

MIAMI BEACH

LETTER TO COMMISSION

372-2014

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: November 5, 2014

SUBJECT: **REQUEST FOR PROPOSAL (RFP) NO. 2014-253-YG FOR DESIGN/BUILD SERVICES FOR THE CONSTRUCTION OF A 54" REDUNDANT SANITARY SEWER FORCE MAIN**

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The purpose of this Letter to Commission is to provide a status update regarding the issuance of a Request for Proposal (RFP) for design/build services for the construction of a 54" redundant sanitary sewer force main.

On June 11, 2014, the City Commission approved the issuance of the subject RFP. After the City Commission approved the project to be advertised for procurement of a contractor to perform the services for design/construction of this project, the City retained a consultant (AECOM) to perform the construction management of the work. Their review of the Design Criteria Document identified areas of the project requirements that could be further developed to ensure a quality project. Their enhancements of the document have been completed and this will result in benefit to the City to better control the quality of the work.

Following the review of the RFP by AECOM, the Administration has incorporated some revisions to the RFP. The material revisions include:

1. The Scope of Work Section has been enhanced to describe the critical elements of the project, including the tunnel, open cut installations, terminal connections, bypass, and associated utility relocation and final restoration.
2. The Minimum Requirement Section has been amended to relax the requirement that firms have a minimum of two (2) Design/Build projects instead of five (5).
3. The Evaluation Methodology and Determination of Award Sections have been revised to include a two-step process. Details of the two step process are located on page 10 and page 14 of the RFP.
4. An Alternate Proposals Section has been added to allow bidders to offer a solution which may result in cost and/or time savings to the City.

Attached is the revised draft RFP for your review. I would appreciate any comments and/or suggestions you may have by November 10, 2014.

Thank you.

JLM/MT/ECAP
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**REQUEST FOR PROPOSALS
DESIGN/BUILD SERVICES FOR
54" REDUNDANT SEWER FORCE MAIN
RFP No. 2014-253-YG**

RFP ISSUANCE DATE: NOVEMBER 12, 2014

PRE-PROPOSAL MEETING DATE: NOVEMBER 20, 2014

PROPOSAL DUE DATE: JANUARY 7, 2015

ISSUED BY: YUSBEL GONZALEZ, CPPB

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Alex Denis, *Director*

DEPARTMENT OF PROCUREMENT

1700 Convention Center Drive, Miami Beach, FL 33139

305.673.7000 x 7490 | adenis@miamibeachfl.gov

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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov
DEPARTMENT OF PROCUREMENT
Tel: 305.673.7490, Fax: 786.394.4006

PUBLIC NOTICE

REQUEST FOR PROPOSALS (RFP) No. 2014-253-YG DESIGN/BUILD SERVICES FOR: 54" REDUNDANT SEWER FORCE MAIN Miami Beach, Florida

The Design/Build Firm (DBF) will be responsible for engineering, design, permitting, construction, testing, and commissioning services associated with the installation of approximately 5300 linear ft. of new 54-inch Force Main (FM) that will commence in the vicinity of Washington Avenue and Commerce Street, in Miami Beach, and terminate at Pump Station No.1, located on 11th Street. The new FM will serve as a redundant main to the existing 54-inch Precast-Concrete Cylinder Pipe (PCCP) that's was determined to be distressed, and at risk of incipient failure, based on a condition assessment performed by Pure Technologies limited in December of 2011. The DBF shall be responsible for the performance of all ancillary work required to achieve a functional and satisfactory project which may include and not be limited to implementing temporary and permanent facilities including shafts, mirotunneling operations, open cut installations, tapping and by-pass schemes, utility relocation, pavement reconstruction and streetscaping, and any other services that may be required to deliver the project in compliance with the City's objectives and performance requirements, as described in the Design Criteria Package (DCP). The DCP prepared by the City of Miami Beach (CMB) defines the scope of the project; establishes the design criteria and performance requirements; provides exhibits including conceptual/indicative plans and survey information; and includes technical specifications for major elements of the work for which the Design/Build Firm is to comply when executing the Work.

The DCP for this project shall be available in digital format CDs. Please call Yusbel Gonzalez, CPPB at 305.673.7490, or e-mail yusbelgonzalez@miamibeachfl.gov to secure a CD. **The cost for these CDs is \$20.** One may purchase a CD through the Finance Cashier located on the 1st Floor in City Hall. Please make reference of the RFP number (RFP 2014-253-YG) and project name (DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN) to the Finance Cashier. After purchase, CDs are to be collected by the Proposer at the Procurement Office located on the 3rd Floor in City Hall with presentation of receipt from the Finance Cashier.

A Pre-Proposal Conference, as further detailed in Section 0100-10 of the RFP is scheduled for **2:00 p.m. on November 20, 2014** in the **City Manager's Large Conference Room located at 1700 Convention Center Drive on the 4th floor.**

Sealed proposals will be received by the City of Miami Beach Department of Procurement Management, 3rd Floor, 1700 Convention Center Drive, Miami Beach, Florida 33139, **until 3:00 p.m. on December 18, 2014**, for DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN (the Project).

Sincerely,



Alex Denis
Director, Procurement Management Department

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0100. GENERAL INSTRUCTIONS TO PROPOSERS:

1. General: This Request for Proposals (RFP) is issued by the City of Miami Beach, Florida (the "City"), as the means for prospective Proposers to submit their qualifications, scope of work, technical approach, and price 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 appendixes 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 Proposers and, subsequently, the successful Proposer(s) who will be the DESIGN/BUILD FIRM that enters into Contract with the City if this RFP results in an award.

The City utilizes **Public Purchase** (www.publicpurchase.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 **Public Purchase** must register immediately with **Public Purchase** to assure it receives any addendum issued to this RFP. **Failure to receive an addendum may result in disqualification of Proposal submitted.**

2.0 Project Background: The City currently owns and operates 5200 linear feet of existing 54-inch sanitary sewage Force Main (FM) that connects to Pump Station No. 1, extends westerly along 11 Street, and southerly along Alton. The main is the sole transmission pipeline for conveying approximately 24 MGD of raw sewerage from the City to the MDWASD's newly constructed 60-inch main that traverses Government Cut and directs flow to Virginia Key for final treatment. The main, constructed in 1977 with Pre-Cast Concrete Cylindrical Pipe (PCCP) was subject to a condition assessment in February 2012 by Pure Technologies which revealed structural deficiencies in approximately 3% of the installation. These deficiencies have manifested in the form of breaks in the pre-stressed bands that places the pipeline at risk of potential failure. Failure could prove catastrophic to the Miami Beach community, causing discharge of millions of gallons of raw sewerage that can affect safety, human health, coastal environment, and local business operations. To alleviate such risks, the City is undertaking this project to construct a new 54-inch FM to serve as a redundant pipeline with the capacity to be deployed in an emergency situation. The redundant main is to be designed, constructed, and commissioned with no interruption of service to the existing 54-inch FM and is expected to be operational by September 2015.

3.0 Scope of Work: The Design/Build Firm (DBF) shall provide engineering, design, permitting, construction, testing and commissioning services for the construction of approximately 5300 linear force main with a minimum internal diameter of 54-inches commencing at the existing 48-inch plug valve located at the intersection of Washington Avenue and Commerce Street, extending northerly in the ROW of Washington and Euclid Avenues, and easterly within the ROW of 11th Street with final connection to the existing 30-inch FM in the vicinity of Pump Station No. 1. Refer to Exhibit. The design and construction services rendered by the DBF shall result in a complete, functional, and operable pipeline project with a minimum 80 year design life. The Project shall consist of the following main elements:

1. Approximately 4600 linear feet micro-tunnel along the urban corridor Euclid Avenue and Washington Avenue. The micro tunnel shall be constructed at an average top of tunnel elevation (TOT) elevation of (-) 15 ft. NGVD and a vertical alignment that provides a minimum of one pipe diameter of rock cover in the mined/bored geology. The tunnel shall consist or contain a minimum 54-inch inside diameter product pipe comprised of a fiberglass reinforced mortar product with proven application in pressurized sewer systems.
2. Approximately 600 linear feet of 54-inch open cut pipe installation at the terminal locations of the project, along Washington Avenue and 11th Street to accomplish the final connections to the existing 48-inch plug valve in the vicinity of Commerce, and the connection to the 30-inch discharge main fronting PS No. 1. The

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open cut pipeline shall consist of either Pre-Stressed Concrete Embedded Cylinder Pipe (PCECP) or a Fiberglass Reinforced Mortar Pipe (FRMP).

3. Approximately 5200 linear feet of the existing damaged 54-inch force main to be decommissioned, purged of sewage, and prepared for rehabilitative work to be performed by another Contractor in the future.
4. Utility location and relocation as required, ancillary piping, tapping, temporary bypass, excess/unsuitable site material disposal, and tie-in connections to facilitate successful construction and commissioning the new FM without any interruption of service to the existing 54-inch FM.

The Design/Build Firm 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. Any Work and services which may be reasonably assumed as necessary to accomplish this objective, including but not limited to furnishing shafts, coffer cells, utility relocation, bypass schemes, maintenance of traffic plans, and site shall be supplied by the Design-Builder.

Proposed Budget: The City of Miami Beach's Capital Improvement budget for the proposed project is \$10 Million.

3. Project Duration: The Design/Build Firm must complete the Work by the following durations, which exclude the warranty administrative period.

1. Substantial Completion Date on or before 194 calendar days after the Notice to Proceed requires putting into commercial service the new 54-inch sewer force main pipeline.
2. Final Completion Date on or before 224 calendar days after the Notice to Proceed which requires obtaining acceptance by all applicable regulatory agencies including the City for all Work and Services under the Contract, including decommissioning existing 54-inch sewer force main and preparing it for rehabilitation, all remaining site restorations, as-built drawings and record documents, and all other remaining incomplete or unacceptable work items identified at or subsequent to 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 \$3,500.00 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 \$1,400.00 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.

4. Location of Work: The location of the project is approximately Washington Avenue from Commerce Street to 2nd Street, Miami Beach, Florida.

5. Design Criteria Package: The DCP for this project shall be available in digital format on CDs. Please call Yusbel Gonzalez at 305.673.7490, or e-mail yusbelgonzalez@miamibeachfl.gov to secure a CD. **The cost for these CDs is \$20.** One may purchase a CD through the Finance Cashier located on the 1st Floor in City Hall. Please make reference of the RFP number (RFP 2014-253-YG) and project name (DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN) to the Finance Cashier. After purchase, CDs are to be collected by the

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Proposer at the Procurement Office located on the 3rd Floor in City Hall with presentation of receipt from the Finance Cashier.

