be subject to, the requirements of Section 255.078 of the Florida Statutes, as may be amended. Except as provided by law, the City shall have no obligation to release or disburse retainage until Substantial Completion of the Project. Any such request shall be made independently of and separately from any Application for Payment or other document required by the Contract Documents. Upon receipt by the Design/Builder of a Certificate of Substantial Completion pursuant to Section 6.11 hereof, fully executed by the City establishing the Substantial Completion Date, and after completion of all items on the Substantial Completion Punch List and/or other incomplete Work, the Design/Builder may submit a payment request for all remaining retainage. It shall be the City's sole determination as to whether any of the items have been completed. For items deemed not to have been completed, the City may withhold retainage up to two times the total cost to complete such items. In the event that all or any of the Substantial Completion Punch List items have not been completed on or before the Final Completion Date, then City, in its sole discretion, may elect to complete some or all of such Substantial Completion Punch List items and apply the retainage held with respect thereto towards the costs of completion thereof; provided, however, in the event that such retainage amounts are not sufficient to complete the remaining Substantial Completion Punch List items, Design/Builder shall promptly pay to or reimburse the City for the amount of any deficiency. Any interest earned on retainage shall accrue to the benefit of City. City shall disburse the retainage amounts withheld upon the City's acceptance of the completion of the items for which they were withheld and, assuming that no other items or conditions have arisen with respect to the Work, including, without limitation, any defects or other noncompliance with the Contract Documents.

8.8. No Acceptance. No progress payment made by the City to Design/Builder shall constitute acceptance of any portion of the Work, any goods or materials provided under this Agreement or any portion thereof. No partial or entire use or occupancy of the Project by the City shall constitute an acceptance of any portion of the Work or the complete Project which is not in accordance with the Contract Documents.

8.9. Payment by the City.

a. **Approval of Applications for Payment.** The City shall use good faith reasonable efforts to approve or reject (specifying, in the event of rejection, the reasons therefor) each Design/Builder's certified Application for Payment within fourteen (14) days after receipt thereof, or within such period of time as may be otherwise permitted by Fla. Stat. 218.735. If reasons for rejection apply only to a portion of such Application for Payment, only such portion shall be rejected. An Application for Payment or portion thereof that has been approved by the City is herein referred to as an "Approved Application for Payment."

b. **Frequency of Payments.** In accordance with Section 218.735 of Florida Statutes, the City shall make, subject to the terms and conditions of this Agreement, progress payments for Approved Applications for Payment, less Retainage as herein provided for and/or withholding of any other amounts pursuant to the Contract Documents

(including, without limitation, withholding of payment pursuant to Article 8 and any other provisions of the Contract Documents), and shall use good faith reasonable efforts to make such payments within the twenty-five (25) days after the applicable certified Application for Payment is marked as received, in accordance with Section 218.74(1) of the Florida Statutes.

c. **No Diversion.** The Design/Builder agrees that monies received for the performance of this Agreement shall be used first for payment due for labor, material, and services for the Project and taxes thereon, and said monies shall not be diverted to satisfy obligations of the Design/Builder on other contracts or accounts and/or in any manner which may constitute a violation of Florida Statute 713.345.

8.10. Release of Subcontractor Retainage. If a Subcontractor has completed its portion of the Work (including all Substantial Completion Punch List items relating to the Subcontractor's portion of the Work) pursuant to any given Subcontract, the Design/Builder may request the City to disburse the Retainage being held by the City in respect of such Subcontractor, after delivering to the City any necessary consent to such disbursement from any bond sureties in form reasonably satisfactory to the City. If the City is reasonably satisfied the Subcontractor's work has been completed in accordance with the Contract Documents and the City has received satisfactory final releases of lien with respect to the Subcontractor's work, the City may, at its sole discretion, disburse said portion of Retainage, provided that all other requirements of the Contract Documents are satisfied. Regardless of whether the City has disbursed said Retainage with respect to any Subcontractor, the twelve (12) month period referred to in Section 13.2 herein and as otherwise required by the Contract Documents shall not begin with respect to the portion of the Work performed by such Subcontractor until the Substantial Completion Date.

8.11. Maximum Reimbursement. Notwithstanding anything to the contrary set forth in the Contract Documents, in no event shall the Design/Builder be entitled to reimbursement from the City with respect to the Work for any amount that exceeds the Contract Price.

8.12. Final Progress Payment/Final Completion. At such time as all Work, including all Substantial Completion Punch List items, is complete in accordance with the Contract Documents and accepted by the City (except as provided in Section 13.2), the Design/Builder may apply for the Final Progress Payment in accordance with this Section. Upon receipt of written notice from Design/Builder that the Work is ready for final inspection and acceptance, Consultant, City and RPR shall, within ten (10) days, make an inspection thereof. If Consultant and Contract Administrator find the Work acceptable, the requisite documents set forth below have been submitted, the requirements of the Contract Documents have been fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment in the form set forth in Appendix "C" hereto shall be issued by Consultant, evidenced by its signature, certifying under oath that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

The City will pay the remaining amount of money due the Design/Builder under this Agreement, provided that the Design/Builder has submitted the following to the City:

a. Consent of any bond sureties to such payment, in a form reasonably satisfactory to the City;

b. Any other documentation establishing and evidencing payment or satisfaction of obligations including, but not limited to, receipts, releases and final waivers of lien from the Design/Builder and all Consultants, Design Subconsultants and Subcontractors, to the extent and in such form as may be reasonably required by the City;

c. Final bill of materials, if applicable, and final invoice;

d. Any and all manufacturers' warranties, guarantees, maintenance instructions, catalogs and other similar documentation; all such warranties and guarantees shall be in the name of the City and run to the benefit of the City; and

e. As required by the Contract Documents, a complete set of the "field set" of drawings in .pdf format, final "as-built" drawings, as specified in Article 3 stamped, signed and sealed and approved by the Consultant and the Design/Builder, together with the compact disc of such drawings and the final "as-built" critical path method schedule referenced in said Article 3.

8.13. Waiver of Claims. The release by the City and acceptance of the Final Progress Payment by Design/Builder shall operate as and shall be a release to the City from all present and future Claims or liabilities, of whatever kind or nature, arising under, relating to or in connection with this Agreement for anything done or furnished or relating to the Work or the Project, or from any act or omission of the City relating to or connected with the Contract Documents, the Work or the Project, except those Claims or liabilities, if any, for which the Design/Builder has provided the City with written notice pursuant to and in strict compliance with Article 15 herein and containing a detailed reservation of rights that identifies the precise nature of the dispute, all facts in support of Design/Builder's Claim, the particular scope of Work giving rise to the Claim, and the amount and/or time sought in connection with the Claim.

ARTICLE 9

PROTECTION OF PERSONS AND PROPERTY

9.1. Project Site Safety. Notwithstanding anything contained to the contrary herein, as between the Design/Builder and the City, the Design/Builder has sole responsibility for safety throughout the term of this Agreement. The Design/Builder shall be solely responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs. The Parties acknowledge and agree the Design/Builder's responsibility for review, monitoring and coordination of the safety programs of Subcontractors shall not extend to direct control over execution of Subcontractors' safety programs. Each Subcontractor shall remain the controlling employer with respect to its portion of the Work and shall be responsible for the safety programs and precautions applicable thereto as well as the activities of others' work in areas designated to be controlled by such Subcontractor.

9.2. Security. The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Project Site and any adjacent areas affected by the Work secure in every material respect, to decrease the likelihood of accidents from any cause, and to avoid vandalism and other contingencies which may delay the Work or give rise to any Claims or liabilities. The Design/ Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder

shall take all precautions and measures as may be reasonably necessary to secure the Work and Project Site at all hours, including evenings, holidays and non-work hours. Such precautions may include but not be limited to, provision of security guards, locked gates or fences and/or installation of security cameras.

9.3. Severe Weather. During such periods of time as are designated by the United States Weather Bureau as being a tropical storm watch or warning or a hurricane watch or warning, the Design/Builder, at no cost to the City, shall take all precautions necessary to secure the Project Site in response to all threatened storm events, regardless of whether the City has given notice of same. Compliance with any specific tropical storm or hurricane watch or warning precautions will not constitute additional Work including, without limitation, physically securing and/or removing on-site materials or equipment which may pose a hazard if left in the Project Site during a severe weather event.

9.4. Prevention of Damage or Injury. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to a) persons performing the Work and other persons who may be affected thereby; b) the Work and materials, fixtures and equipment to be incorporated therein; and c) other property used in connection with the Work, whether or not located at or adjacent to the Project Site. Only such materials and equipment as are reasonably necessary or appropriate for the Work under this Agreement shall be placed or stored at the Project Site. If gasoline, flammable oils or other highly combustible materials are to be stored at the Project Site, they shall be stored in safety containers and placed in clearly marked safe areas.

9.5. Accidents. In case of accident, the Design/Builder shall immediately furnish the City with full data and all documents relative to such accident including, without limitation, any accident and/or incident report prepared in connection therewith.

9.6. Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with all Applicable Laws, ordinances, rules, regulations and orders of Federal, State and local governmental authorities bearing on or pertaining to the safety of persons and property and their protection from damage, injury or loss.

9.7. Damage to Property at Project Site. The Design/Builder shall be liable for any and all damage or loss to property belonging to the City or others at the Project Site to the extent caused by the Design/Builder, any Consultant, Design Subconsultant, Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts they may otherwise be liable. The costs and expenses incurred by the Design/Builder under this Section 9.7 shall not be reimbursable by City and shall be borne by Design/Builder at its sole cost and expense. Nothing in the foregoing shall preclude the Design/Builder from paying such costs and expenses out of any insurance proceeds received by the Design/Builder under the policies of insurance maintained under this Agreement.

9.8. Damage to Others' Property. The Design/Builder shall exercise due care and take all precautions during prosecution of the Work including, but not limited to, construction or excavation, to avoid damage, as a result of the Design/Builder's and its Subcontractors' operations to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of Separate Contractors, and the property of the City and others. The Design/Builder shall repair any damage thereto caused by the Design/Builder's or its Subcontractors' operations. Design/Builder shall immediately report any damage caused to others' property to the Contract Administrator, provided, however, that the costs and

expenses incurred by the Design/Builder under this Section 9.8 shall not be reimbursable by City and shall be borne by Design/Builder at its sole cost and expense. Nothing in the foregoing shall preclude the Design/Builder from paying such costs and expenses out of any insurance proceeds received by the Design/Builder under the policies of insurance maintained under this Agreement, provided that in no event shall the processing of any insurance claims in any way relieve, excuse or delay the Design/Builder from remediating, repairing, and/or otherwise completing all Work in accordance with the requirements of the Contract Documents. In connection therewith, the City hereby waives all Claims against the Design/Builder for loss or damage to any of the City's properties which currently adjoin the Project Site, but only to the extent of the City's actual recovery of property insurance proceeds from its property insurers. If the Design/Builder fails to repair such damage, then after ten (10) days prior notice from the City to the Design/Builder, the City shall be entitled to repair such damages occurring to its property with its own forces or other contractors and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the City, including overhead, in repairing such damages if, within the ten (10) day period after the City's delivery of such written notice to the Design/Builder, the Design/Builder has not commenced and diligently proceeded with any such repairs and/or completed such repairs if feasible within the ten (10) day period.

9.9. Utilities. Design/Builder shall be solely responsible for verifying location of utilities and for preserving all existing utilities within the Project Site limits and utilities otherwise affected by Design/Builder's Work, whether shown in the Contract Documents or not. If utility conflicts are encountered by Design/Builder during construction, Design/Builder shall re-design its proposed improvements, at its sole cost, to avoid utility conflicts, and/or provide sufficient notice to the owners of the utilities, and it shall be the sole responsibility of the Design/Builder to resolve any conflicts and make all necessary adjustments, at no additional cost to the City. However, if the utility owner is solely responsible for causing an unreasonable delay, Design/Builder will be entitled an extension of time in accordance with Article 12 of this Agreement. The Design/Builder shall not be entitled to rely on as accurate any information and/or documentation provided by the City which may identify locations of any utilities. Design/Builder shall independently confirm the location of all such utilities and any potential conflicts therewith.

9.10. Protection of the Work. Design/Builder shall protect the Work, including Work that is factory finished, during transportation, storage, during and after installation. Where applicable, and as required, Design/Builder shall close off spaces of areas where certain Work has been completed to protect it from any damage caused by others during their operations. Design/Builder shall store all materials related to the Work, and shall be responsible for and shall maintain partially or wholly finished Work through Substantial Completion of the Project. If any materials or part of the Work should be lost, damaged, or destroyed by any cause or means whatsoever, the Design/Builder shall satisfactorily repair and replace the same at Design/Builder's own cost. The Design/Builder shall maintain suitable and sufficient guards, if necessary, and barriers, and at night, suitable and sufficient lighting for the prevention of accidents and/or any damage to the Project Site and the Work. To all applicable areas where preparatory work activity is part of the Work, Design/Builder shall carefully examine surfaces over which finished Work is to be installed, laid or applied, before commencing with the Work. Design/Builder shall not proceed with said Work until defective surfaces on which Work is to be installed, laid or applied are corrected to the satisfaction of the Contract Administrator and /or RPR. Commencement of Work shall be considered acceptance by Design/Builder of surfaces and conditions.

9.11. No Interference. The Design/Builder covenants and agrees that it shall at all times perform the Work, and cause all Subcontractors and representatives of Design/Builder to perform the Work, so as to prevent interference with the residential areas adjacent to or near the Project Site, business operations of the City, members of the public and employees and other parties associated with adjacent businesses and/or operations, including, without limitation prevention of, the following types of interference: (a) fumes, odors, dust, debris, noise, vibration and safety hazards; (b) obstructions of access and obstructions of traffic flow to or from any building, roadway, entryway, parking garage or parking lot in the vicinity of the Project Site, and (c) interruption in the availability and normal operation of water, sewer, electricity, gas, telephone, HVAC systems, computer systems and other utility services and systems relating to properties adjacent to and around the Project Site. The Design/Builder must plan ahead in detail, schedule accurately, anticipate problems, and communicate clearly in writing to the City in a timely manner its plans and intentions clearly in writing to the City in a timely manner to avoid creating any of the types of interference described in this Section. If any such interference does occur, the Design/Builder must act immediately to remedy the same.

If any of the Design/Builder's construction or other activities interfere with or otherwise disrupt the City's operations, the Design/Builder shall, within four (4) hours of notice from the City, remedy or otherwise correct the cause of such interference or disruption. In the case of an emergency, the Design/Builder shall promptly remedy or otherwise correct the cause of such interference or disruption upon receipt of any notice from the City.

ARTICLE 10

BONDS AND INSURANCE

10.1. Project Insurance. The Design/Builder shall furnish to Department of Procurement Management, City of Miami Beach, 1700 Convention Center Drive, 3rd Floor, Miami Beach, Florida 33139, Certificate(s) of Insurance which indicate that it has obtained all insurance coverage has been obtained which meets the requirements as described in Appendix "G" of this Agreement prior to commencing performance of the Work. At the request of the City, Design/Builder shall also provide copies of such insurance policies.

10.2. Performance Bond And Payment Bond. The Design/Builder shall, within ten (10) business days of the Contract Date, furnish and deliver to the City a payment bond and a performance bond, in a form to be provided by the City, issued by sureties licensed and authorized to do business in the State of Florida, covering the faithful performance and completion of this Agreement, including the performance and completion of those services provided by Design Consultants and Design Subconsultants, and Subcontractors of any tier and covering the payment of all obligations arising hereunder including but not limited to, the payment for all materials used in the performance of this Agreement and for all labor and services performed under this Agreement (including materials, labor and/or services provided by Design Consultants and Design Subconsultants and Subcontractors of any tier), whether by Subcontractors or otherwise. Each of the aforesaid bonds (collectively herein referred to as the "Performance Bond and Payment Bond") shall have a penal amount equal to the Contract Price, unless otherwise approved by the City and to the extent permitted by law. Each bond shall be increased in the amount of any change to the Contract Price. Each bond shall continue in effect for one (1) year after Final Completion of the Work.

The Performance Bond and Payment Bond and the sureties issuing such bonds shall meet all the requirements of Appendix "G" and the Performance Bond and Payment Bond shall each be in the form set forth in Appendix "I" hereof, or shall otherwise be acceptable to the City in its reasonable discretion. If any of the sureties on the Performance Bond and Payment Bond at any time fails to meet said requirements, or is deemed to be insufficient security for the penalty of said bond, then the City may, on giving thirty (30) days notice thereof in writing, require the Design/Builder to furnish a new and/or additional bond(s) in the above amounts with such sureties thereon being licensed and authorized to do business in the State of Florida and as shall be satisfactory to the City. The Design/Builder shall pay all costs of compliance with this Article 10 as part of the Contract Price.