6. Minimum Requirements: In order for proposals to be deemed responsive, Proposers must meet the minimum requirement set forth herein. Non-responsive proposals will be disqualified from consideration. The proposed Design/Build Firm shall demonstrate its project team experience by presenting the qualifications and capabilities of the Design/Builder Firm, Lead Constructor(s) and Lead Designer(s) supported by listing projects completed within the last 10 years, including projects that may be at least 50% complete prior to the required submittal date of the solicitation.

Additionally, proposing firms shall provide the following:

Design/Build Firm Minimum Requirements:

1. The Design/Build Firm shall have performed and/or managed as a prime contractor or Design/Build Firm the construction of at least two (2) micro-tunnel projects, one of which was a minimum length 1,200 linear feet with a minimum of 48-inch inside diameter.
2. The Design/Build Firm shall be licensed as a General Contractor or Underground Utility Contractor in the State of Florida.
3. The Design/Build Firm shall have completed at least three (3) projects in the past ten (10) years demonstrating experience in Right of Way (ROW) improvement projects involving utility installations, pavement restoration and streetscaping.
4. The Design/Build Firm shall have completed at least two (2) Design-Build projects in the past ten (10) years.

The DESIGN/BUILD FIRM may also qualify for any of the Lead Constructor or Lead Designer requirements.

Lead Designer(s) Minimum Qualifications:

1. The Lead Designer(s) Firm shall have designed at least two (2) microtunneling projects, including 1 project consisting of a minimum 1200-foot length and 48-inch inside diameter.
2. The Lead Designer(s) Firm performing design for the tunneling shafts shall have designed at least 2 tunneling shafts to support a tunnel operation and at least 20-feet deep (below grade).
3. The Lead Designer firm performing the design of the open cut installation shall have designed one (1) project that included a minimum 36-inch diameter pipe and involved tapping/bypass/line stop scheme on an operating pipeline.

Lead Constructor Requirements:

1. The Lead Constructor(s) firm performing the tunneling work shall demonstrate a minimum total of 2500 linear feet of micro-tunnel installation, including 1 project consisting of a minimum length of 1200 linear feet and 48-inch inside diameter.
2. The Lead Constructor(s) firm performing the shaft construction shall have constructed two (2) tunneling shafts that were at least 20 foot deep (below grade).
3. The Lead Constructor(s) firm performing the open cut installation of 54-inch pipe shall have performed at least 2 projects utilizing open cut methods with pipe of 48-inches inside diameter or larger, including 1 project having a total installed length of at least 500 linear feet.
4. Design-Build Team shall include a firm having demonstrated experience with one (1) project of tapping into an operating sewer system pipe, of reasonably similar size and type. This firm may be a specialty subcontractor.

The Lead Constructor may also qualify for any of the Design/Builder requirements.

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Design/Build Firm Safety Record - Past Performance:

Minimum past performance as reflected by a three (3) year average for the last three (3) previous full years, 2011, 2012, 2013 of the Experience Modification Rate (EMR) for the Design/Build Firm, Tunnel Constructor, and Shafts Constructor shall not exceed 1.10 for each firm.

1. Design/Build Firm shall provide EMR data for the previous three (3) full calendar years (2011, 2012, and 2013) 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.
2. Design/Build Firm shall also provide their OSHA forms 300 and 300A for the last three (3) full calendar years indicating OSHA submitted accident data for evaluation by the City as to their frequency and severity.

7. Anticipated RFP Timetable. The tentative schedule for this solicitation is as follows:

Phase I - Qualifications	
RFP Issued	November 12, 2014
Pre-Submittal Meeting	November 20, 2014 @ 2:00 PM
Deadline for Receipt of Questions	December 22, 2014 @ 5:00 PM
Responses Due	January 7, 2015
Selection Committee Meeting	January 28, 2015 (Tentative)
Commission Approval to Shortlist	February/March 2015
Phase II – Technical Proposals	
Solicitation Issued to Short-Listed Proposers	TBD
Pre-Submittal Meeting	TBD
Deadline for Receipt of Questions	TBD
Proposals Due	TBD
Selection Committee Meeting to Interview	TBD
Commission Approval of Final Proposer	TBD

8 Proposal Submission: One (1) unbound original proposal must be received on or before the date stipulated herein for the receipt of proposals. Additionally, seven (7) bound copies as well as a CD or flash drive copy of the complete proposal are to be submitted to the City. The original proposal and all copies must be submitted to the Department of Procurement in a sealed envelope or container stating on the outside, the Proposer's name, address, telephone number, RFP number, title, and due date. Any proposals received after time and date specified will be returned to the Proposer unopened. The responsibility for submitting a proposal before the stated time and date is solely and strictly the responsibility of the Proposer. The City is not responsible for delays caused by mail, courier service, traffic, weather or any other occurrence.

9. Procurement Contact: Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact named herein, in writing, with a copy to the City Clerk's Office, Rafael E. Granado via e-mail: RafaelGranado@miamibeachfl.gov ; or facsimile: 786-394-4188. The RFP 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 Solicitation Timeline. All responses to questions/clarifications will be sent to all prospective Proposers in the form of an addendum.

Procurement Contact:
Yusbel Gonzalez

Telephone:
305-673-7000 Ext 6230

Email:
yusbelgonzalez@miamibeachfl.gov

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10. Pre-Proposal Conference: A VOLUNTARY Pre-Proposal Conference is scheduled for **10:00 a.m.** on **September 17 25, 2014** in the City Manager's Conference Room located at 1700 Convention Center Drive on the 4th floor.

Attendance (in person or via telephone) to this meeting is not mandatory but strongly encouraged. Proposers interested in participating in the meeting via telephone must follow these steps:

- (1) Dial the TELEPHONE NUMBER: 888-270-9936 (Toll-free North America)
- (2) Enter the MEETING NUMBER: 1142644# (note that the number is followed by the pound (#) key).

11. 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). Only questions answered by written addenda formally issued by the City will be binding and may supersede terms noted in this solicitation. Addendum will be released through *PublicPurchase*. Any prospective Proposer who has received this RFP by any means other than through **PublicPurchase** must register immediately with **PublicPurchase** to assure it receives any addendum issued to this RFP. **Failure to receive an addendum may result in disqualification of Proposal submitted.**

12. CONE OF SILENCE. Pursuant to Section 2-486 of the City Code, all procurement solicitations once advertised and until an award recommendation has been forwarded to the City Commission by the City Manager are under the "Cone of Silence." The Cone of Silence ordinance is available at <http://library.municode.com/index.aspx?clientId=13097&stateID=9&statename=Florida>. Any communication or inquiry in reference to this solicitation with any City employee or City official is strictly prohibited with the of exception communications with the Procurement Director, or his/her administrative staff responsible for administering the procurement process for this solicitation providing said communication is limited to matters of process or procedure regarding the solicitation. 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.

13. SPECIAL NOTICES. You are hereby advised that this solicitation is subject to the following ordinances/resolutions, which may be found on the City Of Miami Beach website: <http://web.miamibeachfl.gov/procurement/scroll.aspx?id=23510>

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| • CONE OF SILENCE..... | CITY CODE SECTION 2-486 |
| • PROTEST PROCEDURES..... | CITY CODE SECTION 2-371 |
| • DEBARMENT PROCEEDINGS..... | CITY CODE SECTIONS 2-397 THROUGH 2-485.3 |
| • LOBBYIST REGISTRATION AND DISCLOSURE OF FEES..... | CITY CODE SECTIONS 2-481 THROUGH 2-406 |
| • CAMPAIGN CONTRIBUTIONS BY VENDORS..... | CITY CODE SECTION 2-487 |
| • CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON PROCUREMENT ISSUES..... | CITY CODE SECTION 2-488 |
| • REQUIREMENT FOR CITY CONTRACTORS TO PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS..... | CITY CODE SECTION 2-373 |
| • LIVING WAGE REQUIREMENT..... | CITY CODE SECTIONS 2-407 THROUGH 2-410 |
| • LOCAL PREFERENCE FOR MIAMI BEACH-BASED VENDORS..... | CITY CODE SECTION 2-372 |
| • PREFERENCE FOR FLORIDA SMALL BUSINESSES OWNED AND CONTROLLED BY VETERANS AND TO STATE-CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES..... | CITY CODE SECTION 2-374 |
| • FALSE CLAIMS ORDINANCE..... | CITY CODE SECTION 70-300 |
| • ACCEPTANCE OF GIFTS, FAVORS & SERVICES..... | CITY CODE SECTION 2-449 |

Note: Ordinances may be amended any time prior to the receipt of bids. The most recently approved ordinance or version shall apply.

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00200. DEFINITIONS:

Please refer to Section 00600, Contract, Article No. 1 – "Definitions and Identifications", in the Attachment.

00300. INSTRUCTIONS TO PROPOSERS:

1. Examination of Contract Documents and Site: It is the responsibility of each Proposer before submitting a proposal, to:
 - 1.1. Examine the Contract Documents thoroughly,
 - 1.2. Visit the site or structure to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work,
 - 1.3. 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,
 - 1.4. Study and carefully correlate Proposer's observations with the Contract Documents, and
 - 1.5. Carefully review the Contract Documents and notify Consultant of all conflicts, errors or discrepancies in the Contract Documents of which Proposer knows or reasonably should have known.

The submission of a proposal shall constitute an incontrovertible representation by Proposer that Proposer has complied with the above requirements and that without exception, the proposal is premised upon performing and furnishing the Work required by the Contract Documents and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2. Pre-Proposal Interpretations: **Only questions answered by written Addenda will be binding and may supersede terms noted in this RFP. Oral and other interpretations or clarifications will be without legal effect.** All questions about the meaning or intent of the Contract Documents are to be directed to the City's Procurement Director or designated representative in writing. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by the City by means of Addenda mailed or delivered to all parties recorded by the City's Procurement Director as having received the Bidding Documents. **Written questions should be received no less than ten (10) calendar days prior to the date of the opening of Proposals. There shall be no obligation on the part of City or the City's Procurement Director to respond to questions received less than ten (10) calendar days prior to original proposal opening date stipulated in this solicitation.**
3. Joint Ventures: **Joint Ventures are not allowed.** The City will contract with a Prime Contractor only. Each proposal shall be submitted by the Prime Contractor only. However, proposals may include sub-contractors or sub-consultants to the Prime Contractor.
4. Printed Form of Proposal: All proposals must be made upon the blank Proposal Tender Form included herein and must give the price in strict accordance with the instructions thereon. The proposal must be signed and acknowledged by the Proposer in accordance with the directions on the proposal form.
5. Acceptance or Rejection of Proposals: The City reserves the right to reject any or all proposals prior to award. Reasonable efforts will be made to either award the Contract or reject all proposals within one-hundred twenty (120) calendar days after proposal opening date. A Proposer may not withdraw its proposal unilaterally nor change the Contract Price before the expiration of ninety (90) calendar days from the date of proposal opening. A Proposer may withdraw its proposal after the expiration of one hundred twenty (120) calendar days from the date of proposal opening by delivering written notice of withdrawal to the Department of Procurement Management prior to award of the Contract by the City Commission.

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6. Determination Of Award: Pursuant to F.S. 287.055, the City shall first consider the qualifications of firms through the process outlined in Section 0305, Evaluation of Process. **The Evaluation of proposals shall proceed in a two-phase process:**
- A. Phase I – Proposals will be evaluated in accordance with the criteria established in Section 0305 for Phase I Evaluation. Following the Phase I Evaluation Process, the City Manager may recommend to the City Commission no less than three respondents to be considered in Phase II. The number of respondents recommended to be short-listed for consideration in Phase II is solely at the discretion of the City Manager.
 - B. Phase II – Short-listed Proposals will be evaluated in accordance with the criteria established in Section 0305 for Phase II Evaluation.

The results of both Phase I and Phase II evaluations will be considered by the City Manager who may recommend to the City Commission the respondent(s) he deems to be in the best interest of the City, or may recommend rejection of all responses. 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:

- a) The ability, capacity and skill of the proposer to perform the contract.
- b) Whether the proposer can perform the contract within the time specified, without delay or interference.
- c) The character, integrity, reputation, judgment, experience and efficiency of the respondent.
- d) The quality of performance of previous contracts.
- e) 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 for each phase and may approve such recommendation. The City Commission may also, at its option, reject the City Manager's recommendation and select another proposer (or proposers) which it deems to be in the best interest of the City, or it may also reject all responses.

Once the Phase II ranking is approved by the City Commission, the City will enter into contract negotiations with the top ranked firm. If the City and selected firm cannot agree on contractual terms, the City will terminate negotiations and begin negotiations with the next ranked firm, continuing this process with each firm in rank order until agreeable terms can be met or the procurement is terminated. Contract negotiations and execution will take place as quickly as possible after selection.

7. Evaluation: An interim performance evaluation of the successful Proposer may be submitted by the Contract Administrator during construction of the Project. A final performance evaluation shall be submitted when the Request for Final Payment to the construction contractor is forwarded for approval. In either situation, the completed evaluation(s) shall be forwarded to the City's Procurement Director who shall provide a copy to the successful Proposer. Said evaluation(s) may be used by the City as a factor in considering the responsibility of the successful Proposer for future proposals with the City.
8. Contract Price: The Contract Price is the Guaranteed Maximum Price agreed to by the Design/Build Firm and the City under this Contract, payable to complete the Work in accordance with the DCP, and as may be increased or decreased by Change Order. The Contract Price is to include the furnishing of all necessary design, labor, materials, equipment including tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the Contract

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Documents. The cost of any item(s) of Work not covered by a specific Contract unit price or lump sum price shall be included in the Contract unit price or lump sum price to which the item(s) is most applicable.

9. Postponement of Date for Presenting and Opening Proposals: The City reserves the right to postpone the date for receipt and opening of proposals and will make a reasonable effort to give at least five (5) calendar days written notice of any such postponement to each prospective Proposer.
10. Qualifications of Proposers: Proposals shall be considered only from Proposers which submit their proposal by the proposal's due date; Proposers who meet the "Minimum Requirements"; and Proposers that submit all required documentation as requested under this solicitation.

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

11. Addenda and Modifications: The City shall make reasonable efforts to issue addenda within seven (7) calendar days prior to proposal opening. All addenda and other modifications made prior to the time and date of proposal opening shall be issued as separate documents identified as changes to the RFP.
12. Prevailing Wage Rates: [N/A] City of Miami Beach Ordinance No. 94-2960 provides that in all non-federally funded construction contracts in excess of one million dollars to which the City of Miami Beach is a party, the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall not be less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work, as established by the Federal Register, in the City of Miami Beach, Florida. The provisions of this Ordinance **shall not** apply to the following projects:
 - a. water, except water treatment facilities and lift stations;
 - b. sewer, except sewage treatment facilities and lift stations;
 - c. storm drainage;
 - d. road construction, except bridges or structures requiring pilings; and
 - e. beautification projects, which may include resurfacing new curbs, gutters, pavers, sidewalks, landscaping, new lighting, bus shelters, bus benches and signage.

13. Occupational Health and Safety: In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this proposal must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

13.1 The chemical name and the common name of the toxic substance.

13.2 The hazards or other risks in the use of the toxic substance, including:

- 13.2.1 The potential for fire, explosion, corrosion, and reaction;
- 13.2.2 The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
- 13.2.3 The primary routes of entry and symptoms of overexposure.

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- 13.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.
- 13.4 The emergency procedure for spills, fire, disposal, and first aid.
- 13.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.
- 13.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.
14. Environmental Regulations: The City reserves the right to consider a Proposer's history of citations and/or violations of environmental regulations in investigating a Proposer's responsibility, and further reserves the right to declare a Proposer not responsible if the history of violations warrant such determination in the opinion of the City. Proposer shall submit with its Proposal, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Proposer that there are no citations or violations. Proposer shall notify the City immediately of notice of any citation or violation which Proposer may receive after the Proposal opening date and during the time of performance of any contract awarded to it.
15. "Or Equal" Clause: Whenever a material, article or piece of equipment is identified in the Contract Documents including plans and specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, City, through Consultant, will have made its best efforts to name at least three (3) such references. Any such reference is intended merely to establish a standard; and, unless it is followed by the words "**no substitution is permitted**" because of form, fit, function and quality, 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 materials, article or equipment so proposed is, in the sole opinion of Consultant, equal in substance, quality and function.

ANY REQUESTS FOR SUBSTITUTION MUST BE MADE TO THE CITY'S PROCUREMENT DIRECTOR.

16. Protested Solicitation Award: Proposers that are not selected may protest any recommendation for Contract award in accordance with City of Miami Beach Code Section 2-371, which establishes procedures for resulting protested proposals and proposed awards. Protest not timely pursuant to the requirements of the City Code shall be barred.
17. Financial Stability and Strength: The Proposer must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that they can satisfactorily provide the goods and/or services required herein.

In addition to other financial documents required to be submitted, the City may require, after receipt of proposals, that Proposers shall submit financial statements for each of their last two complete fiscal years within ten (10) calendar days, upon written request. Such statements should include, at a minimum, balance sheets (statements of financial position) and statements of profit and loss (statement of net income). When the proposal submittal is from a joint venture, each Proposer involved in the joint venture must submit financial statements as indicated above.

The City reserves the right to consider third-party information (e.g., Dun & Bradstreet's Supplier Reports or similar) in determination of capacity.

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

18. Veteran Business Enterprises: Pursuant to City of Miami Beach Code Section 2-374, the City shall give a preference to a responsive and responsible Proposer which is a small business concern owned and controlled by a veteran(s) or which is a service-disabled veteran business enterprise, and which is within five percent (5%) of the lowest responsive, responsible Proposer, by providing such Proposer an opportunity of providing said goods or contractual services for the lowest responsive Proposal amount. Whenever, as a result of the foregoing preference, the adjusted prices of two (2) or more Proposers which are a small business concern owned and controlled by a veteran(s) or a service-disabled veteran business enterprise constitute the lowest proposal pursuant to an RFP or oral or written request for quotation, and such proposals are responsive, responsible and otherwise equal with respect to quality and service, then the award shall be made to the service-disabled veteran business enterprise.
19. Equal Benefits Code Provision: Proposers are advised that this Proposal and any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of City Code Section 2-373, entitled "Requirement for City Contractors to Provide Equal Benefits for Domestic Partners (the "Code Provision")." The Code Provision applies to all employees of a DESIGN/BUILD FIRM who work within the City limits of the City of Miami Beach, Florida; and the Contractor's employees located in the United States, but outside of the City of Miami Beach limits, who are directly performing work on the contract within the City of Miami Beach.
20. Alternative Proposal Provision: Alternate Technical Proposals are those that take exception to any base requirement of Design Criteria Document and provide an alternate solution or approach. One or multiple Alternate Proposals may be submitted at the sole option of a Design/Build Firm. The City, at its sole discretion, may validate or reject any or all alternate proposals. Only Alternate Proposals that provide an equal or lesser price than the Base Proposal will be considered. All proposers must submit a responsive and responsible "Base Proposal" in full compliance with the Design Criteria Package. If a Design-Builder submits an Alternate Proposal without providing a Base Proposal that meets the Design Criteria documents requirements, their Alternate Proposal will be disqualified.

In the event that any Alternate Proposal is accepted, but is deemed non-compliant after the Alternate Proposal envelope is opened due any discrepancies identified in completing the Alternate Proposal forms, then the CSC will be required to re-evaluate the base proposal and assign point values based solely upon the base proposal submitted.

If the Design/Build Firm is awarded the Design Build Contract based on an Alternate Technical Proposal, the Design-Builder shall accept full technical, cost and schedule responsibility and risk of implementing that Alternate Technical Proposal. If such Alternate Technical Proposal is determined not feasible or impractical for any reason, including any reason beyond control of the Design/Build Firm, the Design/Build Firm is required to perform the Project without recourse in accordance with the original requirements of the Design Criteria Document, and at the same price and schedule as contracted with the Alternate Proposal

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00305. EVALUATION METHODOLOGY

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.

The evaluation of responses will proceed in a two-step process, as set forth below. Step 1 will consist of the qualitative criteria listed below to be considered by the Evaluation Committee. Step 2 will consist of the quantitative criteria established below, to be added to the Evaluation Committee results by the Procurement Department Management.