ARTICLE 11

CHANGES IN THE WORK

11.1. Contract Amendments. The City, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions, with the Contract Price and the Contract Time being adjusted accordingly. Amendments to the Contract Documents may be issued by the City on its own initiative or in response to a proposal by the Design/Builder.

a. Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by Change Order or Construction Change Directive. A Change Order shall be based upon agreement between the City and the Design/Builder; a Construction Change Directive may be issued by the City alone and may or may not be agreed to by the Design/Builder. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

b. If City requests a change in the Work, it shall submit a change request to Design/Builder, in writing. Within seven (7) days of its receipt of any such request from the City, the Design/Builder shall submit a detailed proposal to the City stating (i) the proposed increase or decrease, if any, in the Contract Price which would result from such a change, (ii) the effect, if any, upon the Contract Time and/or achievement of any Milestone by reason of such proposed change, and (iii) all supporting data and documentation, including any requested by the City in its change request.

c. If the Design/Builder proposes an increase or decrease in the Contract Price, such proposal must be accompanied by a detailed cost breakdown in relation to the Project Budget and sufficient substantiating data to permit evaluation by the City. If the Design/Builder does submit a proposal within the preceding seven (7) day time period, the City shall, within thirty (30) days following its receipt of such proposal, notify the Design/Builder as to whether the City agrees with such proposal and wishes to accept the Design/Builder's proposal.

d. In the event the City agrees to accept the Design/Builder's proposal in relation to the City's request for a change in the Work, the Parties shall execute a Change Order, stating their agreement upon all of the following: i) in the scope of the change in the Work; ii) the amount of the adjustment in the Contract Price, if any; and (iii) the extent of the adjustment in the Substantial Completion Date and/or Milestone, if any. In addition to the circumstances described above, the Parties may enter into a Change Order to the extent

otherwise expressly provided in this Agreement. The increase or decrease in the Contract Price resulting from a change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Contract Administrator and Resident Project Representative;

2. by unit prices if agreed upon; or

3. by time and materials cost and a mutually acceptable fixed or percentage fee for the Design/Builder. Design/Builder expressly acknowledges and agrees that it has sufficiently calculated and incorporated any and/or all overhead and profit into its cost proposal using any of the aforementioned methodologies.

e. If none of the methods set forth above are agreed upon, the City may either (i) notify the Design/Builder that the City has decided not to proceed with the requested change; or (ii) issue a Change Order for the maximum amount and time agreed to by the City, with the difference subject to a reservation of rights by the Design/Builder. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change, including a reasonable overhead and profit in accordance with this Article 11. The Project Coordinator, with the input of the Consultant and/or Resident Project Representative, will establish an estimated cost of the Work and the Design/Builder shall not perform any Work whose cost exceeds that estimate without prior written approval by the City. In such case, and also under Subsection 11.1(d) above, the Design/Builder shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Contract Price as outlined in Article 8. In such event, Design/Builder shall promptly proceed with the Work involved.

f. If the City elects not to proceed with a change after reviewing the Design/Builder's proposal submitted in response to a change request by the City, the Design/Builder shall be reimbursed for costs reasonably incurred by it for design services or preparing proposed revisions to the Contract Documents in connection with such change request by only under the following circumstances: (i) such change is a material and substantial deviation from the scope of the Work and is not contemplated by or reasonably inferable from the Contract Documents; and (ii) the Design/Builder received written approval from the City in advance of incurring such design costs and the City approved the specific amount of design costs being sought for reimbursement, at the rates the City customarily pays for comparable design services. If the preceding conditions are satisfied, the Design/Builder shall be reimbursed for the specific design costs, as approved by the City for design services or preparing approved revisions to the Contract Documents at the rates the City customarily pays for comparable design services. In furtherance thereof, such rates must be set forth in documentation to be submitted and approved by the City in its reasonable discretion.

g. If unit prices are included as part of any Change Order or are otherwise applicable pursuant to any of the Contract Documents, City shall pay to Design/Builder the amounts determined for the total number of each of the units of Work completed at the unit price stated in the Schedule of Prices Bid associated with such Work. The number of units contained in the bid is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Contract Documents, as may be amended by Change

Order. If additional unit price work is ordered, then the Design/Builder shall perform the Work as directed and shall be paid for the actual quantity of such item(s) of Work performed at the appropriate original Schedule of Prices Bid associated with such Work.

h. The Design/Builder's overhead and profit markup or fee for all Change Orders shall not exceed (i) ____ percent (____%) of the net change in the Contract Price for Work performed by Design/Builder's own forces, or (ii) ____ (____%) of the net change in the Contract Price for Work performed by Subcontractors and Suppliers. The overhead and profit markup or fee by Subcontractors and Suppliers for Change Orders shall be reasonable, but in no event shall the aggregate total amount of overhead and profit that each Subcontractor and all lower tier subcontractors and Suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives exceed ____ (____%). For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include a proportionate corresponding reduction in the overhead and profit fee, as applicable to the Design/Builder, Subcontractors or Suppliers.

i. Notwithstanding any other provision of the Contract Documents to the contrary, Design/Builder acknowledges and agrees that after the Contract Price has been established, no Change Order shall be approved for any matters referenced in Sections 3.10(a) through 3.10(f), and 3.23(a) through 3.23(b), including all subparts thereto.

j. Design/Builder shall furnish to the City all supporting documentation evidencing all of its proposed expenditures, demonstrating that the costs are necessary for the completion of the Project, and the reasons the amounts should be payable by the City. If Design/Builder disagrees with City's decision to deny a request for a Change Order and/or to utilize the City's Contingency, any such dispute may be resolved in accordance with the dispute resolution procedures set forth in Article 15.

11.2. Construction Change Directives. The Contract Administrator or RPR shall have the right to approve and issue Construction Change Directives setting forth written interpretations of the intent of the DCP or the Contract Documents (other than the Construction Documents) to Design/Builder and ordering minor changes in execution of the Work, provided the Construction Change Directive involves no change in the Contract Price or the Contract Time.

11.3. No Design/Builder Changes. The Design/Builder shall not initiate changes in the scope of the Work; it being acknowledged and agreed by the Design/Builder that the Work can be successfully completed within the Contract Price and by the Substantial Completion Date.

11.4. Claims Regarding Scope Changes. A "Scope Change" shall mean a material change in the Work which either (i) is not reasonably inferable from the Construction Documents and other Contract Documents, or (ii) is a substantial increase or decrease in the Work arising from any changes required to the Construction Documents by agencies having jurisdiction and which were not reasonably foreseeable. Design/Builder acknowledges and agrees that increases or decreases in the Work arising from (i) any matters implicating or covered by Sections 3.10(a) through 3.10(f), and Sections 3.23(a) through 3.23(b) including all subparts thereto, or (ii) gaps between Subcontractors' bids, shall not constitute a Scope Change unless Design/Builder can demonstrate that such Work was not reasonably inferable from the Construction Documents and other Contract Documents.

a. If the Design/Builder believes that any direction, action, comment or approval by the City or Consultant gives rise to or constitutes a Scope Change

for which a Change Order may be required, but for which a Change Order has not yet been issued, the Design/Builder must submit notice to the City within ten (10) days of such direction, action, comment or approval which it believes constitutes a Scope Change that may require a Change Order, which shall constitute a Claim.

b. Any such notice shall include the Design/Builder's good faith estimate as to the cost and schedule impact to the Design/Builder resulting from the direction, action, comment or approval. The Design/Builder must submit, in accordance with Article 15 of this Agreement, a final Claim to the City within thirty (30) days of such direction, action, comment or approval, which Claim shall include the actual cost (including a detailed cost breakdown in relation to the Project Budget and sufficient substantiating data to permit evaluation by the City) and schedule impact to the Design/Builder resulting from the direction, action, comment or approval.

c. Such notice and final Claim are conditions precedent to any cost or schedule adjustment on the basis of such Claim and, if the Design/Builder does not submit such a notice within such ten (10) day period and a final Claim within such thirty (30) day period, the Design/Builder shall be deemed to have waived its right to make such Claim in the future. If the Design/Builder follows the preceding notice and Claim procedures and the City agrees with the Claim, the Parties shall execute a Change Order implementing the changes requested in the Claim. If the City does not agree with such a Claim, the Parties shall resolve their disagreement in accordance with Section 15 of this Agreement.

11.5. Waiver of Claims. By executing a Change Order, the Design/Builder thereafter waives all Claims and the right to assert any further Claim for an increase in the Contract Price or an extension in the Substantial Completion Date or other Milestone or overall Contract Time based on the Work that is the subject of such Change Order; it being acknowledged and agreed by the Design/Builder that any such Change Order shall completely address any schedule or cost impact associated with the subject matter of the Claim

11.6. Cost and Schedule. Notwithstanding anything to the contrary contained in this Agreement, the Contract Price, the Substantial Completion Date and any Milestone may only be adjusted by Change Order.

ARTICLE 12

NO DAMAGES FOR DELAY; EXTENSIONS TO THE CONTRACT TIME

12.1. No Damages for Delay.

a. **No Damages for Delay.** **NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS** including, without limitation, any Claim for an increase in the Contract Price, or payment or compensation to the Design/Builder (or its Consultant, Design Subconsultants and Subcontractors) of any kind for direct, indirect, consequential, impact, or other costs, expenses, lost profits, compensation, reimbursement or damages including, but not limited to, 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, and irrespective of whether such delay constitutes an Excusable Delay and irrespective of whether such delay results in an

extension of the Contract Time; provided, however, Design/Builder's hindrances or delays are not due solely to fraud, bad faith, willful, active or intentional interference by the City in the performance of the Work, and then only where such acts continue after Design/Builder's written notice to the City of such alleged interference.

b. Design/Builder acknowledges and agrees that Excusable Delay shall not be deemed to constitute willful or intentional interference with the Design/Builder's performance of the Work without clear and convincing proof that they were the result of a deliberate act, without any reasonable and good-faith basis, and were specifically intended to disrupt the Design/Builder's performance of the Work. The City's attempts to facilitate or assist Design/Builder in performance of the Work shall in no way be construed, interpreted and/or be deemed to constitute willful or intentional interference with the Design/Builder's performance of the Work.

c. Except as provided herein, Design/Builder hereby waives all other remedies at law or in equity that it might otherwise have against the City on account of any Excusable Delay and any and all other events that may, from time to time, delay the Design/Builder in the performance of the Work. Design/Builder acknowledges and agrees that, except as specified herein, all delays or events and their potential impacts on the performance by the Design/Builder are specifically contemplated and acknowledged by the Parties in entering into this Agreement and that Design/Builder's pricing of the Work and the determination of the Contract Price shall be expressly based on the Design/Builder's assumption of the risks thereof, and Design/Builder hereby waives any and all Claims it might have for any of the foregoing losses, costs, damages and expenses.

12.2. Extensions to the Contract Time.

a. **Excusable Delays.** Except as set forth above, Design/Builder's sole remedy for Excusable Delay is an extension of the Contract Time for each day of critical path delay, but only if the pre-requisites and notice requirements of Subsection 12.4 below have been timely and properly satisfied. An Excusable Delay is one that (i) directly impacts critical path activity delineated in the Project Schedule and extends the time for completion of the Work; (ii) could not reasonably have been mitigated by Design/Builder, including by re-sequencing, reallocating, redeploying and/or increasing the amount of its forces to other portions of the Work; and (iii) is caused by Force Majeure (as defined in Subsection 12.c below) or other circumstances beyond the control and due to no fault of Design/Builder or its Subcontractors, material persons, Suppliers, or Vendors ("Excusable Delay"). If two or more separate events of Excusable Delay are concurrent with each other, Design/Builder shall only be entitled to an extension of time for each day of such concurrent critical path delay, and Design/Builder shall not be entitled to double recovery thereon. For illustration purposes only, if two events of Excusable Delay are concurrent for two days, Design/Builder shall only receive a time extension of a total of two days, and not four days.

b. Inclement weather may be grounds for an Excusable Delay when rains or other inclement weather conditions result in Design/Builder being unable to work at least fifty percent (50%) of the normal work shift on controlling items of Work identified on the accepted updated progress schedule submitted pursuant to Article 3 of this Agreement. Time extensions for weather delays shall not be automatic and must be requested in accordance with the notice and other requirements of Article 12 hereof. No time extension for weather-related delays will be permitted until the Design/Builder demonstrates that the total number of days in any given month by which the Design/Builder has been delayed due to adverse weather conditions in

accordance with this Section exceeds the number of days corresponding with each month below, as follows:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Days:	06	06	06	06	10	15	16	17	17	13	08	06

Time extensions in any given month shall only be allowable for adverse weather days in excess of the days corresponding for each respective month as set forth above.

c. A Force Majeure event may be grounds for an Excusable Delay. A "Force Majeure" event is an event that (1) in fact causes a delay in the performance of a Party's obligations under the Contract Documents, and (2) is beyond the reasonable control of the Party incurring the delay, and (3) is not due to an intentional act, error, omission, or negligence of such Party, and (4) could not have reasonably been foreseen and prepared for by such Party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, floods, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, failure of equipment supplied by Design/Builder, receipt of and incorporation of defective materials into the Work, failure of Suppliers to deliver equipment and materials except where such failure is itself the result of a Force Majeure event, or failure of Design/Builder to secure the required permits for prosecution of the Work.

i. If Design/Builder's performance of its obligation under the Contract Documents is prevented or delayed by an event believed by Design/Builder to be Force Majeure, Design/Builder shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case exceeding the time period set forth in Subsection 12.4, provide written Notice to the City, (1) of the occurrence of the delay, (2) of the nature of the event and the cause thereof, (3) of the anticipated impact on the Work, (4) of the anticipated period of the delay, and (5) of what course of action Design/Builder plans to take in order to mitigate the detrimental effects of the event. Design/Builder's timely delivery to City of the Notice of the occurrence of a Force Majeure event is a strict condition precedent to allowance of an extension of time under this Section; however, receipt of such Notice by City shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure. The burden of proof of the occurrence of a Force Majeure event shall be on Design/Builder. Failure to give such Notice promptly within such time limit and/or without the information required as set forth herein may be deemed sufficient reason for denial by City of any extension of time.

ii. If in the opinion of City shall not unreasonably withhold designation of an event as a Force Majeure event, in which case, Design/Builder shall be entitled to such extension of time for completing the Project as, in the opinion of City, is reasonable and equitable.

iii. The suspension of Design/Builder's performance of the Work due to a Force Majeure event shall be of no greater scope and no longer in duration than is absolutely required. Design/Builder shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing

performance and otherwise to remedy its inability to perform the Work to the extent its inability to perform is the direct result of the Force Majeure event.

iv. Design/Builder's obligations that arose before the occurrence of a Force Majeure event causing the suspension of performance shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.

d. If an event of delay satisfying all requirements herein to constitute Excusable Delay directly arises from an act or omission of the City relating to its obligations under the Contract Documents, no such act or omission shall be deemed an Excusable Delay unless and until the Design/Builder shall have first provided the City with written notice setting forth a description of the specific acts or omissions adversely affecting the progress of the Work and the City shall have failed, within ten (10) business days after receipt of such written notice, to have responded in any way to the written Notice, (whether agreeing or disputing Design/Builder's claimed event of delay) or commenced to address or correct the act or omission described in the Design/Builder's notice; and provided further, if the City fails to correct such act or omission, the period of any such Excusable Delay shall be deemed to have commenced on the date the City received the aforesaid written notice from the Design/Builder.

e. Any extension of time for Excusable Delay will depend upon the extent to which the delay affects the Project Schedule and will only extend the scheduled dates for the items of the Work so delayed and shall be net of any available "float" time included in the Project Schedule or Construction Schedule. Scheduled dates for other portions of the Work not so delayed will remain unchanged. Delays which do not affect the Critical Path of the Project Schedule will not entitle Design/Builder to an extension of time regardless of whether they may otherwise satisfy the other requirements for an Excusable Delay.

f. Design/Builder's sole remedy for the occurrence of Excusable Delays shall be an extension of time for the activities on the Project Schedule, in accordance with Section 12.2(a). In lieu of providing a time extension for an Excusable Delay, subject to City's approval at its sole discretion, City and Design/Builder may agree for Design/Builder to work on approved evening or Saturday shifts. However, nothing contained herein, shall require the City to agree, permit or require Design/Builder to work on any evening and/or Saturday shifts and the failure to grant such permission shall not, in any way, excuse the Design/Builder from timely performing the Work in accordance with the approved Project Schedule.