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):

- Organization Plan (10 Points)
- Design/Build Firm (Prime Proposer) Experience & Qualifications (25 Points)
- Lead Designer Experience & Qualifications (20 Points)
- Lead Constructor Experience & Qualifications (20 Points)
- Key Construction Subcontractor Experience & Qualifications (10 Points)
- Prime Proposer's Financial Capability (10 Points)
- Safety Past Performance (5 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)
- 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

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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

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 accordance with the criteria established below. 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. Recommend the Voluntary Alternate Proposals to accept, if any
- d. Score proposers utilizing the Evaluation Criteria

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

- Project Organization Plan (10 Points)
- Approach & Methodology Plan (20 Points)
- Project Schedule (10 Points)
- Construction Logistics Plan (10 Points)
- Lowest Guaranteed Maximum Price including any City accepted Voluntary Alternate Proposals (50 Points)

Consideration and acceptance of any Voluntary Alternate Proposal will be in the sole discretion of the City based on the recommendation by the Design Criteria Professional that a proposal is consistent with the Design Criteria Package, including but not limited to, performance specifications outlined therein.

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Each proposed Guaranteed Maximum Price (GMP), including any City accepted Voluntary Alternate Proposals, shall be scored as follows:

Sample Objective Formula for Cost				
Vendor	GMP	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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00315. PROPOSAL SUBMISSION REQUIREMENTS

1. **FORMAT FOR SUBMITTAL.** Proposal packages must contain all the information requested in the following documents, each fully completed, and signed as required. Proposal packages which do not include all required documentation, or are not submitted in the required format, or do not have the appropriate signatures on each document, may be deemed non-responsive. The City reserves the right to request any documentation omitted, with exception of the Proposal Price form. Proposer must submit the documentation within three (3) calendar days upon request from the City, or the proposal may be deemed non-responsive. Non-responsive proposal packages will receive no further consideration.

Proposers may not dictate the circumstances under which the documents are deemed to be confidential. Only the State Legislature may determine which public records are subject to disclosure and which are not. Moreover, a private party cannot render public records exempt from disclosure merely by designating as confidential the material it furnishes to the City. The desire of the private party to maintain privacy of certain materials filed with the City is of no consequence unless such materials fall within a legislative created exemption to Chapter 119, Florida Statutes.

2. **CONTENTS AND FORMAT OF PROPOSAL.** To facilitate review of proposals, Proposers are requested to submit proposals in the format stipulated in this section, including clearly identifying each proposal section (tab).

PHASE I RESPONSE FORMAT

In order to maintain comparability, facilitate the review process, and assist the Evaluation Committee in review of responses, it is recommended that responses be organized and tabbed in accordance with the sections and manner specified below. Hard copy submittals should be bound and tabbed as enumerated below and contain a table of contents with page references. Electronic copies should also be tabbed and contain a table of contents with page references. Proposers should prepare their submittal on 8.5 x 11 paper. Please feel free to include other materials, such as covers, appendices, brochures, etc. at your discretion. The recommended number of pages the City desires for each submittal item is indicated below. These are recommendations only and actual pages may exceed the recommendation.

The City reserves the right to require additional information to determine financial capability. Proposer shall have ten (10) calendar days respond to such a request.

TAB 1	Executive Summary
	<ol style="list-style-type: none">1. Cover Page, Letter, and Table of Contents. The cover letter must indicate Prime Proposer and be signed by same.2. Proposal Overview. Provide a brief summary describing your firm's, experience and qualifications, staff that will be assigned to this project, and any other relevant information. (recommend 2-3 pages)3. Minimum Requirements: Submit verifiable information documenting compliance with the Minimum Requirements in Section 0100, Paragraph 7, Pages 7 - 8 of the RFP.<ol style="list-style-type: none">a. Design/Build Firm / Prime Respondent (recommend 1 page)b. Lead Designer(s) (recommend 1 page)c. Lead Constructor (recommend 1 page)
TAB 2	Organization Plan / Personnel
	<p>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:</p> <ol style="list-style-type: none">1. An organizational chart depicting the structure and lines of authority and communication. A narrative that

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describes the intended structure regarding project management, accountability and compliance with the terms of the RFP.

2. 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 of the team's key personnel who will be assigned to the Project that demonstrate their experience and qualifications, education and performance record.
4. At a minimum, the Prime Proposer shall include the above listed information for the following proposed project team members:
 - a. Design/Build Project Manager
 - b. Lead Designer Design Manager
 - c. Final Design Engineer(s) – Structural; Geotechnical; Pipeline/Mechanical
 - d. Lead Constructor – Construction Manager
 - e. Construction Superintendent – Tunnel and Shaft
 - f. Underground Utility Superintendent Foreman
 - g. Pipe Tapping Superintendent
 - h. Design Build Safety Manager

TAB 3

Design/Build Firm (Prime Proposer) Experience & Qualifications

Qualifications of Proposing Firm. Describe experience and qualifications of the Prime Respondent 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. (recommend 1 page)
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 (micro-tunnel, right-of-way, design/build, etc.), percentage completed, anticipated completion date, your firm's role (i.e. design/build, lead designer, lead constructor). (recommended 1 page)
3. **Relevant Experience:** Summarize the company's most similar projects of comparable size and scope where similar services to those described in this RFP have been provided. Projects must illustrate familiarity with all of the following aspects: underground utility construction, microtunneling, deep shaft construction, pipe tapping, storm water collection and disposal, and site concrete work. All projects must demonstrate experience with existing traveled roads where traffic must have been maintained. Projects must have a minimum of \$1,000,000 each. 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. Explanation of differences between awarded and final contract amounts, if difference exceeded 5%
 - f. If micro-tunnel project, please provide number of linear feet and diameter size
 - g. If right-of-way improvement, please indicate if it included utility installations, pavement restoration, and streetscaping.

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- h. Indicate firm's role in the project (design/builder, lead designer, or lead constructor).
 - i. If applicable, a brief description of how the Prime Proposer maintained operations while under construction.
 - j. The names of the key project managers, highlighting any individuals who also worked on this project.
 - k. Reference contact information (including name, address, telephone number and e-mail address)
4. **Safety Record:** Provide the firm's safety record for the last three (3) previous full calendar years (2011, 2012, and 2013). The information to provide shall be as follows:
- a. Firm's Experience Modification Rate (EMR) data for the previous three (3) full calendar years (2011, 2012, and 2013) 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.
 - b. OSHA forms 300 and 300A for the last three (3) full calendar years indicating OSHA submitted accident data.

TAB 4 Lead Designer Experience & Qualifications

Qualifications of Proposing Firm. Describe experience and qualifications in providing 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. (recommend 1 page)
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 (micro-tunnel, etc.), percentage completed, anticipated completion date, your firm's role (i.e. lead designer) (recommend 1 one page).
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 the company's most similar projects in providing the services detailed herein. Projects must illustrate familiarity with microtunneling design, tunnel shaft designs, and open cut installation design (recommend 1 page per project). 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. Explanation of differences between awarded and final contract amounts, if difference exceeded 5%
 - f. Micro tunnel size and diameter (indicate if tunnel shafts and open cut installations were designed)
 - g. Years project designed (or "Under Design")
 - h. The names of the key project architects, highlighting any individuals who will also work on this project
 - i. Reference contact information (including address, telephone number and e-mail address)

TAB 5 Lead Constructor Experience & Qualifications

Qualifications of Proposing Firm. Describe experience and qualifications in providing 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. (recommend 1 page)
2. **Company's List of Similar Experience and Qualifications:** Provide a list of the company's experience and

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qualifications with the services detailed herein. Provide a table that includes the following information: agency name, type of project (micro-tunnel, right-of-way, design/build, etc.), percentage completed, anticipated completion date, your firm's role (i.e. lead designer) (recommend 1 one page).

3. **Relevant Experience:** Summarize the company's most similar projects in providing the services detailed herein. Projects must illustrate familiarity with where construction documentation was provided. Projects must illustrate familiarity with all of the following aspects: underground utility construction, microtunneling, deep shaft construction, pipe tapping (into an operating sewer system pipe), storm water collection and disposal, and site concrete work. All projects must demonstrate experience with existing traveled roads where traffic must have been maintained. Projects must have a minimum of \$1,000,000 each. For each project include: (recommend 1 page per project)
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Awarded contract amount and final contract amount
 - e. Explanation of differences between awarded and final contract amounts, if difference exceeded 5%
 - f. If micro-tunnel project, please provide number of linear feet and diameter size
 - g. Indicate if shaft construction and open cut installation was performed
 - h. The names of the key project managers, highlighting any individuals who also worked on this project
 - i. Reference contact information (including name, address, telephone number and e-mail address)

TAB 6

Key Construction Subcontractor Experience & Qualifications

Qualifications of Proposing Firm(s). For each key construction subcontractor describe experience and qualifications as detailed below.

1. **Company Information:** Provide background information, including company history, years in business, number of employees, and any other information communicating capabilities and experience. (recommend 1-2 pages)
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 (micro-tunnel, right-of-way, design/build, etc.), work assigned. (recommended 1 page)
3. **Relevant Experience:** Summarize 5 (five) of the company's most similar projects of comparable size and scope where similar construction services have been provided. Please list similar sanitary sewer force main projects first followed by other relevant project experience. Projects must illustrate familiarity with: traffic control, maintenance of access for pedestrians to businesses or residences, underground utility construction, erosion control and storm water pollution prevention measures, drainage collection and/or disposal system, irrigation systems, and landscape planting (recommend 1 page per project) For each project include:
 - a. Project name and location
 - b. Project description
 - c. Date of project completion
 - d. Reference contact information

TAB 7

Financial Capability

1. **Bonding Capacity:** Provide evidence that the Prime Respondent has adequate bonding capacity suitable for the scope of work. Proposers shall provide proof of its bonding capacity by a statement from a Surety firm 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

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letterhead and signed by an authorized agent of the firm.

2. **Dun & Bradstreet:** The Prime Proposer shall pay D&B to send the Supplier Qualifier Report (SQR) to the City through electronic means, emailing to yusbelgonzalez@miamibeachfl.gov. The cost of the preparation of the D&B report shall be the responsibility of the Respondent. The proposer can request the report from D&B at:

<https://supplierportal.dnb.com/webapp/wcs/stores/servlet/SupplierPortal?storeId=11696>

TAB 8 Forms

Provide Certification, Questionnaire & Requirements Affidavit (Appendix A). Attach Appendix A fully completed and executed. The Certification, Questionnaire & Requirements Affidavit (Appendix A) must be signed by the Prime Respondent.