12.3 Unexcusable Delays. "Unexcusable Delay" shall mean any delays not included within the definition of Excusable Delay as set forth above including, without limitation, any delay which extends the completion of the Work or portion of the Work beyond the time specified in the Project Schedule including, without limitation, the Substantial Completion Date and any Milestone and which is caused by the act, fault, inaction or omission of the Design/Builder or any Consultant, Design Subconsultant, Subcontractor, Supplier or other party for whom the Design/Builder is responsible; any delay that could have been limited or avoided by Design/Builder's timely notice to the City of such delay; or any delay in obtaining licenses, permits or inspections that are the responsibility of the Design/Builder or its Consultant, Design Subconsultant, Subcontractors, Suppliers or any other party for whom the Design/Builder is responsible. An Unexcusable Delay shall not be cause for granting an extension of time to complete any Work or any compensation whatsoever, and shall subject the Design/Builder to damages in accordance with the Contract Documents. In no event

shall the Design/Builder be excused for interim delays which do not extend the Project Schedule, including the Substantial Completion Date, or any Milestones.

12.4. Prerequisites and Notice Requirements for Extensions of Time. Except as provided in Article 11 with respect to Changes in the Work, an extension of the Contract Time will only be granted by the City under the following circumstances: (a) if a delay occurs as a result of an Excusable Delay, and (b) the Design/Builder has complied with each of the following requirements below to the reasonable satisfaction of the City:

a. Design/Builder shall provide written notice to the City of any event of delay or potential delay within two (2) business days of the commencement of the event giving rise to the request. The Design/Builder, within ten (10) days of the date upon which the Design/Builder has knowledge of the delay, shall notify the City, in writing, of the cause of the delay, stating the approximate number of days the Design/Builder expects to be delayed, and must make a request for an extension of time, if applicable, to the City, in writing, within ten (10) days after the cessation of the event causing the delay, specifying the number of days the Design/Builder believes that its activities were in fact delayed by the cause(s) described in its initial notice.

b. The Design/Builder must show to the reasonable satisfaction of the City that the activity claimed to have been delayed was in fact delayed by the stated cause of delay, that the critical path of the Work was materially affected by the delay, that the delay in such activity was not concurrent with any Unexcusable Delay, and that the delay in such activity will result in a delay of the Substantial Completion Date in the Project Schedule or any other Milestone.

c. The initial notice provided by the Design/Builder under Subsection (a) above shall provide an estimated number of days the Design/Builder believes it will be delayed and describe the efforts of the Design/Builder that have been or are going to be undertaken to overcome or remove the Excusable Delay and to minimize the potential adverse effect on the cost and time for performance of the Work resulting from such Excusable Delay. The mere written notice of an event of delay or potential delay, without all of the aforementioned required information, is insufficient and will not toll the time period in which the Design/Builder must provide proper written notice under this Article.

d. Design/Builder's strict compliance with this Section is a condition precedent to receipt of an extension of the Contract Time. Failure of the Design/Builder to comply with all requirements as to any particular event of delay, including the requirements of this Section, shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any entitlement to an extension of time and all Claims resulting from that particular event of Project delay. Once the Parties have mutually agreed as to the adjustment in the Contract Time due to an Excusable Delay if any, they shall enter into a Change Order documenting the same.

e. If the City and Design/Builder cannot resolve a request for time extension made properly and timely under this Section within sixty (60) days following submission, the Design/Builder may re-submit the request as a Claim in accordance with the procedures set forth in Article 15 of this Agreement.

f. Design/Builder's Duty. Notwithstanding the provisions of this Agreement allowing the Design/Builder to claim delay due to Excusable Delay, whenever an Excusable

Delay shall occur, the Design/Builder shall use all reasonable efforts to overcome or remove any such Excusable Delay, and shall provide the City with written notice of the Design/Builder's recommendations on how best to minimize any adverse effect on the time for performing the Work resulting from such Excusable Delay. In furtherance of the foregoing, whenever there shall be any Excusable Delay, the Design/Builder shall use all reasonable efforts to adjust the Project scheduling and the sequencing and timing of the performance of the Work in a manner that will avoid, to the extent reasonably practicable, any Excusable Delay giving rise to an actual extension in the time for performance of the Work.

ARTICLE 13 **CORRECTION OF WORK**

13.1. Correction of Work Prior to Completion. Prior to the Substantial Completion Date, the Design/Builder shall, at the earliest practical opportunity, correct Work (including any drawings, plans, specifications, items of construction or fabrication, or any other product constituting a part of or component of the Work) (i) which the City, RPR and/or Consultant reasonably rejects as defective or nonconforming to the Contract Documents (whether arising from a design or construction defect, error, omission or deficiency) in a written notice delivered to the Design/Builder at any time, or (ii) which is otherwise known by the Design/Builder or any Consultant, Design Subconsultant, Subcontractor or Supplier to be defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by, or are damaged by, such defective Work, the Design/Builder shall, at the earliest practical opportunity, correct, repair or replace such affected or damaged Work as well as any other property of the City damaged by such defective or nonconforming Work, whether or not such Work is fabricated, installed or completed. The cost of correcting any such Work shall not be reimbursable by the City and shall be borne by the Design/Builder at its sole cost and expense. Nothing in the foregoing shall preclude the Design/Builder from paying such costs and expenses from any insurance proceeds received by the Design/Builder under the insurance maintained under this Agreement.

13.2. Correction of Work after Substantial Completion. For a period of twelve (12) months from the Substantial Completion Date, the Design/Builder shall, promptly after receipt of notice from the City, and at its sole cost and expense, including the cost and expense of additional architectural, engineering and other professional services and inspection and testing services, re-execute, correct, repair and replace all Work found to be defective or nonconforming to the Contract Documents (whether arising from a design or construction defect, error, omission or deficiency) and all portions of the Work adversely affected by or damaged by such defective or nonconforming Work and all other property of the City which is damaged by such defective or nonconforming Work.. The Parties understand and agree that the preceding language shall in no way limit the City's right or ability to recover from the Design/Builder for defective or nonconforming Work, or errors or omissions, to the extent such defective or non-conforming Work, errors or omissions constitute a breach of the Contract Documents, or otherwise constitutes the negligent performance of the Work or the obligations of the Design/Builder hereunder. The Design/Builder shall use its best efforts to remedy any of the foregoing matters so as to minimize revenue loss to the City and to avoid disruption of the City's operations at, or adjacent to, the Project Site. Design/Builder shall initiate and diligently pursue corrective action within seven (7) days after receipt of notice from the City, unless such matters involve life safety issues, in which case Design/Builder shall immediately initiate all corrective actions as may be necessary. All such corrective work

must be completed within thirty (30) days of receipt of notice from the City. In the event of a reoccurrence of defective or nonconforming Work, the City may require replacement of the Work, at Design/Builder's sole cost and expense, if any prior correction action was insufficient. If Design/Builder undertakes any corrective action to repair or replace any defective or nonconforming Work, and such Work is subsequently found to be defective or nonconforming, the City may undertake the repair and perform the Work at Design/Builder's sole cost and expense.

13.3. No Limitation. Nothing contained in Section 13.2 of this Agreement shall be construed to establish a period of limitation with respect to other obligations of the Design/Builder under the Contract Documents, nor shall any such provisions be construed to establish a period of limitation with respect to the City's rights and remedies in the event of the discovery of any defects in the Work whether or not such defects are discussed before the 12 month period following the Substantial Completion Date. The preceding Section 13.2 relates only to the specific obligation of the Design/Builder to personally correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced against the Design/Builder, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations or recover damages in connection therewith.

13.4. City's Right to Stop Work. If, prior to the Substantial Completion Date, the Design/Builder persistently fails to correct defective Work as and when required hereunder, or persistently or materially fails to carry out the Work in accordance with the Contract Documents, the City may deliver a notice to the Design/Builder's Project Manager setting forth that such a persistent or material failure is occurring and has occurred, and demanding that the Design/Builder commence to cure such persistent or material failure within fourteen (14) days and diligently pursue such cure thereafter. In the event that the cure is not commenced and pursued to the reasonable satisfaction of the City within such 14-day period, the City may, by written directive or consent of the Contract Administrator, order the Design/Builder to stop the Work, or the portion of the Work to which such notice relates, until the cause for such order has been eliminated; provided, however, the City's right to stop the Work shall not have given rise to a duty on the part of the City to exercise the right for the benefit of the Design/Builder or other persons or entities and shall not give rise to any liability of the City to the Design/Builder resulting from delay. The Design/Builder shall not have any Claim for an increase in the Contract Price or a change in the Project Schedule due to stoppage in the Work or restarting the Work pursuant to this Section.

13.5. City's Right to Correct Deficiencies. If, prior to the Substantial Completion Date, the Design/Builder fails, within fourteen (14) days after receipt of written notice of deficiency from the City, to commence and continue correction of any defective or nonconforming Work, or to correct any other non-compliance with the Contract Documents ("Notice of Deficiency") with diligence and promptness to the satisfaction of the City, without prejudice to any other remedies the City may have, including declaring the Design/Builder in Default, and with or without terminating this Agreement in whole or in part, the City may correct such deficiencies, and deduct an amount equal to the expenditures incurred by the City in so doing from amounts due or to become due to the Design/Builder. If the payments then or thereafter due to the Design/Builder are not sufficient to cover the amount of the expenditures incurred by the City which are subject to deduction or Final Payment to Design/Builder has been made, upon demand, the Design/Builder shall pay the difference to the City.

ARTICLE 14

INDEMNIFICATION

14.1. In consideration of the sum of Twenty-Five Dollars (\$25.00) and other good and valuable consideration, the sufficiency of which the Design/Builder hereby acknowledges, to the fullest extent permitted by law, Design/Builder shall defend, indemnify and save harmless City and Design Criteria Professional, and their respective officers and employees, from liabilities, damages, losses and costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Design/Builder and persons employed or utilized by Design/Builder in the performance of this Agreement.

14.2. Sums otherwise due to Design/Builder under this Agreement may be retained by City until all of City's Claims for indemnification under this Agreement have been settled or otherwise resolved. Any amount withheld pursuant to this Section 14.3 or otherwise under Section 14 shall not be subject to payment of interest by City.

14.3. The execution of this Agreement by Design/Builder shall operate as an express acknowledgment that the indemnification obligation is part of the bid documents and/or Contract Documents for the Project and the monetary limitation on indemnification in this Section 14 bears a reasonable commercial relationship to the Agreement.

14.4. Nothing in this Section 14 is intended, or should be construed, to negate, abridge or otherwise reduce the other rights and obligations of indemnity that may otherwise exist as to a party described in Section 14.1.

14.5. Nothing in this Section 14 is intended to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement, to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

14.6. The indemnification obligations set forth in this Section 14 shall survive the termination and/or expiration of this Agreement.

ARTICLE 15

CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1. Claims.

a. Claims must be initiated by written notice and, unless otherwise specified in Section 11.8 or otherwise in this Agreement, submitted to the other party within twenty-one (21) days of the event giving rise to such Claim or within 21 days after the claimant reasonably should have recognized the event or condition giving rise to the Claim, whichever is later. Such Claim shall include sufficient information to advise the other party of the circumstances giving rise to the Claim, the specific contractual adjustment or relief requested including, without limitation, the amounts and number of days of delay sought, and the basis of such request. The Claim must include all job records and other documentation supporting entitlement, the amounts and time sought. In the event additional time is sought, the Design/Builder shall include a time impact analysis to support such Claim. The City shall be entitled to request additional job records or documentation to evaluate the Claim. The Claim shall also include the

Design/Builder's written notarized certification of the Claim in accordance with the False Claims Ordinance, Sections 70-300 et seq., of the City Code.

b. Claims not timely made or otherwise not submitted in strict accordance with the requirements of this Section 15 or other Contract Documents shall be deemed conclusively waived, the satisfaction of which shall be conditions precedent to entitlement.

c. Design/Builder assumes all risks for the following items, none of which shall be the subject of any Change Order or Claim and none of which shall be compensated for except as they may have been included in the Design/Builder's Contract Price as provided in the Contract Documents: Loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other project, loss of interest income on funds not paid, inefficiencies, costs to prepare a bid, cost to prepare a quote for a change in the Work, costs to prepare, negotiate or prosecute Claims, and loss of projects not bid upon, or any other indirect and consequential costs not listed herein. No compensation shall be made for loss of anticipated profits from any deleted Work.

15.2. Dispute Avoidance and Resolution.

a. Claims shall first be submitted to the City for initial recommendation for determination by the City at the time and in the manner specified in Section 15.1 herein unless otherwise specified in this Agreement or other Contract Documents. The City shall render an initial recommendation for determination of such Claim, in writing, as soon as practicable, but not later than forty-five (45) days of receipt of such Claim, unless the parties mutually stipulate otherwise in writing or other circumstances warrant a time extension as determined by the City. Failure to render a written decision within the 45 days, or a later date if stipulated by the parties, shall be considered a denial of the Claim submitted by the claimant.

b. In order to preserve for review an initial recommendation for determination of the City at mediation and/or by a court of competent jurisdiction (as applicable), then the party seeking review shall notify the other party in writing within fifteen (15) days of such recommendation by the City or, if no recommendation, within 15 days of when the Claim is denied as a result of inaction by the City. Failure to timely preserve review of the City's written recommendation or denial by inaction shall constitute a waiver of such Claim or entitlement to such objection and the recommendation of the City (whether by affirmative written recommendation or denial by inaction) shall be deemed final and binding, but subject to mediation and litigation (as applicable).

c. If the City agrees to pay a portion of the Claim, the Design/Builder may reserve the remaining portion of the Claim by executing a conditional release in a Change Order, which states the remaining amount and time sought and identifies the particular scope of Work to which the reservation applies. Unspecified amounts or time claimed will not preserve a Claim or right to a Claim. Each such Change Order shall contain a release and waiver of all Claims as of the date the Design/Builder executes the Change Order, except as specifically included in a reservation of Claims within the Change Order. The reservation of Claims shall, as to each reserved individual Claim, state the amount and time sought in the Claim and identify the scope of Work giving rise to the Claim. Any Claim not included in the reservation of Claims or that fails to specify the amount and/or time sought are deemed waived and abandoned.

d. In the event any Claims which have been timely preserved remain unresolved by Substantial Completion, then the parties shall participate in mediation within sixty (60) days,

unless the City terminates the Agreement, which shall render such mediation moot. If the City determines, at its sole and absolute discretion, that it would be beneficial to mediate any particular Claims at any time prior to Substantial Completion, then any such Claims shall be submitted to mediation at the City's election. The parties shall mutually agree to the selection of a mediator, and mediation, which shall be confidential in the same manner as Court-ordered mediation, shall take place within the 60-day post-Substantial Completion time period, unless both parties mutually agree otherwise. The parties shall split the mediator's fees equally. Participation in mediation shall be a condition precedent to filing suit in a court of competent jurisdiction unless otherwise excused by the terms of this Article 15 or stipulated by both parties in writing.

e. In the event of a dispute arising after Substantial Completion, Final Progress Payment or Final Completion, mediation is encouraged but is not a condition precedent to litigation.

15.3. Duty to Continue Performance. Pending resolution of any dispute, the Design/Builder shall proceed and shall cause its Subcontractors to proceed diligently with the performance of its duties and obligations under the Contract Documents and the City shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The failure of the Design/Builder to continue prosecution of the Work in the event of a pending dispute shall be deemed a Default pursuant to Section 16.2 of this Agreement.

15.4. Final Dispute Resolution. In the event of a dispute arising after Final Progress Payment or Final Completion, or a dispute which arose prior to Substantial Completion, has been preserved and which was not successfully resolved at mediation, a court of competent jurisdiction in Miami-Dade County shall hear such disputes. The parties hereby waive a trial by jury, which requirement shall be included in each and every Subcontract, sub-consulting agreement and purchase order that Design/Builder executes, in connection with its Work on the Project.

ARTICLE 16 **TERMINATION**

16.1. Termination for Convenience. In addition to other rights the City may have at law and pursuant to the Contract Documents with respect to cancellation and termination of the Agreement, the City may, in its sole discretion, terminate for the City's convenience the performance of Work under this Agreement, in whole or in part, at any time upon written notice to the Design/Builder. The City shall effectuate such Termination for Convenience by delivering to the Design/Builder a Notice of Termination for Convenience, specifying the applicable scope and effective date of termination, which termination shall be deemed operative as of the effective date specified therein without any further written notices from the City required. Such Termination for Convenience shall not be deemed a breach of the Agreement, and may be issued by the City with or without cause.

a. Upon receipt of such Notice of Termination for Convenience from the City, and except as otherwise directed by the City, the Design/Builder shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 16.1:

i. Stop the Work specified as terminated in the Notice of Termination for Convenience;

ii. Promptly notify all Subcontractors of such termination, cancel all contracts and purchase orders to the extent they relate to the Work terminated to the fullest extent possible and take such other actions as are necessary to minimize demobilization and termination costs for such cancellations;

iii. Immediately deliver to the City all Design Materials as defined in Section 22.10 hereof, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased. The Design/Builder acknowledges and agrees that all amounts previously paid to the Design/Builder with respect to the creation and preparation of Design Materials in approved Applications for Payment, along with the final payment for the Design Materials, to be based on the percent completion of the Design Materials, shall include the consideration to Design/Builder for City's ownership and receipt of Design Materials, with final payment for Design Materials shall be provided after receipt of Design Materials;

iv. If specifically directed by the City in writing, assign to the City all right, title and interest of Design/Builder under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

v. Place no further subcontracts or purchase orders for materials, services, or facilities, except as necessary to complete the portion of the Work not terminated (if any) under the Notice of Termination for Convenience;

vi. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Agreement had been completed, would be required to be furnished to the City;

vii. Settle all outstanding liabilities and termination settlement proposals from the termination of any subcontracts or purchase orders, with the prior approval or ratification to the extent required by the City (if any);

viii. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project Site, including life safety and any property related to this Agreement that is in the Design/Builder's possession and in which the City has or may acquire an interest; and

ix. Complete performance of the Work not terminated (if any).

b. Upon issuance of such Notice of Termination for Convenience, the Design/Builder shall only be entitled to payment for the Work satisfactorily performed up until the date of its receipt of such Notice of Termination for Convenience, but no later than the effective date specified therein. Payment for the Work satisfactorily performed shall be determined by the City in good faith, in accordance with the percent completion of the Design Materials less all amounts previously paid to the Design/Builder with respect to the creation and preparation of Design Materials in approved Applications for Payment, the

reasonable costs of demobilization and reasonable costs, if any, for canceling contracts and purchase orders with Subcontractors to the extent such costs are not reasonably avoidable by the Design/Builder.

Design/Builder shall submit, for the City's review and consideration, a final termination payment proposal with substantiating documentation, including an updated Schedule of Values, within 30 days of the effective date of termination, unless extended in writing by the City upon request. Such termination amount shall be mutually agreed upon by the City and the Design/Builder and absent such agreement, the City shall, no less than fifteen (15) days prior to making final payment, provide the Design/Builder with written notice of the amount the City intends to pay to the Design/Builder. Such final payment so made to the Design/Builder shall be in full and final settlement for Work performed under this Agreement, except to the extent the Design/Builder disputes such amount in a written notice delivered to and received by the City prior to the Design/Builder's accepting such final payment.

16.2. Event of Default. The following shall each be considered an item of Default. If, after delivery of written notice from the City to Design/Builder specifying such Default, , and following the City's issuance of a Notice of Deficiency and expiration of the cure period pursuant to Section 16.2(m) of this Agreement, the Design/Builder fails to promptly commence and thereafter complete the curing of such Default within a reasonable period of time, not to exceed thirty (30) days, after the delivery of such Notice of Default, it shall be deemed an Event of Default, which constitutes sufficient grounds for the City to terminate Design/Builder for cause:

a. Failing to perform design services or any other portion of the Work in a manner consistent with the requirements of the Contract Documents or within the time required therein; or failing to use the, Subcontractors, entities and personnel as identified and set forth, and to the degree specified, in the Contract Documents, subject to substitutions approved by the City in accordance with this Agreement and the other Contract Documents;

b. Failing, for reasons other than an Excusable Event of Delay, to begin the Work required promptly following the issuance of a Notice to Proceed;

c. Failing to perform the Work with sufficient manpower, workmen and equipment or with sufficient materials, with the effect of delaying the prosecution of the Work in accordance with the Project Schedule and/or delaying completion of any of the Project within the specified time;

d. Failing, for reasons other than an Excusable Event of Delay, to timely complete the Project within the specified time;

e. Failing and/or refusing to remove, repair and/or replace any portion of the Work as may be rejected as defective or nonconforming with the terms and conditions of the Contract Documents;

f. Discontinuing the prosecution of the Work, except in the event of: 1) the issuance of a stop-work order by the City; or 2) the inability of the Design/Builder to prosecute the Work because of an event giving rise to an Excusable Event of Delay as set forth in this Agreement for which Design/Builder has provided written notice of same in accordance with the Contract Documents;

g. Failing to provide sufficient evidence upon request that, in the City's sole opinion, demonstrates the Design/Builder's financial ability to complete the Project;

h. An indictment is issued against the Design/Builder;

i. Failing to make payments to for materials or labor in accordance with the respective agreements;

j. Persistently disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

k. Fraud, misrepresentation or material misstatement by Design/Builder in the course of obtaining this Agreement;

l. Failing to comply in any material respect with any of the terms of this Agreement or the Contract Documents.

m. **Prior to issuing any notice of Default to the Design/Builder, City shall first issue to the Design/Builder a written notice of deficiency, briefly specifying the nature of the Design/Builder's non-compliance with the Contract Documents, and providing the Design/Builder seven (7) business days to cure the deficiency or other non-compliance ("Notice of Deficiency"). If the Design//Builder fails to successfully cure the deficiency within the applicable time period, City shall thereafter issue a written notice of Default pursuant to this Section 16.2.**

In no event shall the time period for curing a Default constitute an extension of the Substantial Completion Date or a waiver of any of the City's rights or remedies hereunder for a Default which is not cured as aforesaid.

16.3. Termination of Agreement for Cause.

a. The City may terminate the Design/Builder for cause upon the occurrence of an Event of Default as defined in Section 16.2, or for any other breach of the Agreement or other Contract Documents by the Design/Builder that the City, in its sole opinion, deems substantial and material, following written notice to the Design/Builder and the failure to timely and properly cure to the satisfaction of the City in the time period set forth in Section 16.2, or as otherwise specified in the Notice of Default.

b. Upon the occurrence of an Event of Default, and without any prejudice to any other rights or remedies of the City, whether provided by this Agreement, the other Contract Documents or as otherwise provided at law or in equity, the City may issue a Notice of Termination for Cause to Design/Builder, copied to the Surety, rendering termination effective immediately, and may take any of the following actions, subject to any prior rights of the Surety:

i. Take possession of the Project site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Design/Builder;

ii. Accept assignments of subcontracts;

iii. Direct Design/Builder to transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other

material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Agreement had been completed, would be required to be furnished to the City; and

iv. Finish the Work by whatever reasonable method the City may deem expedient.

c. Upon the issuance of a Notice of Termination for Cause, the Design/Builder shall:

i. Immediately deliver to the City all Design Materials as defined in Section 22.10 hereof, in their original/native electronic format (i.e. CAD, Word, Excel, etc.), any and all other unfinished documents, and any and all warranties and guaranties for Work, equipment or materials already installed or purchased;

ii. If specifically directed by the City in writing, assign to the City all right, title and interest of Design/Builder under any contract, subcontract and/or purchase order, in which case the City shall have the right and obligation to settle or to pay any outstanding claims arising from said contracts, subcontracts or purchase orders;

iii. As directed by the City, transfer title and deliver to the City (1) the fabricated and non-fabricated parts, Work in progress, completed Work, supplies and other material produced or required for the Work terminated; and (2) the completed or partially completed Project records that, if this Agreement had been completed, would be required to be furnished to the City; and

iv. Take any action that may be necessary, or that the City may direct, for the protection and preservation of the Project Site, including life safety and property related to this Agreement that is in the Design/Builder's possession and in which the City has or may acquire an interest.

d. The rights and remedies of the City under Article 16 shall apply to all Defaults are non-curable in nature (including, without limitation, a breach of Section 22.23 of this Agreement), or that fail to be cured within the applicable cure period or are cured but in an untimely manner, and the City shall not be obligated to accept such late cure.

16.4. Recourse to Performance and Payment Bond; Other Remedies.

a. Upon the occurrence of an Event of Default, and irrespective of whether the City has terminated the Design/Builder, the City may (i) make demand upon the Surety to perform its obligations under the Performance and Payment Bond, including completion of the Work, without requiring any further agreement (including, without limitation, not requiring any takeover agreement) or mandating termination of Design/Builder as a condition precedent to assuming the bond obligations; or (ii) in the alternative, the City may take over and complete the Work of the Project, or any portion thereof, by its own devices, by entering into a new contract or contracts for the completion of the Work, or using such other methods as in the City's sole opinion shall be required for the proper completion of the Work, including succeeding to the rights of the Design/Builder under all subcontracts as contemplated by Article 16.

b. The City may also charge against the Performance and Payment Bond all fees and expenses for services incidental to ascertaining and collecting losses under the

Performance and Payment Bond including, without limitation, accounting, engineering, and legal fees, together with any and all costs incurred in connection with renegotiation of the Agreement.

16.5. Costs and Expenses.

a. All damages, costs and expenses, including reasonable attorney's fees, incurred by the City as a result of an uncured Default or a Default cured beyond the time limits stated herein (except to the extent the City has expressly consented, in writing, to the Design/Builder's late cure of such Default), together with the costs of completing the Work, shall be deducted from any monies due or to become due to the Design/Builder under this Agreement, Irrespective of whether the City ultimately terminates Design/Builder.

b. Upon issuing a Notice of Termination for Cause, the City shall have no obligation to pay Design/Builder, and the Design/Builder shall not be entitled to receive, any money until such time as the Project has been completed and the costs to make repairs and/or complete the Project have been ascertained by the City. In case such cost and expense is greater than the sum which would have been due and payable to the Design/Builder under this Agreement for any portion of the Work satisfactorily performed, the Design/Builder and the Surety shall be jointly and severally liable and shall pay the difference to the City upon demand.

16.6. Termination If No Default or Erroneous Default. If, after a Notice of Termination for Cause is issued by the City, it is thereafter determined that the Design/Builder was not in default under the provisions of this Agreement, or that any delay hereunder was an Excusable Event of Delay, the termination shall be converted to a Termination for Convenience and the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause contained in Section 16.1. The Design/Builder shall have no further recourse of any nature for wrongful termination.

16.7. Remedies Not Exclusive. Except as otherwise provided in the Contract Documents, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

16.8. Design/Builder Right to Stop Work. If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) days due to no act or fault of Design/Builder or persons or entities within its control, or if the City should fail to pay the Design/Builder any material amount owing pursuant to an Approved Application for Payment in accordance with the Contract Documents and after receipt of all supporting documentation required pursuant Article 8, and if the City fails to make such payment within ninety (90) days after receipt of written notice from the Design/Builder identifying the Approved Application for Payment for which payment is outstanding, then, unless the City is withholding such payment pursuant to Article 8) hereof or any other provision of this Agreement which entitles the City to so withhold such payment, the Design/Builder shall have the right upon the expiration of the aforesaid ninety (90) day period to stop its performance of the Work, provided that Design/Builder has sent a Notice to Cure to the City via certified mail, allowing for a 7 day cure period. In such event, Design/Builder may

terminate this Agreement and recover from City payment for all Work executed and reasonable expense sustained (but excluding compensation for any item prohibited by Article 15 and other provisions of the Contract Documents). In the alternative to termination, Design/Builder shall not be obligated to recommence the Work until such time as the City shall have made payment to the Design/Builder in respect of such Approved Application for Payment, plus any actual and reasonable related demobilization and start-up costs evidenced by documentation reasonably satisfactory to the City. Except as set forth in this Section 16.8, no act, event, circumstance or omission shall excuse or relieve the Design/Builder from the full and faithful performance of its obligations hereunder and the completion of the Work as herein provided for.

16.9. Materiality and Non-Waiver of Breach. Each requirement, duty, and obligation in the Contract Documents is material. The City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or Amendment of this Agreement. A waiver shall not be effective unless it is in writing and approved by the City. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and the failure of the City to exercise its rights and remedies under this Article 16 at any time shall not constitute a waiver of such rights and remedies.

ARTICLE 17

SEPARATE CONTRACTS

17.1. Right to Award Separate Contracts. The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts to other contractors, including subcontractors, in connection with other portions of the Project or other construction or operations on and/or adjacent to the Project Site (collectively, "Separate Contractors").

17.2. Integration of Work with Separate Contractors. Design/Builder shall afford Separate Contractors reasonable access to the Project Site for the execution of their work. Design/Builder shall arrange the performance of the Work so that the Work and the work of the City and the Separate Contractors are, to the extent applicable, properly coordinated, so that any disruption or damage to the Work or to any work of the City or of Separate Contractors is avoided or minimized.

17.3. Coordination. Design/Builder shall conduct its Work with Separate Contractors, and shall cooperate with Separate Contractors, as directed by the Contract Administrator.

a. Coordination with Separate Contractors may be grounds for an extension of Contract Time or any adjustment in the Contract Price.

17.4. Use of Project Site. The Design/Builder shall afford the City and all Separate Contractors reasonable opportunity for storage of their materials and equipment, and performance of their work on and/or adjacent to the Project Site. The Design/Builder shall also coordinate its construction and operations with the City and all Separate Contractors' construction and operations as required by the Contract Documents.

17.5. Deficiency in Work of Separate Contractors. If to properly execute a portion of the Work, the Design/Builder depends upon the construction or operations by the City or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the City apparent discrepancies or defects in such other construction that renders it unsuitable for proper execution Design/Builder Work. The Parties shall resolve in good faith any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to so report shall constitute a representation by the Design/Builder to the City that the City's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Design/Builder's Work. However, although such representation constitutes a waiver of any rights of Design/Builder against the City for discrepancies or defects in such Separate Contractor's work, such representation shall not constitute a waiver of any rights of the Design/Builder against such Separate Contractor as a result of such discrepancies or defects.

17.6. The Design/Builder shall promptly remedy damage caused by the Design/Builder or its Subcontractors to completed or partially completed construction or to property of the City or Separate Contractors. The City shall incorporate provisions comparable to those set forth in this Article 17 into each contract it enters into with a Separate Contractor, and accordingly notify the Design/Builder in writing.

ARTICLE 18

GUARANTEES AND WARRANTIES

18.1. Guarantees and Warranties required by the Contract Documents shall commence on the Substantial Completion Date of the Work (or date of Partial Substantial Completion, as applicable), unless otherwise provided, and shall be in effect for a period of one (1) year, unless otherwise provided in the Contract Documents. To the extent there is any conflict as to the applicable time period of coverage for any Guarantee or Warranty to be provided by the Design/Builder under the Contract Documents, the longer period of time for any such Guarantee or Warranty shall govern, without regard to any Guarantees or Warranties provided by Subcontractors. Design/Builder shall provide the Guarantees and Warranties required by the Contract Documents, without regard to whether the Subcontractors or Suppliers provided the Guarantees and Warranties.

18.2. The Design/Builder shall correct all defects discovered within one (1) year (or such longer period of time if provided in the Contract Documents) following the Substantial Completion Date. Design/Builder shall commence repairs and/or replacement within ten (10) days after being notified by the City of the defect and will prosecute the repairs and/or replacement diligently until completed. For any replacement Work performed during the one-year period after the Substantial Completion Date, Design/Builder shall provide a new one-year Warranty for such replacement Work.

18.3. If the Design/Builder fails to act within ten (10) days, the City may have the repairs and/or replacement performed by others at the expense of the Design/Builder.

18.4. Written warranties furnished to the City are in addition to implied warranties, and shall not limit the duties, obligations, rights and remedies otherwise available under Applicable Law or the Contract Documents. The Design/Builder shall also furnish any special Guarantees or Warranties called for in the Contract Documents.

ARTICLE 19

PRODUCT REQUIREMENTS/SUBSTITUTIONS

19.1. Whenever a material, article or piece of equipment is identified in the Contract Documents including, without limitation, in the DCP, by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, it is intended merely to establish a standard and, unless it is followed by words indicating that "no substitution is permitted," any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the material, article or equipment so proposed is, after review and evaluation of the materials that must be submitted in support of the substitutions set forth in Section 19.2 herein, in the opinion of the Design Criteria Professional: (a) at least equal in quality, durability, appearance, strength and design; (b) performs at least equally the function imposed in the general design for the Project; (c) conforms, to the detailed requirements for the items as indicated by the Contract Documents; and (d) carries the same Guaranty or Warranty of the specified equipment.

19.2. All substitution requests will be made in accordance with the requirements in Division 1, of the Project specifications, via written request which shall include a Shop Drawing and/or Change Order which shall be attached to a detailed description of the originally specified item and a detailed description of the proposed substitution. A comparison letter itemizing all deviations from specified items must be included for the Design Criteria Professional to properly evaluate any proposed substitution. Failure to provide the deviation comparison letter shall automatically constitute a denial of the request.

19.3. Any changes, inclusive of design changes, made necessary to accommodate substituted equipment under this paragraph shall be at the sole expense of Design/Builder.

19.4. Consultant's written consent will be required as to acceptability, and no substitute will be ordered, installed or utilized without the Design Criteria Professional's prior written acceptance, which will be evidenced by an accepted Shop Drawing or other written approval provided by the DCP or Contract Administrator. City may require Design/Builder to furnish, at Design/Builder's expense, a special performance Guarantee or other warranty with respect to any substitute.