TAB 9 Other

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 E – Insurance Requirements.

Provide any other information the Prime Proposer believes will help the City understand the team's capabilities.

PHASE II RESPONSE FORMAT (TECHNICAL PROPOSAL)

Following City Commission selection of the short-listed proposers pursuant to Phase II of the RFP, the short-listed proposers will be required to prepare a detailed proposal for the Project. The Design Criteria Package, form of contract, and other requirements are planned to be issued to the Phase I short-listed proposers on TBD, and proposals are planned to be due on TBD.

In order to maintain comparability, facilitate the review process, and assist the Evaluation Committee in review of responses, it is recommended that responses be organized and tabbed in accordance with the sections and manner specified below. Hard copy submittals should be bound and tabbed as enumerated below and contain a table of contents with page references. Electronic copies should also be tabbed and contain a table of contents with page references. Proposers should prepare their submittal on 8.5 x 11 paper. Please feel free to include other materials, such as covers, appendices, brochures, etc. at your discretion. The recommended number of pages the City desires for each submittal item is indicated below. These are recommendations only and actual pages may exceed the recommendation.

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.

The City reserves the right to require additional information to determine financial capability. Proposer shall have ten (10) calendar days respond to such a request.

TAB 1 Organization Plan / Personnel

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

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1. An organizational chart depicting the structure and lines of authority and communication. A narrative that describes the intended structure regarding project management, accountability and compliance with the terms of the RFP.
2. Identify all key personnel 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. Key personnel shall include:
 - a. Design/Build Project Manager
 - b. Lead Designer Design Manager
 - c. Final Design Engineer(s) – Structural; Geotechnical; Pipeline/Mechanical
 - d. Lead Constructor – Construction Manager
 - e. Construction Superintendent – Tunnel and Shaft
 - f. Underground Utility Superintendent Foreman
 - g. Pipe Tapping Superintendent
 - h. Design Build Safety Manager
4. Resumes of the team's key personnel who were not provided in the Phase I response to this RFP.

TAB 2 Approach & Methodology Plan

PROJECT APPROACH: Proposer will be required to submit a narrative of its team's approach to the project. The following is to be addressed in the Project Approach section:

1. Submit verifiable evidence Proposer's intent to utilize Disadvantaged Business Enterprise (DBE) Firms. Accepted DBE certifications include the Small Business Administration (SBA), State of Florida, or Miami-Dade County.
2. A management plan including, techniques for 'partnering' with the community's merchants, tenants and residents and its approach to a project of this nature with construction activities as described in the Scope.
3. The Proposer shall provide a detailed description of the key Project activities, to include final design and construction activities approach;
4. The Proposer shall illustrate complete understanding of the scope of work for all components of the project. The narrative shall address methodology, sequencing and phasing of the various work efforts.
5. The Proposer shall describe the efforts involved in coordinating with Florida Power and Light (FPL), AT&T and Atlantic Broadband (ABB).
6. Proposer shall clearly detail and present its approach to all required permitting issues, including but not limited to, water distribution system, stormwater drainage system, street lighting system, landscaping etc., relative to the applicable agency(ies) and entity(ies), e.g. City of Miami Beach, SFWMD, FDOT, FDEP, USACOE, Miami-Dade County RER, Fl. Dept. of Health, etc.
7. 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. The Proposer shall explain its QA/QC Plan and the plan for any of its subconsultants or Subcontractors, namely the policies and procedures that will be used to assure the complete and the accurate management of the Project.
8. Proposer must perform at least sixty percent (60%) of the construction work with the firm's own forces.
9. Proposer shall provide summary narrative inclusive of the proposer's project understanding, key performance and success factors, and the proposed design and construction approach which highlights the main attributes and benefits of this approach.
10. Proposer shall describe the technical approach, and provide calculations and drawings as applicable, to sufficiently demonstrate the following:
 - a. Typical plan and profile of the new 54-inch force main pipe, cross sections for the tunnel bore, related new shafts, and all new force main piping.

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- b. Anticipated utility or structure relocations, if required.
 - c. Planned supplementary geotechnical investigations, or environmental/ contamination surveys/assessments by the proposer to support or validate the proposer's design approach, if any.
11. The proposer shall describe the approach to microtunnel and pipe design by addressing the following:
- a. Basis of design for sizing the tunnel and establishing the ultimate elevation and grade.
 - b. Demonstrate how your basis of design provides adequate structural support and water-tightness for the tunnel and shafts.
 - c. Indicate whether soil improvement is anticipated, and, if so, describe the techniques proposed.
 - d. Indicate whether any lubrication is anticipated, and if so, describe the method proposed.
 - e. Demonstrate how the tunnel break-in and break-out approach minimizes water infiltration and supports achieving proposed tunnel alignment and grade.
 - f. Provide the basis for selecting the 54-inch jacking pipe and material and fittings to achieve 80 year design life, based on extrapolation of historical data on similar type projects to the extent possible.
 - g. Demonstrate how the design approach for the tie-in connections to the existing 54-inch force main, and associated bypasses, can be implemented without interrupting existing service/operation.
12. Proposer shall describe the planned construction execution approach by demonstrating the following:
- a. Demonstrate how the selection of the Microtunnel Boring Machine (MTBM) equipment will be successful given the geological conditions and alignment requirements, and provide capability for corrective actions along drill path, if necessary.
 - b. Demonstrate the approach for emergency rescue of people and equipment in the event that the MTBM becomes immobile during mining,
 - c. Demonstrate how the proposed shaft construction methodology, excavation and shaft sealing plan, and ultimate dewatering strategy, meets requirements of the specification for water tightness and handling of construction water.
 - d. Demonstrate the approach for managing and handling of shaft and tunnel spoils to minimize excessive stock piling at the construction compound, and minimize traffic impacts including spillage during hauling and disposal operations.
 - e. Provide the methodology for determining an optimal location for tapping the active 54-inch force main such that the risk of breaching or joint failure is minimized during such activity.
 - f. Demonstrate the approach for decommissioning the existing damaged 54-inch FM and preparing it for rehabilitation by another Contractor.
 - g. Identify and demonstrate that the proposed work/staging area for the tunneling and open cut work is contained/isolated from the major commercial and residential activities along Washington and Euclid. Provide a Maintenance of Traffic (MOT) plan that provides access to the residentent and business impacted by construction work and maintains a minimum of 1 lane of traffic in both directions.
 - h. Provide a detailed layout of the work zone, and staging area for material, equipment, and trailers at the designated construction areas.
13. Proposer shall describe the planned environmental quality management approach by demonstrating the following:
- a. Approach to minimize community impacts from temporary night illumination, construction noise, dust and vibration.
 - b. Correcting any resultant settlement and / or damage to any existing structures that are a consequence of the Proposer's construction activities.
 - c. Prevention or containment of any discharges from the existing force main during taping, or any other work performed in, on, or around the existing force main.

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d. Pre-treatment of construction water prior to disposal to ensure compliance with permit requirements.

14. It is the objective of the City that, at a minimum, 60% of the construction portion of the project defined herein shall be performed directly by the Prime Contractor (rather than through sub-contractors). To evaluate compliance with this objective, proposers shall submit a schedule, by Construction Specification Institute (CSI) Division, denoting which sections of the scope shall be performed directly by the Prime Contractor (with its own forces) and which sections are intended to be subcontracted.

TAB 3 Project Schedule

The Proposer shall submit a Preliminary CPM Project Schedule covering the period from NTP to Final Completion with the submittal which will be the initial Project Baseline Schedule. The Preliminary Project Schedule shall include all major design, permitting, procurement 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.

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

- Design Schedule & Submittals
- Design Phase Reviews by the City – Assume 4 weeks
- Community Involvement
- Permitting
- Utility Coordination/Relocation
- Start and completion of Construction, Testing and Commissioning
- Substantial Completion and Final Completion Dates for all Work.

TAB 5 Construction Logistics Plan

Describe plan on how construction staging areas, pedestrian paths, vehicular traffic patterns, etc. will be handled in order to mitigate disruption.

TAB 6 Guaranteed Maximum Price

Submit a Guaranteed Maximum Price (GMP) for delivering the completed Project consistent with the Design Criteria Package. Please utilize Appendix D – Cost Tender Form to submit your GMP.

TAB 7 Voluntary Alternate Proposals

It is the goal of the City for the Prime Proposer to develop the Project consistent with the Design Criteria Package. Nevertheless, Prime Respondent is also encouraged to submit suggested alternates or "Voluntary Alternate Proposals" for the Project which may result in cost and/or time savings to the City. Voluntary Alternate Proposals may only be submitted in relation to alternative materials, equipment or building systems, and must maintain the design intent. The City reserves the right to utilize any Voluntary Alternate Proposal in the design and construction of the Project even though it may be a Voluntary Alternate Proposal proposed by an unsuccessful proposer. Notwithstanding the foregoing, the City will only utilize that portion of a Voluntary Alternate Proposal of an unsuccessful proposer which is not subject to a copyright or other intellectual property right of such Proposer.

Each Voluntary Alternate Proposal shall be submitted with the following information:

- Title
- Reduction in GMP on a line item basis
- Reduction in construction duration
- Original DCP Specification
- Proposed Design-Builder Specification (attach supporting drawings, product specification sheets and/or other supporting data). Any proposed Voluntary Alternate Proposal must include the same level of specificity as outlined in the Design Criteria Package. For example, if the Design Criteria Package specifies

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a specific brand of plumbing fixture, the Voluntary Alternate Proposal must also propose a specific brand. Any Voluntary Alternate Proposal with less specificity than outlined in the DCP will not be considered.

- Differences between Design Criteria Package specification and proposed substitution
- Certify:
- The Voluntary Alternate Proposal is equal or superior in all respects to the Design Criteria Package.
- Same warranty will be furnished for the Voluntary Alternate Proposal as for specified product.
- Same maintenance service and source of replacement parts, as applicable, is available.
- Voluntary Alternate Proposal does not affect dimensions and functional clearances.

Voluntary Alternate Proposal shall address the following:

- Provide the title and full technical description and explanation of the Alternate Proposal, including any drawings and / or specifications.
- Identify the requirement, with reference document, article and page number, that is being modified or excluded by the alternate proposal
- Explain how will the Alternate proposal provide an equal, or better, project scope and performance than what is specified in the Design Criteria. Explain the advantages associated with the alternate which the proposer believes are of value to the City.
- Explain how the Alternate Proposal provide the hydraulic equivalent of the existing 54-inch FM without resulting in an installation that requires more than two pipe barrels.
- Explain how will the Alternate Proposal affect stakeholders with respect to traffic access along the urban corridor, existing easements, and staging requirements, and how will the Design/Build Firm avoid any negative impacts and increased risks.
- Explain how will the Alternate Proposal affect long term operation and maintenance costs borne by City
- Explain the risks involved in implementing this Alternate Proposal and how will the Design-Builder avoid or mitigate those risks.
- Provide Lead Constructor's past experience and qualifications in implementing the Alternate proposal on a similar project involving equal pipe diameter, installation lengths, construction materials, in similar geology

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00405. 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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MIAMIBEACH

CITY OF MIAMI BEACH

REQUEST FOR PROPOSALS (RFP) No. 2014-253-YG DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN

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

- I. **MIAMI-DADE COUNTY DEPARTMENT OF REGULATORY AND ECONOMIC RESOURCES (RER)
(formerly DERM).**
 - Class II Surface Water Permit
 - Class V Dewatering Permit
 - Drainage Well Permit
 - File Notice of commencement with SFWMD and 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. **MIAMI-DADE TRAFFIC ENGINEERING DEPARTMENT**

- IV. **MIAMI-DADE WATER AND SEWER DEPARTMENT (WASD)**

- V. **FLORIDA POWER AND LIGHT (FPL)**

- VI. **CITY OF MIAMI BEACH PUBLIC WORKS DEPARTMENT**
 - ROW Permit - Fee to be waived.
 - Building Department - Plumbing, Structural, Electrical - Fees to be waived with the exception of Dade County fees
 - Notice of Commencement Permit

- VII. **SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD)**

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APPENDIX A



MIAMI BEACH

Proposal Certification, Questionnaire & Requirements Affidavit

RFP 2014-253-YG
DESIGN/BUILD SERVICES FOR 54"
REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

Solicitation No: 2014-253-YG	Solicitation Title: DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN	
Procurement Contact: Yusbel Gonzalez	Tel: 305-673-7000 Ext. 6230	Email: yusbelgonzalez@miamibeachfl.gov

PROPOSAL CERTIFICATION, QUESTIONNAIRE & REQUIREMENTS AFFIDAVIT

Purpose: The purpose of this Proposal Certification, Questionnaire and Requirements Affidavit Form is to inform prospective Proposers of certain solicitation and contractual requirements, and to collect necessary information from Proposers in order that certain portions of responsiveness, responsibility and other determining factors and compliance with requirements may be evaluated. **This Proposal Certification, Questionnaire and Requirements Affidavit Form is a REQUIRED FORM that must be submitted fully completed and executed.**

1. General Proposer Information.

FIRM NAME:	No of Employees:
No of Years in Business:	No of Years in Business Locally:
OTHER NAME(S) PROPOSER HAS OPERATED UNDER IN THE LAST 10 YEARS:	
FIRM PRIMARY ADDRESS (HEADQUARTERS):	
CITY:	
STATE:	ZIP CODE:
TELEPHONE NO.:	
TOLL FREE NO.:	
FAX NO.:	
FIRM LOCAL ADDRESS:	
CITY:	
STATE:	ZIP CODE:
PRIMARY ACCOUNT REPRESENTATIVE FOR THIS ENGAGEMENT:	
ACCOUNT REP TELEPHONE NO.:	
ACCOUNT REP TOLL FREE NO.:	
ACCOUNT REP EMAIL:	
FEDERAL TAX IDENTIFICATION NO.:	

The City reserves the right to seek 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.

1. **Veteran Owned Business.** Is Proposer claiming a veteran owned business status?

YES NO

SUBMITTAL REQUIREMENT: Proposers claiming veteran owned business status shall submit a documentation proving that firm is certified as a veteran-owned business or a service-disabled veteran owned business by the State of Florida or United States federal government, as required pursuant to ordinance 2011-3748.

2. **Conflict Of Interest.** All Proposers must disclose, in their Proposal, the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, all Proposers must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates.

SUBMITTAL REQUIREMENT: Proposers must disclose the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Proposers must also disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates

3. **References & Past Performance.** Proposer shall submit at least three (3) references for whom the Proposer has completed work similar in size and nature as the work referenced in solicitation.

SUBMITTAL REQUIREMENT: For each reference submitted, the following information is required: 1) Firm Name, 2) Contact Individual Name & Title, 3) Address, 4) Telephone, 5) Contact's Email and 6) Narrative on Scope of Services Provided.

4. **Suspension, Debarment or Contract Cancellation.** Has Proposer ever been debarred, suspended or other legal violation, or had a contract cancelled due to non-performance by any public sector agency?

YES NO

SUBMITTAL REQUIREMENT: If answer to above is "YES," Proposer shall submit a statement detailing the reasons that led to action(s).

5. **Vendor Campaign Contributions.** Proposers are expected to be or become familiar with, the City's Campaign Finance Reform laws, as codified in Sections 2-487 through 2-490 of the City Code. Proposers shall be solely responsible for ensuring that all applicable provisions of the City's Campaign Finance Reform laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including disqualification of their Proposals, in the event of such non-compliance.

SUBMITTAL REQUIREMENT: Submit the names of all individuals or entities (including your sub-consultants) with a controlling financial interest as defined in solicitation. For each individual or entity with a controlling financial interest indicate whether or not each individual or entity has contributed to the campaign either directly or indirectly, of a candidate who has been elected to the office of Mayor or City Commissioner for the City of Miami Beach.

6. **Code of Business Ethics.** Pursuant to City Resolution No.2000-23879, each person or entity that seeks to do business with the City shall adopt a Code of Business Ethics ("Code") and submit that Code to the Procurement Management Department with its response or within five (5) days upon receipt of request. The Code shall, at a minimum, require the Proposer, to comply with all applicable governmental rules and regulations including, among others, the conflict of interest, lobbying and ethics provision of the City of Miami Beach and Miami Dade County.

SUBMITTAL REQUIREMENT: Proposer shall submit firm's Code of Business Ethics. In lieu of submitting Code of Business Ethics, Proposer may submit a statement indicating that it will adopt, as required in the ordinance, the City of Miami Beach Code of Ethics, available at www.miamibeachfl.gov/procurement/.

7. **Living Wage.** Pursuant to Section 2-408 of the Miami Beach City Code, as same may be amended from time to time, Proposers shall be required to pay all employees who provide services pursuant to this Agreement, the hourly living wage rates listed below:

- Commencing with City fiscal year 2012-13 (October 1, 2012), the hourly living rate will be \$11.28/hr with health benefits, and \$12.92/hr without benefits.

The living wage rate and health care benefits rate may, by Resolution of the City Commission be indexed annually for inflation using the Consumer Price Index for all Urban Consumers (CPI-U) Miami/Ft. Lauderdale, issued by the U.S. Department of Labor's Bureau of Labor Statistics. Notwithstanding the preceding, no annual index shall exceed three percent (3%). The City may also, by resolution, elect not to index the living wage rate in any particular year, if it determines it would not be fiscally sound to implement same (in a particular year).

Proposers' failure to comply with this provision shall be deemed a material breach under this proposal, under which the City may, at its sole option, immediately deem said Proposer as non-responsive, and may further subject Proposer to additional penalties and fines, as provided in the City's Living Wage Ordinance, as amended. Further information on the Living Wage requirement is available at www.miamibeachfl.gov/procurement/.

SUBMITTAL REQUIREMENT: No additional submittal is required. By virtue of executing this affidavit document, Proposer agrees to the living wage requirement.

8. **Equal Benefits for Employees with Spouses and Employees with Domestic Partners.** When awarding competitively solicited contracts valued at over \$100,000 whose contractors maintain 51 or more full time employees on their payrolls during 20 or more calendar work weeks, the Equal Benefits for Domestic Partners Ordinance 2005-3494 requires certain contractors doing business with the City of Miami Beach, who are awarded a contract pursuant to competitive proposals, to provide "Equal Benefits" to their employees with domestic partners, as they provide to employees with spouses. The Ordinance applies to all employees of a Contractor who work within the City limits of the City of Miami Beach, Florida; and the Contractor's employees located in the United States, but outside of the City of Miami Beach limits, who are directly performing work on the contract within the City of Miami Beach.

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

YES NO

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

YES NO

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Firm Provides for Employees with Spouses	Firm Provides for Employees with Domestic Partners	Firm does not Provide Benefit
Health			
Sick Leave			
Family Medical Leave			
Bereavement Leave			

If Proposer cannot offer a benefit to domestic partners because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent and submit a completed Reasonable Measures Application (attached) with all necessary documentation. Your Reasonable Measures Application will be reviewed for consideration by the City Manager, or his designee. Approval is not guaranteed and the City Manager's decision is final. Further information on the Equal Benefits requirement is available at www.miamibeachfl.gov/procurement/.

9. **Public Entity Crimes.** Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal, Proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a proposal, Proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals, Proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

SUBMITTAL REQUIREMENT: No additional submittal is required. By virtue of executing this affidavit document, Proposer agrees with the requirements of Section 287.133, Florida Statutes, and certifies it has not been placed on convicted vendor list.

10. Have you ever failed to complete any work awarded to you? If so, where and why?
 YES NO

SUBMITTAL REQUIREMENT: If yes, submit information on project, agency, agency contact and reason why contractor failed to complete work.

11. Has a surety company ever intervened to assist a governmental agency or other client of the proposer in completing work that the proposer failed to complete?
 YES NO

SUBMITTAL REQUIREMENT: If yes, submit owner names, addresses and telephone numbers, and surety and project names, for all projects for which you have performed work, where your surety has intervened to assist in completion of the project, whether or not a claim was made.

12. **Bankruptcy.** Has the Proposer filed any bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Proposer, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.
 YES NO

SUBMITTAL REQUIREMENT: If yes, list and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Proposer, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

13. **Litigation History.** Has Proposer or any principal or employee of the Proposer (relating to professional endeavors only) been the subject of any claims, arbitrations, administrative hearings and lawsuits brought by or against the Proposer or its predecessor organization(s) during the last five (5) years.
 YES NO

SUBMITTAL REQUIREMENT: If yes, list all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; a description of the subject matter of the dispute; and the final outcome of the claim.