ARTICLE 20 **PUBLIC INFORMATION**

Design/Builder shall coordinate with and assist the City and its Public Information Officer with respect to all matters relating to the Project. At all times, Design/Builder shall provide accurate and current information to the fullest extent possible, and shall assist in identifying potential impacts that should be communicated in advance with the public including, but not limited to, matters relating to maintenance of traffic plans, road closures, and other Work that may involve substantial noise or other disruptions. Design/Builder shall participate in public meetings and other public relations efforts with the community, as necessary.

ARTICLE 21 **QUALITY CONTROL/QUALITY ASSURANCE**

In accordance with the requirements of Appendix E and Division 1 of the Project Specifications, the Design/Builder shall be responsible and accountable for the quality control of the Work

including, without limitation, all quality control testing and inspections for the Work. The Design/Builder shall supervise the Work of all Subcontractors, reviewing construction means, methods, techniques, sequences and procedures, providing instructions to each when their Work does not conform to the requirements of the Contract Documents. The Design/Builder shall be responsible for ensuring that each Subcontractor makes whatever necessary corrections are required in a timely manner, so as to not affect the efficient and timely progress of the Work. The Design/Builder shall receive copies of all Claims or reports issued by the Consultant (with copy to the City) relative to the performance or acceptability of Work. Should disagreement occur between the Design/Builder and either the Contract Administrator or the Consultant over acceptability of Work and its conformance with the requirements of the Contract Documents of the Project, the City shall be the final judge of performance and acceptability, and noncompliant Work shall be corrected accordingly. The City may employ independent firm(s) for verification testing of the quality control testing performed by or on behalf of Design/Builder. However, the City shall not be obligated to have such verification testing performed, nor shall its commissioning, or election not to commission, such verification testing relieve Design/Builder of its independent obligations under the Contract Documents to perform such quality control testing and inspections and ensure the Work complies with the Contract Documents. The Design/Builder will exercise reasonable care and diligence in discovering and promptly reporting to City any defects or deficiencies in the Work. The Design/Builder shall establish the Project Schedule and review the progress schedules submitted by Subcontractors in order to ensure proper and timely completion of the Work.

ARTICLE 22

ADDITIONAL TERMS & CONDITIONS

22.1. Representations and Warranties. The Design/Builder further represents and warrants as of the date hereof and throughout the term of this Agreement:

a. That it has the financial resources, is solvent, and is sufficiently experienced, fully and properly licensed (to the extent required by Applicable Laws) and competent to properly and timely perform this Agreement, that the material facts stated or shown in any papers submitted or referred to in connection with this Agreement, including, without limitation, Design/Builder's responses to the City's RFP, and all other Contract Documents, and any subsequent additions thereto, are true in all material respects.

b. That it has full power and authority, and has obtained all corporate approvals necessary, to execute and perform this Agreement, and the same is a legal, valid and binding obligation of the Design/Builder, enforceable against the Design/Builder in accordance with its terms, subject to bankruptcy, equitable principles and laws affecting creditor's rights generally;

c. That it has the required authority, ability, skills and capacity to perform, and shall perform, the Work in a manner consistent with sound engineering and construction principles, Project management and supervisory procedures, and reporting and accounting procedures;

d. That it has carefully examined and analyzed the provisions and requirements of this Agreement as of the Effective Date, that it has thoroughly inspected the Project Site and satisfied itself from its own investigations as to the general nature of the things needed for the timely and proper performance of this Agreement;

e. That the Project is constructible, the performance of the Work within the timeframe established in the Project Schedule and for an amount not to exceed the Contract

Price in accordance with the provisions and requirements of the Contract Documents is feasible and that it can and shall perform its responsibilities and duties within the Project Schedule and for an amount not in excess of the Contract Price and in accordance with the provisions and requirements of the Contract Documents;

f. That no member of the City Commission, or other City official, agent or employee has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, or will have such an interest for the term of this Agreement; and that no individual has, or will have, any interest in the Project or this Agreement which is prohibited by law;

g. That, except only for those representations, statements or promises expressly contained in the Contract Documents, no representation, statement or promise, verbal or in writing, of any kind whatsoever by the City, its Commission members, officials, agents, employees or consultants has induced it to enter into this Agreement or has been relied upon by it, including any referring to: (i) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Agreement; (ii) the nature, existence or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Project Site; (iii) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general or local conditions which may in any way affect this Agreement or Design/Builder's performance thereof; (v) the price of performing Work under this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (v) immediately above, having any connection with this Agreement, the negotiation thereof, any discussions thereof, the performance thereof or those employed or connected therewith;

h. That it was given ample opportunity and time, and was hereby requested by the City to review thoroughly all documents forming or relating to this Agreement prior to execution of this Agreement; and

i. That it has knowledge of all the Applicable Laws in effect on the Effective Date of the Agreement and of all business practices in the jurisdiction within which the Project Site is located that must be followed to properly and lawfully perform the Work.

The Design/Builder shall provide to the City evidence of its authority to do business and perform certain professional services in the State of Florida including, without limitation, certificates of good standing, authority and/or registration issued by the Office of the Secretary of State of Florida and Florida's Department of Business and Professional Regulation (as applicable). The City's failure to request such information should the Design/Builder fail to timely produce such evidence shall not, in any way, relieve Design/Builder of its obligation to obtain, maintain current or furnish evidence of, any and all applicable licenses, certifications, registrations and permits as required herein and/or as required by the other Contract Documents. If, following Design/Builder's furnishing of such evidence, the City determines it requires further evidence regarding same, upon City's request, Design/Builder shall furnish such additional evidence to City in a form and manner acceptable to the City.

22.2. Counterparts. This Agreement is comprised of several identical counterparts, each to be fully executed by the Parties and each to be deemed an original having identical legal effect.

22.3. Amendment. Except as otherwise expressly provided in this Agreement (including with respect to Construction Change Directives), no Amendments or changes to the Contract

Documents, or any part thereof, shall be valid unless in writing and signed by both of the Parties hereto, or their respective successors and assigns.

22.4. Applicable Laws. The Design/Builder shall comply, and shall cause all Subcontractors to comply with all Applicable Laws and governmental agencies and authorities having jurisdiction over the Work, the Project and/or the Project Site, now existing or hereinafter in effect. Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if, through mistake or otherwise, any such provision is not so inserted or is not correctly inserted, or is inserted but is subsequently amended, then upon the application of either Party, this Agreement shall forthwith be amended to make such insertion or to incorporate such amendment. In no event, however, shall the failure to insert such provision into this Agreement prevent the enforcement of same or relieve the Design/Builder of its obligation to fully comply with the same.

Nothing contained herein shall be deemed to impose upon the Design/Builder any obligation to perform acts or furnish services in violation of Florida law or condone the performance of such acts or furnishing of such services in violation of Florida law, it being understood that the professional architectural, engineering and other design services covered by the aforesaid Agreement including, without limitation, the preparation of the Design Documents and Construction Documents, shall be provided by the Consultant or its professionally licensed Design Subconsultants.

22.5. Interpretation. Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms of this Agreement, unless expressly stated otherwise.

22.6. Severability. If any provision of this Agreement shall be held to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

22.7. Publicity. Except as coordinated with the Public Information Officer pursuant to Article 20 herein, the Design/Builder, its officers, agents, employees and its Consultants, Design Subconsultants, Subcontractors, Suppliers and their respective officers, agents and employees, shall not issue publicity news releases or grant press interviews relating to the Project without the express prior written consent of the City.

In addition, except as may be required by law during or after performance of this Agreement, the Design/Builder shall not disseminate any information of any nature whatsoever regarding the Project without the express prior written consent of the City. In the event the Design/Builder, its officers, agents, employees and its Consultants, Design Subconsultants, Subcontractors, Suppliers and their respective officers, agents and employees, are presented with a subpoena *duces tecum* regarding the Project records, data, or documents, then such person or entities shall immediately give written notice to the City and the City Attorney with the understanding that the purpose of so doing is to provide City the opportunity to contest such process by any lawful means available to it before such records, data, or documents are submitted to a court or other third parties; provided, however, the Design/Builder shall comply with all such legal processes when required to do so.

22.8. Public Entity Crimes Act. Design/Builder acknowledges and agrees that the provisions of Florida Statute 287.133, relating to public entity crimes, shall apply to this Agreement, which, among other things, provides as follows: In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a Design/Builder, contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a Public Entity Crime, may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work under a contract with the City and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as amended, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this Section shall result in cancellation of the City purchase and may result in debarment.

22.9. No Waiver of Legal Rights. No approval given by the City under this Agreement shall operate to relieve the Design/Builder from any of its responsibilities under this Agreement or be deemed as an approval by the City of any deviation contained in any items or documents subject to such approval, or of any failure by the Design/Builder to comply with any requirement of this Agreement or any provision of the other Contract Documents, unless such deviation or failure has been specifically identified by the Design/Builder and approved by an Amendment to this Agreement. Unless the City has specifically approved a deviation from the Contract Documents in writing by an Amendment, the City shall not be precluded or estopped by any City approval, review, measurement, estimate or certificate made by City either before or after the completion and acceptance of the Work and/or any payment therefor, from (a) showing the true amount and character of the Work performed and goods and materials furnished by the Design/Builder, or showing that any measurement, estimate or certificate is untrue or incorrectly made, or that the Work or goods and materials do not conform in fact to this Agreement or any other Contract Documents, or (b) recovering from the Design/Builder and its sureties such damages as it may sustain by reason of the Design/Builder's failure to comply with the terms of this Agreement. Except as provided herein, neither the acceptance by the City, or any representative of the City, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the City, shall operate as a waiver of any portion of this Agreement, or of any power herein reserved or any right to damages herein provided. A waiver of any breach of this Agreement shall not be held to be a waiver of any other breach whether prior to or subsequent thereto. The City's delay in declaring that a breach has occurred or otherwise asserting its rights under this Agreement shall not constitute a waiver of such breach or limit any of the City's rights under this Agreement.

22.10. Ownership of Design Materials and Documents. The copies or other tangible embodiments of all design materials, whether or not such materials are subject to copyright or other intellectual property protection, including documents, Shop Drawings, computer programs and electronic information developed for the Project (or to the extent that such programs and electronic information are not the property of the Design/Builder, the Consultant, Design Subconsultant or Subcontractor, the results of the use thereof by the Design/Builder), data, plans, drawings, sketches, illustrations, specifications, descriptions, models, the Schematic Design Documents, the Design Documents, the Construction Documents, and any other documents developed, prepared, furnished, delivered or required to be delivered by the Design/Builder, the Consultant, Design Subconsultant, or Subcontractor to the City under the Agreement (collectively, "Design Materials") shall be and remain the property of the City, whether or not the Project and/or Work is commenced or completed. During the term of this Agreement, the Design/Builder shall be responsible for any loss or damage to the Design Materials, while such Design Materials are in the possession of the Design/Builder or any of its Consultants, Design Subconsultants, or Subcontractors, and any such Design Materials lost or damaged shall be replaced and restored at the Design/Builder's expense. The intellectual property rights, if any, to the Design Materials or the contents of or concepts embodied in the Design Materials shall belong to the Design/Builder, the Consultant, Design Subconsultants or Subcontractors in accordance with their contractual relationship and may be copyrighted or made the subject of any other form of intellectual property protection by them in the United States or in any other country.

As to those Design Materials subject to, or which will be subject to, any form of intellectual property protection, the Design/Builder hereby grants (and will cause to be granted and delivered to the City from the Consultant, Design Subconsultants and Subcontractors), as of the date that such Design Materials are delivered or required to be delivered to the City, a worldwide, paid-up, exclusive, irrevocable, transferable license for the term of the intellectual property protection, for the City to use, reproduce and have reproduced, display and publish (and to allow others to use, reproduce and have reproduced, display and publish, in any manner, at any time and as often as such others desire, with or without compensation to the City), such Design Materials and any derivative thereof without further compensation to the Design/Builder, Consultant, Design Subconsultant, Subcontractor or any third party beyond the payments specified for design fees in Article 7 herein, subject to the restrictions set forth below:

a. The City shall not, without the prior written consent of the Design/Builder, the Consultant or appropriate Design Subconsultant, or Subcontractor, as the case may be, use such Design Materials or documents, in whole or in part, for the construction of any other project. The City may, however, at no cost to the City, use such Design Materials and documents for additions, improvements, changes, repairs, maintenance or alterations to the Project. In the event of termination of this Agreement the City shall be entitled to use such Design Materials for completion of the Project by others without additional compensation.

b. Any reproduction of any Design Materials or part thereof shall be faithful and accurate to the original and of good quality.

c. The City shall not remove or alter, and shall reproduce and prominently display on all copies made by the City, the copyright notice and other proprietary legends appearing on such Design Materials when delivered to the City.

i. The Design/Builder acknowledges that the City considers the Project's aggregate architectural expression (that is, the overall combination of the Project's design features), and any distinctive individual features thereof, to be unique and of commercial value, and the Design/Builder, the Consultant, Design Subconsultants, and Subcontractors agree not to design or build, or allow other third parties the use of the Design Materials to design or build, another structure having a substantially similar aggregate architectural expression or substantially similar distinctive individual features. The Design/Builder, Consultant, Design Subconsultants and all Subcontractors shall, however, be free to use individual features, details or systems from the Project or combinations of such features in other projects, so long as such parties comply with the provisions of this Section 22.10. The Design/Builder shall include this provision in its contracts with Subcontractors and in all contracts for Design Subconsultants, and provide copies of all such agreements to the City.

ii. Within ten (10) days of the earlier of the Substantial Completion Date of the Project or the date of termination of the Agreement, the Design/Builder shall deliver to the City all of the Design Materials referred to in Section 22.10 above which have not yet been submitted to the City.

22.11. Non-Collusion. The Design/Builder, in performing its obligations under this Agreement, shall comply with all Federal, State and local laws, rules and regulations regarding collusion and bribery.

22.12. Right to Entry. The Design/Builder shall use, and shall cause its Consultants, Design Subconsultants and Subcontractors to use, a reasonable degree of care when entering upon any property owned by the City in connection with the Project. In the case of property not owned by the City, the Design/Builder and its Consultants, Design Subconsultants and Subcontractors shall comply with any and all instructions and requirements for the use of such property. In the case of property owned by any other entity, the Design/Builder shall separately negotiate and obtain any license or permission to enter upon such property.

22.13. No Personal Liability of Public Officials. In carrying out any of the provisions of this Agreement or in exercising any power City granted to them hereby, there shall be no liability upon any City official, their authorized representatives, or any employee of the City, either personally or as employees or officials of the City, it being understood that in such matters they act as agents and representatives of the City.

22.14. Project Commencement. The Design/Builder shall commence performance of its Design Phase obligations under this Agreement promptly following issuance of the NTP1, and shall commence performance of its Construction Phase obligations under this Agreement promptly following the date the NTP2 is delivered by the City. The Design/Builder shall not be required to perform any construction, and shall not be entitled to receive any payments with respect to construction, until the issuance of the NTP2, but shall be entitled (subject to any provisions relating to the City's obligation to make payments hereunder) to receive payments relating to design services and for costs relating to mobilization for commencement of construction and costs of construction, but only for tasks and/or items which the City and Design/Builder have agreed in writing should commence prior to the City's delivery of the NTP2.

22.15. Risk of Loss. Regardless of passage of title, the risk of loss to any of the Work and to any goods, materials and equipment provided, or to be provided, under this Agreement, shall remain with the Design/Builder until the Substantial Completion Date. Should any of

the Work, or any such goods, materials and/or equipment, be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to the City at the Substantial Completion Date, the Design/Builder shall repair or replace the same at its sole cost. The Performance and Payment Bond or other security or insurance protection required by the Contract Documents or otherwise provided by the City or the Design/Builder shall in no way limit the responsibility of the Design/Builder, under this Section.

22.16. Right to Apply Monies Due. In addition to other available remedies, the City shall have the right to deduct from any funds and monies due or thereafter to become due, to the Design/Builder, including funds retained by the City under the retainage provisions of this Agreement, any amounts due to the City from the Design/Builder as a result of any losses, expenses, damages, obligations or liabilities for which the Design/Builder is responsible pursuant to the provisions of this Agreement, including liquidated damages and costs to repair and/or replace defective work not properly and/or timely repaired or replaced by Design/Builder, and apply said funds deducted toward the satisfaction of such losses, expenses, damages, obligations or liabilities.

It is expressly provided, however, that the deduction and application of such funds shall not apply if the Design/Builder undertakes and makes payment in full of the amounts so due and payable. However, such payment by Design/Builder shall not, in any event, relieve the Design/Builder of its responsibility or liability for any amounts owed in addition to those amounts deducted by the City.

22.17. Signs. The Design/Builder shall install and maintain until Final Completion of the Project signage as required by the Contract Documents. Prior to installation, the signs shall be subject to the review and approval of the Contract Administrator, said approval not to be unreasonably withheld. Also, subject to the prior approval of the Contract Administrator, the Design/Builder may choose and subsequently change the location of the signs.

Except for signage necessary for safety or traffic control, neither the Design/Builder, nor any Subcontractor shall be permitted to display or install any other signs or any advertising, including signs or identification on sidewalk canopies or trailers, at the Project Site, other than those signs customarily appearing on the Design/Builder's or a Subcontractor's construction equipment. The City reserves the right to install signs at the Project Site, provided that such signs do not unreasonably interfere with the Work.

22.18. Venue and Governing Law.

a. This Agreement shall be governed as to performance, interpretation and jurisdiction by the laws of the State of Florida, without regard to conflicts of law rules. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida. **BY ENTERING INTO THIS AGREEMENT, THE DESIGN/BUILDER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT. DESIGN/BUILDER SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS, CONSULTANT, SUBCONSULTANTS, AND SUBCONTRACTORS TO THE PROVISIONS OF THIS AGREEMENT AND THE CONTRACT DOCUMENTS. IN THE EVENT OF A CONFLICT BETWEEN THIS PROVISION AND ANY TERM OR CONDITION IN ANY PROJECT-RELATED AGREEMENT, THE CONTRACT DOCUMENTS SHALL GOVERN AND TAKE PRECEDENCE.**

b. The Design/Builder hereby irrevocably submits itself to the original and exclusive jurisdiction and venue of the Circuit Court of Miami-Dade County, Florida, with regard to any controversy in any way relating to the award, execution or performance of this Agreement. The Design/Builder agrees that service of process on the Design/Builder may be made, at the option of the City, either by registered or certified mail addressed to the Management Representative, by registered or certified mail addressed to any office actually maintained by the Design/Builder, or by personal delivery on the Design/Builder's Project Manager or any officer, director, or managing or general agent of the Design/Builder.

22.19. Notices. All notices and other communications given or required under this Agreement shall be in writing and may be delivered personally, by recognized overnight courier (such as Federal Express, DHL, or the like), or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed:

a. If to the City, to the Contract Administrator, at such address specified in writing by the Contract Administrator, provided that copies of notices pertaining to a failure on the part of the City to perform in accordance with the terms of this Agreement shall be sent to the Contract Administrator and to the following, and to such other persons as may be designated in writing by the City: **Insert name and address of Contract Administrator**

b. If to the Design/Builder, to the Design/Builder's Project Manager, at such address specified in writing by the Project Manager, provided that copies of notices pertaining to a failure on the part of the Design/Builder to perform in accordance with the terms of this Agreement shall be sent to the Project Manager and to such other persons as may be designated in writing by the Design/Builder.

Attention: **Insert name and address of Design/Builder**

c. Notices may also be sent by e-mail provided that such notice is followed up with a hard copy in a manner set forth above.

d. Notices delivered by mail shall be deemed effective three (3) business days after mailing in accordance with this Section. Notices delivered personally, by e-mail, or by overnight courier shall be deemed effective upon receipt.

22.20. Successors and Assigns. No part of this Agreement shall be assigned by the Design/Builder, nor shall any Agreement funds or Claims due, or to become due, be transferred or assigned (other than to the sureties issuing the Performance and Payment Bond, to the extent required as a condition to the issuance thereof), without the prior written approval of the Contract Administrator, but in no case shall such consent relieve the Design/Builder from its obligations or change the terms of this Agreement in any way. The transfer or assignment of any Agreement funds which shall be due, or become due, to the Design/Builder either in whole or part, or any interest therein, without prior written approval by the Contract Administrator, shall cause the annulment of said transfer or assignment. The Design/Builder shall not delegate any of its duties hereunder except as provided in this Agreement. However, Design/Builder's delegation of any of its duties under this Agreement shall in no way relieve Design/Builder of its obligations under the Agreement including, without limitation, ensuring the Work complies with the Contract Documents and the Project is delivered properly and timely to the City and able to be fully functional and used for its intended purpose. In the event that the City approves the

transfer or assignment of this Agreement, this Agreement shall become binding on successors and assigns and this requirement shall survive completion or termination of this Agreement.

22.21. Entire Agreement. The Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises, or other references shall be implied in this Agreement that are not expressly addressed herein.

22.22. Recycled Content. In support of the Florida Waste Management Law, Design/Builder is encouraged to supply any information available regarding recycled material content in the products provided. City is particularly interested in the type of recycled material used (such as paper, plastic, glass, metal, etc.); and the percentage of recycled material contained in the product. City also requests information regarding any known or potential material content in the product that may be extracted and recycled after the product has served its intended purpose.

22.23. No Contingent Fee. Design/Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design/Builder, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Design/Builder, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate the Agreement immediately without liability at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

Attest:

CITY OF MIAMI BEACH, FLORIDA

City Clerk

Mayor

Attest:

DESIGN/BUILDER:

Signature

Signature

Name/Title

Name/Title

APPENDIX A PROJECT DESCRIPTION AND PROJECT SITE

[INSERT PROJECT DESCRIPTION AND PROJECT SITE]

The Project improvements are based upon the Basis of Design report for Neighborhood No. 8 Bayshore prepared by CH2M Hill, as amended, and include the improvements referenced in the final plans for Construction – Central Bayshore (Package A) Right-of-Way Infrastructure Improvements Date 2010, as amended, and the Design Criteria Package, Central Bayshore South dated [REDACTED] 2015. The Project, as referenced in the foregoing, consists, without limitation, of the construction of the infrastructure site work for Neighborhood No. 8- Central Bayshore South including, but not limited to, demolition, site preparation, earthwork, storm drainage, installation of stormwater pump station, stormwater outfall adjustments, road paving and restoration, concrete sidewalk repairs and valley gutters, and water distribution.

As set forth in the Contract Documents, the Design/Builder shall provide and pay for all labor, materials, tools, construction equipment, and other ancillary facilities necessary for proper execution, testing, commissioning, and final restoration work required for the functional and satisfactory delivery of the Work, and shall include any Work which may be reasonably inferred as being necessary to accomplish and complete the Project including, but not limited to, furnishing shafts, coffer cells, utility relocation, bypass schemes, maintenance of traffic plans, and site <do what with the site?>

The Central Bayshore Neighborhood 8 is located within the mid-Beach area. The Project limits (Central Bayshore – South) include, but are not limited to, the public rights-of-way (ROW) within all areas generally bounded by W. 28th Street to the south, Prairie Avenue to the west, Sheridan Avenue to the east and W. 34th Street to the north, as well as North Meridian Avenue between W. 28th Street and Dade Boulevard.

APPENDIX B
LIST OF REPORTS AND PROJECT PLANS

1.1. Narrative Reporting Subsystem. The Design/Builder shall prepare monthly and/or daily written reports as described hereunder. All written reports shall be in 8 1/2" X 11" format. The Design/Builder shall ensure that the City is provided a copy. The Narrative Reporting Subsystem shall include the following reports:

- a. A Monthly Executive Summary, which provides an overview of the Project's progress, current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by, and delays in obtaining and/or renewing any requisite permits from, any permitting authority.
- b. A Monthly Cost Narrative describing the current construction cost estimate status of the overall Project and Amendment or potential Claim status (i.e., amount, reason for change, responsibility), which shall be addressed in detail.
- c. A Monthly Scheduling Narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedule components, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance of the Work. The Narrative should include descriptions of any logic or other changes to the updated Project Schedule versus the baseline Project Schedule and previous updates.
- d. A Monthly Construction Progress Report during the Construction Phase summarizing the overall progress of the Work of the Design/Builder and the various Subcontractors. This report shall include information from the weekly Project Site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations, Project permits, construction problems and recommendations, and plans for the succeeding month. The format for the Monthly Construction Progress Report must be approved and accepted by the City, the Resident Project Representative and Consultant, and will establish the format to be used for each subsequent Monthly Construction Progress Report. Design/Builder shall index, bind and tabulate the Monthly Construction Progress Report in a manner acceptable to the City. The Monthly Construction Progress Reports shall include photos documenting the progress of the Work, and 3 to 4 aerial photos, or additional photos, as needed. The photos will be 8" x 10" in size, with the date and location noted on the back of each photo. A back-up flash drive or CD of the photos is to accompany the hard copies of the photographs. The Monthly Construction Progress Reports and Project photos are to be made an attachment to the Design/Builder's monthly Application for Payment.
- e. A Daily Construction Diary or bound log, maintained in English, during the Construction Phase describing events and conditions on the Project Site. The diary shall be maintained at the Project Site and available to members of the City at any time upon request, and shall set forth, at a minimum, for each day: the weather conditions; how any weather conditions affected progress of the Work; time of commencement of Work for the day; the Work performed; materials, labor, personnel, equipment and Subcontractors utilized for the Work; any idle equipment and reasons for idleness; visitors to the Project site; any special or unusual conditions or occurrences

encountered; any materials delivered to the Project site; and the time of termination of Work for the day. A bound copy of the complete diary shall be submitted to the City at Substantial Completion of the Project.

The written reports outlined in the Section above shall be bound with applicable computer reports and submitted monthly during the Pre-Construction Phase based on the then-current available Construction Documents, and monthly during the Construction Phase. Copies shall be transmitted by Design/Builder to the City and others designated by the Contract Administrator with each monthly Application for Payment. Additional copies of the reports outlined in this Section shall be bound separately and distributed monthly as directed by the Contract Administrator. Certain electronic copies of reports shall be transmitted electronically to the Contract Administrator and others as may be designated by the Contract Administrator.

1.2 Project Manual/Management Plans. Within forty-five (45) days of the Effective Date of the this Agreement, the Design/Builder shall develop a comprehensive Project Management Plan describing the services set forth in the Contract Documents and document such plans in the Project Manual. The Project Manual shall serve as the Project Management Plan, and shall include at a minimum, the following sections:

- a. Project Organizational Chart. A summary organizational chart showing the interrelationships between the various representatives of the Project, other supporting organizations, and permitting review agencies. Detailed charts showing organizational elements participating in this Project shall be included for each of the Key Members of the Project.
- b. Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the various Project representatives. The Responsibility Performance Chart shall indicate primary and secondary responsibility for each specific task required to deliver this Project. The Design/Builder shall develop a similar chart for the personnel within its own organization who are assigned to the Project, and for the personnel of the Key Members of the Project from data supplied by each. Is it Project Manual or Project Management Plan?
- c. Communications Procedures. The Design/Builder shall establish written procedures for communications and coordination required between Key Members of the Project throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications and timing of such communications as applicable. The Design/Builder shall use electronic communication whenever possible. Design/Builder shall create a master email list with a matrix of items to be circulated to the appropriate entities and/or personnel, including, without limitation, the Consultant, Design Subconsultants, the RPR, the City, Subcontractors and others.
- d. Safety Plan. The Design/Builder shall develop a comprehensive safety program for the Project to meet all applicable Federal, State and Local safety requirements. This will include a comprehensive program for ensuring safety of all persons and property affected by the Work.

- e. Quality Assurance/Quality Control (QA/QC Plan). The Design/Builder shall develop and maintain an effective Quality Assurance and Quality Control Plan and procedures as delineated in Appendix E hereto, to ensure that materials furnished and quality of Work performed are in accordance with the Construction Documents and other Contract Documents.
- f. Crisis Management Plan. The Design/Builder shall develop a Crisis Management Plan, describing a general approach to, and identifying emergency contacts in case of, crisis situations, e.g., hurricane, riot, etc., that permits, to the fullest extent possible, uninterrupted progress or performance of the Work or prompt resumption of the Work.
- g. Security Plan. The Design/Builder shall develop and maintain a comprehensive Security Plan to protect the Project Site including, without limitation, the Work installed and the equipment and materials stored within, and to protect the materials stored off-site, against theft, vandalism, fire, and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the Project Site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.
- h. Maintenance of Traffic and Project Site Logistics. The Design/Builder shall prepare a logistics, access staging and maintenance of traffic plans for this Project. The plans shall contain specific procedures for minimizing the disruption of surrounding operations and inconvenience to the public accessing the Project Site and residents in the surrounding areas, such as residents and visitors who must traverse the Project Site to access their residences, hotels or other businesses. The Project Site Logistics Plan shall include documents illustrating the scale and relationship of Project components based on the Project's current and future requirements, Project Schedule and construction budget requirements. The Design/Builder shall ascertain what temporary enclosures, if any, of building areas should be provided for, and may be provided, as a practical matter, in order to assure orderly progress of the Work in periods when extreme weather conditions are likely to be experienced.
- i. Risk Management Plan. The Design/Builder will identify those issues which could impact the successful and timely completion of the Project within the approved Project baseline schedule on a risk register. The Design/Builder will identify, evaluate, and assess Project risks using a SWOT (strengths, weaknesses, opportunities and threats) analysis sufficient to develop customized Project control strategies that maintain visibility and ensure timely initiation of corrective actions should they be required. Assessed risk levels will determine the control level to be used for each Project element, incorporating planned risk responses to mitigate potential impacts.

1.3 Administrative Records.

The Design/Builder will maintain, on a current basis, unless agreed to otherwise by the Contract Administrator, , all files and records for the Project such as, but not limited to, the following:

- Punch Lists
- Cost Proposal Requests
- Bid Analysis/Negotiations/Award Information Contracts/Purchase Orders w/changes
- Material/Equipment Records
- Delivery Logs

- Payment Records
- Transmittal Records
- Inspection Reports
- Project Schedule, Construction Schedule and Updates thereto
- Suspense (Tickler) Files of Outstanding Requirements
- Prevailing Wage Reports
- Shop Plan Submittal/Approval Logs
- Contract Documents
- Warranties and Guarantees
- Cost Accounting Records
- Labor Cost Records
- Material Cost Records
- Equipment Cost Records
- Payment Record Requests
- Subcontractor Pay Exception Reports
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance policies, Insurance Certificates and Bonds
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction Manuals and Lists
- Daily Progress Reports & Subcontractor Daily Reports (including activities performed by subcontractors on-site)
- RFIs, RFCs and Associated Logs
- Monthly Progress Reports
- Project Correspondence Files
- Project Manual

The above Records shall be available to the Contract Administrator, Project Coordinator, Resident Project Representative, and other City representatives for reference or review at any time.

APPENDIX C
FORM OF FINAL CERTIFICATE OF PAYMENT

FINAL CERTIFICATE OF PAYMENT:

PROJECT:
(name, address)

Consultant:

BID/CONTRACT NUMBER:

TO (City):

Contractor:

CONTRACT FOR:

NOTICE TO PROCEED

DATE(S):
DATE OF ISSUANCE:

The undersigned hereby certifies and attests to the following: All conditions or requirements of any permits or regulatory agencies have been satisfied. All documents required by the Contract Documents have been received and accepted. The Work required by the Contract Documents has been reviewed and the undersigned certifies that the Work, including minor corrective work, has been completed in accordance with the provisions of the Contract Documents and is accepted under the terms and conditions thereof.

CERTIFIED AND ATTESTED TO:

_____ Consultant	_____ BY	_____ DATE
_____ Witness for Consultant	_____ BY	_____ DATE
_____ Design/Builder	_____ BY	_____ DATE
_____ Witness for Design/Builder	_____ BY	_____ DATE

Based upon the representation and certification of the Consultant and Design/Builder regarding the proper completion of the Work, the City, through the Contract Administrator, accepts the Work as fully complete and will assume full possession thereof at _____

(date) (time)

City of Miami Beach, Florida

By Contract Administrator

Date

SAMPLE

APPENDIX D
PROJECT SCHEDULE

[To be incorporated after selection of Proposer]

SAMPLE

APPENDIX E

QUALITY CONTROL/QUALITY ASSURANCE

The Design/Builder shall submit, subject to the approval of the City, a comprehensive Quality Control/Quality Assurance Plan as provided in the Contract Documents that includes the components required herein and in other provisions of the Contract Documents. The City shall monitor and review the performance of the Quality Control Plan by the Design/Builder, including observation of inspections and testing activities, as provided in the Contract Documents . All Submittals required pursuant to the Design/Builder's Quality Control Plan, or in other provisions of the Contract Documents, shall be delivered to the City, unless otherwise expressly provided in the Contract Agreement.

The City shall have the right to reject Work which does not conform to the Contract Documents. If the City determines that a defect or nonperformance exists, the Design/Builder shall cause the defective or nonconforming condition to be corrected or replaced with a conforming installation, product or result, subject to the approved Quality Control Plan, provisions of the Contract Documents and approval of City . City's failure to identify and/or reject any defective or non-conforming Work shall not operate to waive City's right to subsequently demand that Design/Builder remedy any defective or non-conforming Work in accordance with the Contract Documents.

1. **Quality Control (QC) Plan.** The Design/Builder shall submit for the City's approval a Quality Control Program Plan for the execution of the Work and the Design/Builder shall organize and conduct all activities to be performed under the Contract Documents with strict attention and adherence to the approved Quality Control Plan. The scope of the Quality Program Plan shall include the quality assurance and quality control elements necessary for the design, procurement, manufacturing, installation, construction, start-up, integrated Systems testing, and execution of the Work by the Design/Builder and Subcontractors, and shall comply with the requirements of the Contract Documents. The Quality Control Plan shall include the preparation of documented quality control procedures and instructions in accordance with the requirements defined in this Section, as well as those specified in the Contract Documents, specifically the Construction Documents.