14. Has the Corporation, Officers of the Corporation, Principal Stockholders, Principals of the Partnership or Owner of Sole Proprietorship ever been indicted, debarred, disqualified or suspended from performing work for the Federal Government or any State or Local Government or subdivision or agency thereof?
 YES NO

SUBMITTAL REQUIREMENT: If yes, list the specific cases and the charging agency.

15. **Principals.** Provide the names of all individuals or entities (including your sub-consultants) with a controlling financial interest. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of 10% or more of the

outstanding capital stock in any corporation or a direct or indirect interest of 10% or more in a firm. The term "firm" shall mean any corporation, partnership, business trust or any legal entity other than a natural person.

16. **Acknowledgement of Addendum.** After issuance of solicitation, the City may release one or more addendum to the solicitation which may provide additional information to Proposers or alter solicitation requirements. The City will strive to reach every Proposer having received solicitation through the City's e-procurement system, PublicPurchase.com. However, Proposers are solely responsible for assuring they have received any and all addendum issued pursuant to solicitation. This Acknowledgement of Addendum section certifies that the Proposer has received all addendum released by the City pursuant to this solicitation. Failure to obtain and acknowledge receipt of all addendum may result in Proposal disqualification.

Initial to Confirm Receipt		Initial to Confirm Receipt		Initial to Confirm Receipt	
	Addendum 1		Addendum 6		Addendum 11
	Addendum 2		Addendum 7		Addendum 12
	Addendum 3		Addendum 8		Addendum 13
	Addendum 4		Addendum 9		Addendum 14
	Addendum 5		Addendum 10		Addendum 15

If additional confirmation of addendum is required, submit under separate cover.

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DISCLOSURE AND DISCLAIMER SECTION

The solicitation referenced herein is being furnished to the recipient by the City of Miami Beach (the "City") for the recipient's convenience. Any action taken by the City in response to Proposals made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such Proposals, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City.

In its sole discretion, the City may withdraw the solicitation either before or after receiving Proposals, may accept or reject Proposals, and may accept Proposals which deviate from the solicitation, as it deems appropriate and in its best interest. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting Proposals in response to this solicitation.

Following submission of a Bid or Proposal, the applicant agrees to deliver such further details, information and assurances, including financial and disclosure data, relating to the Proposal and the applicant including, without limitation, the applicant's affiliates, officers, directors, shareholders, partners and employees, as requested by the City in its discretion.

The information contained herein is provided solely for the convenience of prospective Proposers. It is the responsibility of the recipient to assure itself that information contained herein is accurate and complete. The City does not provide any assurances as to the accuracy of any information in this solicitation.

Any reliance on these contents, or on any permitted communications with City officials, shall be at the recipient's own risk. Proposers should rely exclusively on their own investigations, interpretations, and analyses. The solicitation is being provided by the City without any warranty or representation, express or implied, as to its content, its accuracy, or its completeness. No warranty or representation is made by the City or its agents that any Proposal conforming to these requirements will be selected for consideration, negotiation, or approval.

The City shall have no obligation or liability with respect to this solicitation, the selection and the award process, or whether any award will be made. Any recipient of this solicitation who responds hereto fully acknowledges all the provisions of this Disclosure and Disclaimer, is totally relying on this Disclosure and Disclaimer, and agrees to be bound by the terms hereof. Any Proposals submitted to the City pursuant to this solicitation are submitted at the sole risk and responsibility of the party submitting such Proposal.

This solicitation is made subject to correction of errors, omissions, or withdrawal from the market without notice. Information is for guidance only, and does not constitute all or any part of an agreement.

The City and all Proposers will be bound only as, if and when a Proposal (or Proposals), as same may be modified, and the applicable definitive agreements pertaining thereto, are approved and executed by the parties, and then only pursuant to the terms of the definitive agreements executed among the parties. Any response to this solicitation may be accepted or rejected by the City for any reason, or for no reason, without any resultant liability to the City.

The City is governed by the Government-in-the-Sunshine Law, and all Proposals and supporting documents shall be subject to disclosure as required by such law. All Proposals shall be submitted in sealed proposal form and shall remain confidential to the extent permitted by Florida Statutes, until the date and time selected for opening the responses. At that time, all documents received by the City shall become public records.

Proposers are expected to make all disclosures and declarations as requested in this solicitation. By submission of a Proposal, the Proposer acknowledges and agrees that the City has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Proposal, and authorizes the release to the City of any and all information sought in such inquiry or investigation. Each Proposer certifies that the information contained in the Proposal is true, accurate and complete, to the best of its knowledge, information, and belief.

Notwithstanding the foregoing or anything contained in the solicitation, all Proposers agree that in the event of a final unappealable judgment by a court of competent jurisdiction which imposes on the City any liability arising out of this solicitation, or any response thereto, or any action or inaction by the City with respect thereto, such liability shall be limited to \$10,000.00 as agreed-upon and liquidated damages. The previous sentence, however, shall not be construed to circumvent any of the other provisions of this Disclosure and Disclaimer which imposes no liability on the City.

In the event of any differences in language between this Disclosure and Disclaimer and the balance of the solicitation, it is understood that the provisions of this Disclosure and Disclaimer shall always govern. The solicitation and any disputes arising from the solicitation shall be governed by and construed in accordance with the laws of the State of Florida.

PROPOSER CERTIFICATION

I hereby certify that: I, as an authorized agent of the Proposer, am submitting the following information as my firm's Proposal; Proposer agrees to complete and unconditional acceptance of the terms and conditions of this document, inclusive of this solicitation, all attachments, exhibits and appendices and the contents of any Addenda released hereto, and the Disclosure and Disclaimer Statement; Proposer agrees to be bound to any and all specifications, terms and conditions contained in the solicitation, and any released Addenda and understand that the following are requirements of this solicitation and failure to comply will result in disqualification of Proposal submitted; Proposer has not divulged, discussed, or compared the Proposal with other Proposers and has not colluded with any other Proposer or party to any other Proposal; Proposer acknowledges that all information contained herein is part of the public domain as defined by the State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this Proposal, inclusive of the Proposal Certification, Questionnaire and Requirements Affidavit are true and accurate.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Signature of Proposer's Authorized Representative:	Date:

State of FLORIDA)
)
 County of _____)

On this ____ day of _____, 20____, personally
 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:

APPENDIX B



MIAMI BEACH

“No Bid” Form

RFP 2014-253-YG DESIGN/BUILD SERVICES FOR 54” REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

Note: It is important for those vendors who have received notification of this solicitation that have decided not to respond, to complete and submit the attached “Statement of No Bid.” The “Statement of No Bid” provides the City with information on how to improve the solicitation process. Failure to submit a “Statement of No Bid” may result in not being notified of future solicitations by the City.

Statement of No Bid

WE HAVE ELECTED NOT TO SUBMIT A PROPOSAL AT THIS TIME FOR REASON(S) CHECKED AND/OR INDICATED BELOW:

Workload does not allow us to proposal

Insufficient time to respond

Specifications unclear or too restrictive

Unable to meet specifications

Unable to meet service requirements

Unable to meet insurance requirements

Do not offer this product/service

OTHER. (Please specify)

We do do not want to be retained on your mailing list for future proposals of this type product and/or service.

Signature: _____

Title: _____

Legal Company Name: _____

Note: Failure to respond, either by submitting a proposal or this completed form, may result in your company being removed from our vendors list.

PLEASE RETURN TO:
CITY OF MIAMI BEACH
DEPT. OF PROCUREMENT MANAGEMENT
PROPOSAL #2014-253-YG
1700 Convention Center Drive
MIAMI BEACH, FL 33139

APPENDIX C



MIAMI BEACH

Bid Bond Form (NOT APPLICABLE)

RFP 2014-253-YG
DESIGN/BUILD SERVICES FOR 54"
REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

MIAMI BEACH **BID BOND FORM**

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____ of _____ as PRINCIPAL,

and _____ of _____ as SURETY(S),

are hereby held and firmly bound unto the City of Miami Beach, Florida in the penal sum of:

\$ _____ (numerical figure) / _____ (written)

for the payment, whereof, the said PRINCIPAL and SURETY(S) bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the PRINCIPAL is herewith submitting to the City of Miami Beach, Florida, hereinafter called the CITY, its sealed proposal for a contract for:

**Design/Build Services For Central Bayshore South
Right-Of-Way Infrastructure Improvements
RFP 2014-253-YG**

NOW THEREFORE, the conditions of this obligation are such that, if said proposal is rejected by the CITY, or if said proposal is accepted by the CITY and the PRINCIPAL shall enter into a contract in the form specified by the CITY in accordance with the terms of the proposal and shall furnish a bond for the faithful performance of said contract in the form specified by the CITY, this obligation shall be null and void. Otherwise it shall remain in full force and effect.

In the event that the said proposal is accepted by the CITY and the PRINCIPAL shall fail to enter into the contract as defined herein or shall fail to furnish the performance bond as noted above within ten (10) days of the approval of the award, the PRINCIPAL and SURETY(S) agree to forfeit to the CITY the penal sum herein mentioned, it being understood that the liability of the SURETY(S) shall in no event exceed the penal sum of this obligation.

IN WITNESS WHEREOF,
the above bounded parties have executed this instrument under their several seals this _____ day of _____, 20_____, the name and corporate seal of each party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

PRINCIPAL

SURETY

By _____

By _____

APPENDIX D



MIAMI BEACH

Cost Tender Form

RFP 2014-253-YG
DESIGN/BUILD SERVICES FOR 54"
REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

Section 2 – GUARANTEED MAXIMUM PRICE (GMP) FORM

**RFP 2014-253-YG
 DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN
 FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE
 DISCRETION OF THE PROPOSER**

Item No.	Item Description	Lump Sum Price
1	Professional Services	
2	General Conditions	
3	Pavement and Streetscape Construction	
4	Water and Sewer Construction	
5	Stormwater Collection and Disposal Facility Construction	
6	Allowance: Permit Fees	\$50,000.00
7	Consideration for Indemnification of City	\$25.00
8	Cost for compliance to all Federal and State requirements of the Trench Safety Act	\$25.00
	Grand Total (numerical value)	

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 E



MIAMI BEACH

Insurance Requirements

RFP 2014-253-YG
DESIGN/BUILD SERVICES FOR 54"
REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139



MIAMI BEACH

INSURANCE REQUIREMENTS

This document sets forth the minimum levels of insurance that the contractor is required to maintain throughout the term of the contract and any renewal periods.