The Design/Builder shall be responsible for controlling the quality of all Work, including the Work of Subcontractors. The Design/Builder shall include in its Subcontracts those provisions which it considers necessary to assure that the quality of subcontracted Work will be consistent with that required of the Design/Builder.

The City may audit and inspect the Design/Builder's and Subcontractors' Quality Control Programs at any time. Such audits may be conducted on a random or routine basis and may include an audit of the Design/Builder's inspection records and data. Additionally, the City shall have the right to witness any quality control tests or inspections and shall have access to all test data, including test procedures, test specifications and test results. Further, the City shall have the right to conduct independent tests or inspections (at the City's expense) of any material or equipment to be used in the Work. Such audits, inspections or tests conducted shall be performed to verify that all Work is performed in compliance with applicable provisions of the Contract Documents, but shall not relieve the Design/Builder of any of its obligations under the Contract.

2. **Quality Assurance Management.** The Design/Builder shall prepare a management structure and organizational chart which shall reflect a commitment for an effective quality assurance policy, and which shall define and document its Quality Program Plan approach and objectives for, and

commitment to, quality. The Design/Builder shall ensure that the Quality Program Plan is understood, implemented, and maintained at all levels of the Design/Builder's organization. Management personnel responsible for performing quality control and assurance functions shall report directly to the Design/Builder's Project Executive and Contract Administrator.

a) Quality Assurance Personnel. In its Quality Program Plan, the Design/Builder shall identify the qualifications and experience of personnel responsible for implementation of quality assurance elements of the Quality Program Plan, and a description of the duties of the assigned personnel by job description. Personnel responsible for quality assurance shall be qualified by virtue of skill, education and experience on projects of similar type and complexity. The City reserves the right to approve the Design/Builder's QA/QC manager.

b) Quality Assurance Verifications. The Design/Builder shall identify internal verification requirements, provide adequate resources, and assign trained personnel for verification activities. Verification activities shall be performed by personnel independent of those having the responsibility for the Work being performed. Verification activities shall include verifying the adequacy and enforcement of quality control procedures as they relate to inspections, tests, monitoring of the design, procurement, construction, installation and start-up of the equipment, materials, Systems and completed Work.

c) Procurement Quality Assurance. The Design/Builder shall establish and employ procedures for the selection and control of Subcontractors, including suppliers, which will assure the use of qualified procurement sources and which will provide methods of monitoring the quality levels of the products and services to ensure that they conform to Contract requirements. The Design/Builder shall select Subcontractors, in part, on the basis of their ability to meet the Quality Control Plan requirements.

3. Design Quality. The Design/Builder shall be responsible for the quality of all design documentation under the Contract. The Design/Builder shall establish and utilize procedures and instructions to ensure that all design documents, including those prepared by Subcontractors, are prepared in accordance with the standard of care required pursuant to these subsections and shall meet all other requirements of the Contract Documents. Design and verification activities shall be planned and assigned to qualified staff equipped with adequate resources. Organizational and technical interfaces between different groups within the Design/Builder's or Subcontractor's organizations which provide input into the design process shall be identified and carefully monitored by the Design/Builder to insure an accurate, complete, adequate and fully coordinated design. Such interface monitoring shall be documented and regularly reviewed. Incomplete, unsatisfactory or ambiguous integrated designs shall be identified and promptly resolved by the Design/Builder.

a) Design Quality Control Procedures. Quality control with respect to the design of the Work, and all design-related documentation shall include:

- i. Measures to ensure that appropriate quality standards are included in the design documents and used in the selection and review for suitability of materials, equipment, systems and assemblies.
- ii. Drawings, specifications, reports and other documents shall be stamped and signed by the responsible architect or engineer in accordance with Applicable Laws.

- iii. Coordination of Work performed by different persons in the same area, or in adjacent areas or in related tasks to ensure that conflicts, omissions or misalignments do not occur between or among drawings, or between the drawings and the specifications, and to coordinate the review, approval, release, distribution and revision of design documents prepared by such persons.
- iv. Elements of Work requiring special quality control attention or emphasis, including the applicable standards of quality or practice to be met and the level of completeness, and extent of detailing required.
- v. Development of a list, by discipline, of the names, qualifications, duties, responsibilities and authorities for all persons proposed to be responsible for quality control of design documents.
- vi. Any requirements for external technical experts necessary to ensure the quality of design of the Work, including the name, qualifications, duties, responsibilities and authorities, the anticipated timing of the expected availability of, and any coordination required with respect to, any such experts.
- vii. Preparation of composites in coordination with the Design/Builder's Designer and equipment suppliers to the extent necessary to identify and resolve conflicts in the location of architectural features, structural members, installations and other elements of the Work.

b) Design/Builder Design Quality Review. Prior to the submittal of the design construction documents, the Design/Builder shall provide a quality assurance and control review with architects and engineers experienced in the appropriate disciplines. The criteria to be used in such reviews shall include, but not be limited to:

- i. Conformity of Design/Builder Contract Documents and Design/Builder Drawings with the Contract Documents.
- ii. Assurance that all materials, equipment, and other elements of the Work have been designed to perform satisfactorily in service and in accordance with the Contract Documents.
- iii. The appearance, organization, and technical and grammatical accuracy of such documents.
- iv. Verification that such design construction documents have been checked and signed by each drafter, architect or engineer, checker and reviewer.
- v. Where required by the Contract Documents or applicable laws, verification that such design construction documents have been stamped and signed by the responsible engineer or architect.
- vi. Assurance that such design construction documents have been prepared to assure compatibility with all adjacent or dependent materials, equipment or other elements of the Work.

4. Quality Control of Construction, Manufacturing and Installation

The Design/Builder and each Subcontractor shall be responsible for the establishment and implementation of quality control procedures and instructions for the inspection and testing of manufactured and installed materials, equipment, and assemblies.

a) Inspection and Testing. The Design/Builder shall conduct a complete review of the Contract requirements and shall identify all inspections and tests required for procurement, and the installation and construction of the project Facilities. The Design/Builder shall establish and employ written receiving inspection procedures to ensure that materials, assemblies, and equipment or other elements of the Work are not incorporated into the Work until each item has been inspected or otherwise verified to conform to applicable requirements of the Contract Documents. Verification shall be in accordance with the Quality Program Plan and other documented procedures of the Design/Builder.

The Quality Control Plan and written procedures for first article inspection, final inspection and testing shall provide procedures to ensure that upon completion of all required inspections and tests (including those to be conducted either on receipt of material or equipment or while the material, equipment or other elements of the Work are in process) the results are satisfactory and in compliance with all applicable requirements, and that the results are documented in test reports. No material, equipment or other element of the Work shall be accepted until all the activities specified in the Quality Control Plan and other documented procedures have been satisfactorily completed and the inspection and testing results and documentation are available and approved by the Design/Builder. The Design/Builder shall establish and maintain records which document the fact that each item of material, equipment or other element of the Work has satisfied all applicable inspection and test criteria and other requirements.

b) Field Samples and Mock-ups. Field samples and mock-ups shall be prepared at the Project Site or other location by the Design/Builder as specified in the Contract Documents. Affected finish Work shall not be started until the Design/Builder's Authorized Representative has accepted as satisfactory field samples or mock-ups in writing. The City shall be notified in advance and afforded an opportunity to review field samples and mock-ups before affected finish Work is started.

c) Design/Builder's Control Inspection and Testing. The Design/Builder shall be responsible for control inspection and testing of all materials, equipment and other elements of the Work prior to their delivery from a manufacturer, or during construction (e.g., electrical equipment load tests, soil compaction tests, concrete tests, piping system leakage tests), to ensure compliance with the Contract Documents. Such inspection and testing shall be performed by a qualified independent testing and inspection firm, to be engaged by the Design/Builder at its expense, and approved by the City. The Design/Builder shall submit to the City the name, address, and qualifications, together with the scope of services, of the proposed testing and inspection firm at least sixty (60) Days prior to scheduled commencement of any Work involving such inspection or testing. Should the Design/Builder desire to use more than one firm for control inspection and testing, the required information shall be submitted for each such proposed firm.

All laboratory testing shall be performed by an independent, qualified testing laboratory, employing equipment and qualified testing personnel approved by the City.

d) Control of Nonconforming Material, Equipment, or Elements of Work. The Design/Builder shall establish and maintain a nonconformance system and procedures for uniform reporting, controlling and disposition of Nonconformance Items (NCI's). Procedures shall be established to prevent the inadvertent use or installation of nonconforming material, equipment or other elements of the Work. Control procedures shall provide for identification, evaluation, segregation and, when practical, disposition of nonconforming material, equipment or other elements of the Work and for notification to the Design/Builder, the City and all personnel involved in the affected Work. The responsibility for review and authority for the disposition of nonconforming material, equipment or other Work shall be as established by the Design/Builder in the approved Quality Control Plan.

e) Corrective Action. The Design/Builder shall establish and maintain written procedures for:

- i. Investigating the cause of nonconforming material, equipment or other elements of the Work and the corrective action needed to prevent recurrence;
- ii. Analyzing all processes, work operations, concessions, quality records, service reports, and complaints of the City to detect and eliminate potential causes of nonconforming material, equipment, or other elements of the Work;
- iii. Initiating preventive actions to deal with problems at a level corresponding to risks encountered;
- iv. Applying controls to ensure that effective corrective actions are taken; and
- v. Implementing and recording changes in procedures resulting from corrective action.

f) Handling, Storage, Packaging and Delivery. The Design/Builder shall establish and maintain written procedures for handling, storage, packaging and delivery of materials, equipment and other elements of the Work, including coordination with those materials included in the City's Direct Purchase Program. The Design/Builder shall provide methods and means of handling and provide secure storage areas or stock rooms that prevent damage or deterioration of materials, equipment and other elements of the Work pending delivery, use, or incorporation into the Work. Appropriate methods for authorizing receipt and the release to and from such areas shall be stipulated. The condition of materials, equipment and other elements of the Work in storage shall be assessed at regular and appropriate intervals.

g) Quality Record. The Design/Builder and Subcontractors shall establish and maintain procedures for identification, collection, indexing, storage, maintenance and disposition of records concerning the quality of the Work. Such records shall be maintained at the Project Site and at manufacturing facilities and shall document achievement of the requirements of this Section, and the effective operation of the Quality Program Plan. All quality records shall be legible and identifiable as to the material, equipment or other element of the Work involved. When methods of inspection and testing are changed, the Design/Builder shall obtain review and acceptance of written procedures from the Owner before implementation of any change.

Quality records shall be stored and maintained in such a manner that they are readily retrievable in facilities that provide a suitable environment to minimize deterioration or damage to prevent loss. Retention times of quality records shall be established and recorded. Quality records should be made available, at all times, for evaluation and review by the City.

5. Conformity with Contract Requirements

a) **Verification.** All Work shall be performed and furnished by the Design/Builder pursuant to, and in full conformity with, the Contract Documents. Throughout the duration of the Contract, the Design/Builder will be required to so establish such conformance to the City. In addition, the City may inspect and audit the Work, at all stages of its manufacture, fabrication, factory testing, construction, installation, on-site testing, completion and acceptance procedures, at any time. Review, verification and acceptance of the Work will be accomplished through the design review and construction inspection and testing process. All design documents shall be checked and verified by the Design/Builder for compliance with all applicable Contract Documents and with Applicable Laws.

b) **No Implied Duties.** No right to act granted to the City under this Section, nor any decision made by the City in good faith either to exercise or not to exercise such right, shall give rise to any implied duty or responsibility of the City, respectively, to the Design/Builder, any Subcontractor, any of their agents or employees, or any other person performing any of the Work, or relieve the Design/Builder from its sole responsibility for performing its obligations hereunder. Review of Submittals and any action taken by the City with respect to Submittals shall not relieve the Design/Builder from its sole responsibility for accuracy, completeness, coordination, errors or omissions in the Design/Builder Drawings, the Design/Builder Contract Documents and Submittals and associated calculations, or for deviations from the Contract Documents or compatibility of the item with contiguous or dependent items of the Work.

6. **No Interference.** The City shall not supervise the Design/Builder's forces or Subcontractors or perform other duties for the Design/Builder, nor interfere with the management of the Work by the Design/Builder. Any advice, instruction, direction or other order which the City may give the Design/Builder shall not be construed as releasing the Design/Builder from fulfilling all of the terms of the Agreement or other Contract Documents.

7. **Rejection and Removal of Nonconforming or Defective Work.** As more fully delineated in Section 2.7.16.20, all Work which does not conform to the Design/Builder's warranties or to any other requirements of the Contract Documents will be considered unacceptable, unless otherwise determined to be acceptable as provided in the last paragraph of this Section. Any defective condition, whether the result of poor workmanship, use of materials containing defects, damage through carelessness or any other cause, found by, or disclosed to, the City shall be removed and replaced by Work and materials which conform to the Contract Documents or shall be remedied to the satisfaction of the City. Upon failure on the part of the Design/Builder to comply promptly with any order of the City to remedy, remove or replace Work which is nonconforming or contains Defects, the Owner may cause such nonconforming Work or Defect to be remedied or removed and replaced by separate Contractors employed by the Owner at the Design/Builder's expense. In such event, the costs of such removal, remediation and replacement shall be deducted from any monies due or to become due the Design/Builder under the Agreement.

In the event the City finds, as a result of monitoring of the Design/Builder's quality assurance and quality control activities, that any materials, equipment or the finished product in which materials, equipment or finished product are used are not in conformity with the requirements of the Contract Documents, but that acceptable Work has, nonetheless, been produced, the Owner shall then determine whether the Work shall nevertheless be accepted. If the Owner determines that the Work should be accepted, the Owner will document the basis of acceptance by a Change Order for Diminished Value, which will provide for an appropriate adjustment in the Contract Sum. Any such acceptance shall not, however, ever result in an increase of the Contract Sum or the Contract Price.

8. **Design/Builder's Continuing Obligation.** Neither the issuance of the Certificate of Final Completion, nor the making of Final Progress Payment by the Owner will constitute acceptance of any portion of the Work which is not in compliance with the requirements of the Contract Documents or constitute a release or diminution of the Design/Builder's continuing obligations with respect to the Work pursuant to applicable provisions of the Agreement or other Contract Documents.

APPENDIX F

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SAMPLE

APPENDIX G
DESIGN/BUILDER'S INSURANCE AND BONDING REQUIREMENTS

I. BONDING REQUIREMENTS

1. Design/Builder shall submit all supporting documentation and detailed invoices with respect to insurance and bond premiums required for the Project. City's reimbursement of insurance and bond premiums shall be for the portion of insurance and bond premiums directly attributable to this Agreement. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments.

2. The Performance Bond and the Payment Bond must each be executed by a surety company in good standing with the Florida Office of Insurance Regulation and an adequate rating from A.M. Best indicated in these Contract Documents which surety is authorized to do business in the State of Florida as a 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.

3. The surety company that is bound by the Performance Bond and Payment Bond, respectively, shall be responsible for Design/Builder's acceptable performance of the Work under the Agreement and other Contract Documents and/or for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

4. The surety company shall hold a current Certificate of Authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Performance Bond and Payment Bond exceeds the underwriting limitation set forth in the Circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other acceptable methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10, Section 223.11.) Further, the surety company shall provide City with evidence satisfactory to City, that such excess risk has been protected in an acceptable manner.

5. The City will accept a surety bond from a company in accordance with the requirements set forth below; provided however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the City shall review and either accept or reject the surety company based on the financial information available to the City. The following sets forth, in general, the acceptable parameters for bonds:

Policy- Financial Holder's Size

Amount of Bond	Ratings	Category
\$500,001 to \$1,000,000	A-	Class I
\$1,000,001 to \$2,000,000	A-	Class II
\$2,000,001 to \$5,000,000	A	Class III

\$5,000,000 to \$10,000,000	A	Class IV
\$10,000,001 to \$25,000,000	A	Class V
\$25,000,001 to \$50,000,000	A	Class VI
\$50,000,001 or more	A	Class VII

II. **INSURANCE REQUIREMENTS**

Design/Builder shall provide, pay for and maintain in force at all times during the term of this Agreement (unless otherwise provided) and any extensions thereof, the following insurance policies:

1. **Commercial General Liability** with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- a. Premises and/or Operations coverage;
- b. Independent Contractor or Contractor Owners Protection Liability which includes liability coverage for operations performed for the name of the insured by independent and/or subcontractors that are hired, and acts or omissions of the named insured in connection with his/her general supervision of such operations;
- c. Products and/or Completed Operations coverage (Design/Builder shall maintain in force for 2 years after completion of all work required coverage for Products/Completed Ops, including Broad Form Property Damage);
- d. Explosion/Collapse and Underground Hazard coverage;
- e. Broad Form Property Damage.
- f. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement contained in the Contract Documents.
- g. City must be named as an Additional Insured on this policy as set forth in Section III.4 below.

2. **Workers' Compensation Insurance** to apply for all employees in compliance with the "Workers Compensation Law" of the State of Florida and all applicable Federal laws. Design/Builder shall ensure that all subcontractor(s) at all tiers have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. In addition, the policy(ies) must include: Employers' Liability with minimum limits of Five Hundred Thousand Dollars (\$500,000) each accident.

3. **Business Automobile Liability** with minimum limits of One Million Dollars (**\$1,000,000**) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Owned Vehicles; and (2) hired and Non-Owned Vehicles.
4. **Design Professional Liability** or equivalent Errors & Omissions Liability shall be maintained with the limits of liability provided by such policy to be no less than One Million Dollars (\$1,000,000) for each claim, subject to a maximum deductible acceptable to the City and not-to-exceed \$100,000. Design/Builder shall maintain the claims made form coverage with a minimum of 3 years extended reporting following Final Completion and shall annually provide City with evidence of renewal coverage. Design/Builder is responsible for all deductibles in the event of a claim. Design/Builder shall indicate the deductible for this coverage on its Certificate of Insurance. Design/Builder shall notify City in writing within thirty (30) days of any claims filed or made against the Design Professional Liability Insurance Policy. Consultant and Design Subconsultants shall each maintain the same Errors & Omissions Liability coverages required herein.
5. **Pollution Liability**, which covers mitigation expenses and third-party liability in the minimum amount of Two Million Dollars (\$2,000,000) per claim, subject to a maximum deductible acceptable to the City. Such policy shall include an annual policy aggregate in the amount of Three Million Dollars (\$3,000,000) and name City as additional insured. Design/Builder shall indicate the deductible for this coverage on its Certificate of Insurance.
6. **Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this Project. City shall be included as a Named Insured on this policy, as its insurable interest may appear. This policy shall remain in force until acceptance of the Project by the City.

III. ADDITIONAL TERMS AND CONDITIONS:

1. **Notice to City**. If the initial insurance expires prior to the completion of the Work, renewal copies of insurance policies shall be furnished to the City at least fourteen (14) days prior to the date of their expiration. The insurance policy(ies) must be endorsed to provide the City with at least thirty (30) days' notice of cancellation and/or restriction.
2. **Certificates of Insurance**. Design/Builder shall furnish to the City Certificates of Insurance or endorsements evidencing the insurance coverage specified herein within fifteen (15) days after notification of award of the Agreement, and shall also furnish to the City a copy of each insurance policy required by this Agreement. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificates of Insurance shall be in form acceptable to, and subject to, approval by City. The failure to provide the Certificates of Insurance within fifteen (15) days shall be the basis for the rescission of the awarding Agreement. The official title of the certificate holder is City of Miami Beach, Florida. This official title shall be used in all insurance documentation.
3. **Right to revise or reject**. City's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements at the time of insurance contract

renewal and/or any amendments, not limited to deductibles, 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 scope and applicability of coverage.

4. **Additional Insured.** City and Design Criteria Professional shall be expressly included as an Additional Insured on all policies, as applicable, and with an endorsement that is acceptable to the City. Additional insured certificates for the City shall read “City of Miami Beach, Florida”, 1700 Convention Center Drive, Miami Beach, FL, 33139, Attn: Risk Management, 3rd Floor.

5. **Notice of Cancellation and/or Restriction.** The policy(ies) must be endorsed to provide City with at least thirty (30) days' notice of cancellation or non-renewal and/or restriction. A copy of the endorsement(s) shall be provided with the Certificates of Insurance.

6. **Duty of Care.** Design/Builder's furnishing insurance coverage shall in no way relieve or limit, or be construed to limit or relieve or limit, Design/Builder or any of its Subcontractors of any responsibility, liability, or obligation imposed by the Contract Documents, or by Applicable Laws, including, without limitation, any indemnification obligations which Design/Builder or any of its Consultants, Design Subconsultants and Subcontractors have to City thereunder.

7. **Design/Builder's Failure to Procure.** Design/Builder's failure to procure or maintain the insurance required by this Appendix G during the entire term of the Work shall constitute a material breach and automatic Default of the Agreement. In the event of such a breach, the City may exercise all available rights and remedies hereunder, including the right to immediately suspend or terminate the Agreement without any further notice to or opportunity to use for Design/Builder or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid by the City from the Design/Builder.

8. **Waiver of Subrogation.** Where permitted by law, Design/Builder hereby waives all rights of recovery by subrogation or otherwise (including, without limitation, claims related to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage), against City, and its respective officers, agents, or employees. Certificates of insurance shall evidence the waiver of subrogation in favor of the City, and that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City.

APPENDIX H

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SAMPLE

APPENDIX I

FORM OF PERFORMANCE BOND AND PAYMENT BOND

PERFORMANCE BOND

By this Bond, We _____ as Principal, whose principal business address is _____, as the Design/Builder under the agreement dated _____, 20____, between Principal and the City of Miami Beach, Florida (hereinafter referred to as "City") for the design and construction of the **[D/B Services Central Bayshore South RFP No. 2015-____-YG]** (which agreement and the other Contract Documents referenced therein are hereinafter referred to as "Contract"), the terms of which Contract are incorporated by reference in its entirety into this Bond, and _____, a corporation, whose principal business address is _____ as Surety, are bound to City, as obligee, in the sum of _____ U.S. dollars (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this Bond by reference, and at the times and in the manner prescribed in the Contract; and
2. Pays City all losses, damages, expenses, costs and attorney's fees, including appellate proceedings, that City sustains as a result of default by Principal under the Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in the Work or materials within the time period provided in Section 95.11(2)(b), Florida Statutes; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, including all warranties and curing all latent defects within the time period provided in Section 95.11(2)(b), Florida Statutes;

then this bond is void; otherwise it remains in full force.

Surety specifically assumes liability for any and all damages, including but not limited to liquidated damages set forth in the Contract, arising from Principal's default of the Contract, as well as all latent defects uncovered in the work of the Principal after final acceptance of the work by the City.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the City; provided, however, that this limitation does not apply to suits seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(2)(b), Florida Statutes.

Whenever the Principal shall be, and is declared by City to be, in default under the Contract, City having performed City's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) Complete the Contract in accordance with its terms and conditions; or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if City elects, upon determination by City and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and City, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price" as used in this paragraph, shall mean the total amount payable by City to Principal under the Contract and any amendments thereto, less the amount properly paid by City to Principal.

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

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

Signature page to follow

Signed and sealed this _____ day of _____, 20____.

WITNESSES:

Secretary
(CORPORATE SEAL)

(Name of Corporation)

By: _____
(Signature)

(Print Name and Title)

____ day of _____, 20____.

Countersigned by Resident
Florida Agent of Surety

INSURANCE COMPANY:

By: _____
Attorney-in-Fact

Address:

[attach copy of Agent's ID card
Issued by Fla. Ins. Commissioner]

(Street)

(City/State/Zip Code)

[Atty in fact power of atty must be attached]

Telephone No.: _____

FORM OF PAYMENT BOND

By this Bond, We _____ as Principal, whose principal business address is _____, and whose telephone number is _____, as the Design/Builder under the agreement dated _____, 20____, between Principal and the City of Miami Beach, Florida (hereinafter referred to as "City") for the design and construction of the **[D/B Services Central Bayshore South RFP No. 2015-____-YG]** (which agreement and the other Contract Documents referenced therein are hereinafter referred to as "Contract"), the terms of which Contract are incorporated by reference in its entirety into this Bond, and _____, a corporation, whose principal business address is _____ as Surety, are bound to City, as obligee, in the sum of _____ U.S. dollars (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if the Principal:

1. Promptly makes payments to all claimants, as defined by Florida Statute 255.05(1), providing Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract, and in the times and in the manner prescribed in the Contract; and
2. Pays City all losses, damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains because of a failure by Principal to make any payments required under the Contract;

then this bond is void; otherwise it remains in full force.

A claimant shall have a right of action against the Principal and the Surety for the amount due it. Such action shall not involve the City in any expense.

A claimant, except a laborer, who is not in privity with Principal 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 Principal a notice that he intends to look to the bond for protection. A claimant who is not in privity with Principal 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 Principal and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

No action for the labor, materials, or supplies may be instituted against Principal or the Surety unless both of the above-referenced notices have been given. Any action under this Bond must be instituted in accordance with the notice and time limitations prescribed in Section 255.05(2), Florida Statutes.

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

Signature page to follow

Signed and sealed this _____ day of _____, 20____.

Principal

ATTEST:

(Secretary)

(Corporate Seal)

By: _____
(Signature)

(Print Name and Title)

____ day of _____, 20____.

Countersigned by Resident
Florida Agent of Surety

[attach copy of Agent's ID card
Issued by Fla. Ins. Commissioner]

[Atty in fact power of atty must be attached]

INSURANCE COMPANY:

By: _____
Attorney-in-Fact

Address:

(Street)

(City/State/Zip Code)

Telephone No.: _____

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[TBD]

SAMPLE

FORM OF CHANGE ORDER

CHANGE ORDER FORM

Date: [Click here to enter a date.](#)
To: Design/Builder

Reason: Choose an item.

1. CHANGE IDENTIFICATION: The following changes are hereby made to the above-referenced Contract:

--

2. **ADJUSTMENT TO CONTRACT AMOUNT:** As consideration for the change(s) identified in Section 1, the Contract is **increased / (decreased)** by:

DOLLARS \$

Original Contract Amount:	\$	_____
Net of Previous Executed Change Orders:	\$	_____
Amended Contract Amount (prior to this Change Order) :	\$	_____
The Amount of this Change Order:	\$	_____
Revised Contract Amount:	\$	_____

IF NO ADJUSTMENT IS MADE, THE CONTRACT AMOUNT REMAINS UNCHANGED.

3. ADJUSTMENT TO TIME FOR PERFORMANCE: *In connection with the change(s) noted in Section 1, DESIGN/BUILDER'S TIME FOR PERFORMANCE REMAINS UNCHANGED unless specifically noted herein:*

Adjustment in Time 0 Days

This Change Order is an amendment to the Agreement between the Design/Builder and City. The amount and time change designated herein are the maximum agreed to by both the City and Design/Builder for this Change Order. Design/Builder attests that the Contract adjustment provided herein is reasonable, and constitutes compensation in full for all costs, claims, markup, and expenses, direct or indirect, attributable to this or any other prior Change Orders, including but not limited to compensation in full for any delays, acceleration, or loss of efficiency encountered by Design/Builder in the performance of the Work through the date of this Change Order, and for the performance of this and any prior Change Orders by or before the date of Substantial Completion. In consideration of the compensation and time, if any, in this Change Order, the Design/Builder hereby releases the City from all Claims, demands, or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between the City and Design/Builder with respect to this Change Order. No other agreements or modifications shall apply to this contract amendment unless expressly provided herein

EXCEPT AS EXPRESSLY MODIFIED HEREIN, THE TERMS AND CONDITIONS OF THE CONTRACT DOCUMENTS REMAIN UNCHANGED.

City: _____

Design/Builder:

By: _____

By: _____

APPENDIX C

MIAMI BEACH

Cost Tender Form (SAMPLE ONLY)

**Actual Cost Tender Form shall be provided to short-listed firms
at the conclusion of Phase I Evaluation.**

RFP NO. 2020-180-ND
DESIGN/BUILD SERVICES FOR 72nd STREET
COMMUNITY COMPLEX

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

Section 1 – Certification

The undersigned, as Proposer, hereby declares that the only persons interested in this proposal as principal are named herein and that no person other than herein mentioned has any interest in this proposal or in the Contract to be entered into; that this proposal is made without connection with any other person, firm, or parties making a proposal; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Proposer further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the proposals, as acknowledged below; and that it has satisfied itself about the Work to be performed; and all other required information with the proposal; and that this proposal is submitted voluntarily and willingly.

The Proposer agrees, if this proposal is accepted, to contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

REQUEST FOR PROPOSALS (RFP) No. 2020-180-ND
DESIGN/BUILD SERVICES FOR 72nd STREET COMMUNITY COMPLEX

The Proposer also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total proposal price plus alternates, if any, provided in the RFP Price Form in Section 00408 and to furnish the required Certificate(s) of Insurance.

In the event of arithmetical errors between the division totals and the total base proposal in the RFP Price Form, the Proposer agrees that the total base proposal shall govern. In the event of a discrepancy between the numerical total base proposal and the written total base proposal, the written total base proposal shall govern. In absence of totals submitted for any division cost, the City shall interpret as no proposal for the division, which may disqualify the Proposer.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Signature of Proposer's Authorized Representative:	Date:

State of FLORIDA
personally

)

On this ____ day of _____, 20____,

)

appeared before me _____ who

_____) stated that (s)he is the _____ of _____, a corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of directors and acknowledged said instrument to be its voluntary act and deed. Before me:

Notary Public for the State of Florida

My Commission Expires: _____.

Section 2 – GUARANTEED MAXIMUM PRICE (GMP) - SAMPLE

REQUEST FOR PROPOSALS (RFP)

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**FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE DISCRETION OF
THE PROPOSER**

TO BE PROVIDED DURING PHASE II

**ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE CONSIDERED PART OF THE
PROPOSAL MUST BE SUBMITTED IN DUPLICATE.**

WRITTEN TOTAL: _____

PROPOSER (Print): _____

ADDRESS: _____

CITY/STATE: _____ **ZIP:** _____

FEDERAL I.D. #: _____

NAME/TITLE OF REPRESENTATIVE (Print): _____

SIGNED: _____

(I certify that I am authorized to execute this proposal and commit the proposing firm)

APPENDIX D

MIAMI BEACH

Insurance Requirements

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COMMUNITY COMPLEX

PROCUREMENT DEPARTMENT
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INSURANCE REQUIREMENTS

The Contractor shall maintain and require that their subcontractors maintain the below required insurance in effect prior to awarding the contract and for the duration of the contract. The maintenance of proper insurance coverage is a material element of the contract and failure to maintain or renew coverage may be treated as a material breach of the contract, which could result in withholding of payments or termination of the contract.

- A. Workers' Compensation Insurance for all employees of the Contractor as required by Florida Statute Chapter 440 and Employer Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this contract or (ii) a copy of a Certificate of Exemption.
- B. Commercial General Liability Insurance on an occurrence basis, including Contractual Liability, XCU, Pollution, products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- C. Automobile Liability Insurance covering any automobile, if Contractor has no owned automobiles, then coverage for hired and non-owned automobiles, with limit no less than \$2,000,000 combined per accident for bodily injury and property damage.
- D. Professional Liability (Errors & Omissions) Insurance with limits no less than \$3,000,000, on a claims made basis, with the deductible per claim, if any, not to exceed 10% of the limit of liability.

The Professional Liability policy/coverage shall be amended to include the following:

- Description of operations on the declaration describing the scope of your professional services shall include all aspects of the services performed under this contract, including events arising out of your operations or any qualified subcontractors and sub-tier contractors
 - Amendment of any contractual liability exclusion to state: "This exclusion does not apply to any liability of others, which you assume under a written contract provided such liability is caused by your wrongful acts."
 - Coverage for claims alleging improper supervision of subcontractors and sub-tier contractors
 - Deletion of any exclusions pertaining to design/build liability
 - Coverage shall apply for five (5) years after project is complete
- E. Builders Risk Insurance utilizing an "All Risk" coverage form, with limits equal to the completed value of the project and no coinsurance penalty. *(City of Miami Beach shall be named as a Loss Payee on this policy, as its interest may appear. This policy shall remain in force until acceptance of the project by the City.)*
 - F. Umbrella Liability Insurance in an amount no less than \$10,000,000 per occurrence. The umbrella coverage must be as broad as the primary General Liability coverage.
 - G. Contractors' Pollution Legal Liability *(if project involves environmental hazards)*, with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

Additional Insured - City of Miami Beach must be included by endorsement as an additional insured with respect to all liability policies (except Professional Liability and Workers' Compensation) arising out of work or operations performed on behalf of the contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed in the form of an endorsement to the contractor's insurance.

Notice of Cancellation - Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the City of Miami Beach c/o EXIGIS Insurance Compliance Services.

Waiver of Subrogation – Contractor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

Verification of Coverage – Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

CERTIFICATE HOLDER MUST READ:

CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at:

Certificates-miamibeach@riskworks.com

Special Risks or Circumstances - The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Compliance with the foregoing requirements shall not relieve the Contractor of his liability and obligation under this section or under any other section of this agreement.

APPENDIX E

MIAMI BEACH

Design Criteria Package

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QUESTIONS PERTAINING TO THE DCP WILL BE ADDRESSED ONLY IN PHASE II

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