The contractor shall furnish to Department of Procurement, City of Miami Beach, 1700 Convention Center Drive, 3rd Floor, Miami Beach, Florida 33139, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. **Worker's Compensation Insurance** for all employees of the vendor as required by Florida Statute 440.
- B. **Commercial General Liability** on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **City of Miami Beach must be shown as an additional insured with respect to this coverage.**
- C. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. **Professional (Design Errors & Omissions) Liability** Insurance in an amount not less than \$1,000,000 with the deductible per claim, if any, not to exceed 10% of the limit of liability. The policy must be endorsed to provide coverage for up to three (3) years after project completion. The policy is to be on a primary basis if other professional liability is carried.
- E. **Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this project. City of Miami Beach 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.

All deductibles for insurance required in this Agreement are the responsibility of the Contractor. The coverage required above shall include a Waiver of Subrogation in favor of the City of Miami Beach.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the vendor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B+" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

CERTIFICATE HOLDER MUST READ:

**CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
3rd FLOOR
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

The City of Miami Beach is self-insured. Any and all claim payments made from self-insurance are subject to the limits and provisions of Florida Statute 768.28, the Florida Constitution, and any other applicable Statutes.

APPENDIX F



MIAMI BEACH

Required Forms

RFP 2014-253-YG DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

FORM 00520. SUPPLEMENT TO PROPOSAL TENDER FORM NON-COLLUSION CERTIFICATE

Submitted this _____ day of _____, 20__.

The undersigned, as Proposer, declares that the only persons interested in this proposal are named herein; that no other person has any interest in this proposal or in the Contract to which this proposal pertains; that this proposal is made without connection or arrangement with any other person; and that this proposal is in every respect fair and made in good faith, without collusion or fraud.

The Proposer agrees if this proposal is accepted, to execute an appropriate City of Miami Beach document for the purpose of establishing a formal contractual relationship between the Proposer and the City of Miami Beach, Florida, for the performance of all requirements to which the proposal pertains.

The Proposer states that this proposal is based upon the documents identified by the following number: **RFP 2014-253-YG**.

SIGNATURE

PRINTED NAME

TITLE (IF CORPORATION)

FORM 00530. DRUG FREE WORKPLACE CERTIFICATION

The undersigned Proposer hereby certified that it will provide a drug-free workplace program by:

- (1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the offeror's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establishing a continuing drug-free awareness program to inform its employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Proposer's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Giving all employees engaged in performance of the Contract a copy of the statement required by subparagraph (1);
- (4) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered Contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- (5) Notifying the City in writing within ten (10) calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within thirty (30) calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
- (7) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs(1) through (6).

SIGNATURE

PRINTED NAME

TITLE (IF CORPORATION)

FORM 00540. SUPPLEMENT TO PROPOSAL TENDER FORM TRENCH SAFETY ACT

On October 1, 1990 House Bill 3181, known as the Trench Safety Act became law. This incorporates the Occupational Safety & Health Administration (OSHA) revised excavation safety standards, citation 29 CFR.S.1926.650, as Florida's own standards.

The Proposer, by virtue of the signature below, affirms that the Proposer is aware of this Act, and will comply with all applicable trench safety standards. Such assurance shall be legally binding on all persons employed by the Proposer and subcontractors.

The Proposer is also obligated to identify the anticipated method and cost of compliance with the applicable trench safety standards.

PROPOSER ACKNOWLEDGES THAT INCLUDED IN THE VARIOUS ITEMS OF THE PROPOSAL AND IN THE TOTAL PROPOSAL PRICE ARE COSTS FOR COMPLYING WITH THE FLORIDA TRENCH SAFETY ACT. THESE ITEMS ARE A BREAKOUT OF THE RESPECTIVE ITEMS INVOLVING TRENCHING AND WILL NOT BE PAID SEPARATELY. THEY ARE NOT TO BE CONFUSED WITH PROPOSAL ITEMS IN THE SCHEDULE OF PRICES, NOR BE CONSIDERED ADDITIONAL WORK.

The Proposer further identified the costs and methods summarized below:

Description	Quantity	U/M	Unit Price	Extended Price
Total (Attach lines as necessary.)				

SIGNATURE

PRINTED NAME

TITLE (IF CORPORATION)

APPENDIX G



MIAMI BEACH

Sample Contract

RFP 2014-253-YG
DESIGN/BUILD SERVICES FOR 54"
REDUNDANT SEWER FORCE MAIN

PROCUREMENT DIVISION
1700 Convention Center Drive
Miami Beach, Florida 33139

NOTE: THE FOLLOWING AGREEMENT IS INCLUDED IN THIS RFP FOR EXAMPLE PURPOSES ONLY. THE CITY RESERVES THE RIGHT OT NEGOTIATE, ANY OR ALL TERMS AND CONDITIONS HEREIN, INCLUDING, WITHOUT LIMITATION, THE INCLUSION OF ADDITIONAL TERMS AND CONDITIONS.

AGREEMENT

Between

CITY OF MIAMI BEACH, FLORIDA

and

for

DESIGN/BUILD SERVICES

FOR _____

This is an Agreement (the "Agreement") between the CITY OF MIAMI BEACH, FLORIDA, a not for profit corporation of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

AND

_____, its successors and assigns, hereinafter referred to as "DESIGN/BUILD FIRM."

WRFPESETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and DESIGN/BUILD FIRM agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

Whenever the following terms or pronouns in place of them appear in this Agreement the intent and meaning shall be interpreted as follows:

1.00 Applicable Laws: All federal, state, county, and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Project and any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws may be amended from time to time to perform the Work

1.01 Change Order: To the extent permitted under this Agreement, a fully executed written document authorizing a change in the Contract Price or Contract Time or a material change in the Work.

1.02 City: The 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, which is a party hereto and/or for which this Contract is to be performed. In all respects hereunder, CITY's performance is pursuant to CITY's position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall 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 Contract.

1.03 City Commission: City Commission shall mean the governing and legislative body of the CITY.

1.04 City Manager: City Manager shall mean the Chief Administrative Officer of the CITY.

1.05 Construction Documents Phase: The phase in which DESIGN/BUILD FIRM will consult with the Contract Administrator and prepare the Construction Documents for the Project, based upon the DCP, for review and approval of the CITY (including, without limitation, any and all applicable CITY departments) and any applicable regulatory agencies.

1.06 Construction Manager: The Construction Manager is the authorized individual or firm which is the representative of DESIGN/BUILD FIRM who will administer/manage the construction effort on behalf of the DESIGN/BUILD FIRM.

1.07 Construction Manager Representative: An authorized representative of Construction Manager assigned to the Project site to perform those services detailed in Article 17.

1.08 Construction Phase. The phase of services which constitutes DESIGN/BUILD FIRM's administration of the construction of the Project and all activities necessary for the completion of the Project.

1.09 Consultant: The registered architect, professional engineer, professional land surveyor, civil engineer, architect and/or registered landscape architect who has contracted with or who is employed by DESIGN/BUILD FIRM to provide professional services for the design of the Project and who is licensed by the State of Florida to provide said services

1.10 Contract: This Agreement and all addenda, exhibits and amendments thereto between the CITY and the DESIGN/BUILD FIRM for this Project, all as defined herein. Contract shall also mean the same as Agreement.

1.11 Contract Administrator: The CITY's Capital Improvement Projects Office Director, or his designee, shall be designated as the Contract Administrator for matters concerning the Agreement.

1.12 Contract Documents: This Agreement, as approved by the Mayor and City Commission, pursuant to and subject to the conditions of City Resolution No. 2013-xxxxx, and executed by the Mayor and City Clerk, and any addendums, exhibits or amendments thereto; Change Orders; the performance bond and payment bonds; the DCP; the Construction Documents,

including but not limited to, Plans and Specifications (as approved and permitted) as prepared by the DESIGN/BUILD FIRM in general accordance with the DCP, computerized Critical Path Method (CPM) Project Schedule and Schedule of Values; and any additional documents the submission of which is required by this Agreement. When reference is made in the Contract Documents to publications, standards or codes issued by associations or societies, the intent shall be to specify the current or adopted edition of such publication or standard including revision and effect on the date of the issuance of all applicable permits.

1.13 Contract Time: The original time between Project commencement and Project completion, including any milestone dates thereof, established in Article 6 of the Contract, as may be amended by Change Order.

1.14 Contract Price: The Guaranteed Maximum Price agreed to between DESIGN/BUILD FIRM and the CITY. The Contract Price is not subject to increase, except as expressly allowed within the Contract Documents.

1.15 Design/Build Firm: _____, its successors and assigns, is the DESIGN/BUILD FIRM selected to perform the Work pursuant to this Agreement, and is the person, firm or corporation liable for the acceptable performance of, and payment of all legal debts pertaining to, the Project. All references in the Contract Documents to third parties under contract or control of DESIGN/BUILD FIRM shall be deemed to be a reference to DESIGN/BUILD FIRM. The DESIGN/BUILD FIRM will be responsible for the provision, installation, and performance of all equipment, materials, and services offered. The DESIGN/BUILD FIRM is in no way relieved of the responsibility for the performance of all equipment furnished.

1.16 Design Criteria Package (DCP): DCP 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.

1.17 Design Criteria Professional: Design Criteria Professional shall mean the individual or entity who/which holds a current certificate as a registered engineer under Chapter 471 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/BUILD FIRM for the Project; and evaluate compliance of Project construction with the DCP.

1.18 Field Order: A written order issued by the Contract Administrator or Project Manager which orders minor changes in the Project but which does not involve a change in the Contract Price or Contract Time or a material change in the Work.

1.19 Final Completion: The date certified by the Project Manager or the Design Criteria Professional that all conditions of the permits and regulatory agencies have been met; all construction, including corrective and punch list work, has been performed; all administrative requirements of the Contract Documents have been completed; and CITY has received from DESIGN/BUILD FIRM all necessary documentation, as deemed by the CITY, including but not limited to the following: all final releases of liens, consent of surety, release of claims by

DESIGN/BUILD FIRM, corrected as-built drawings, a final bill of materials, executed final adjusting Change Order, final invoice, "before and after" electronic DVD's (including, without limitation, electronic DVD's of stormwater lines and outfalls within the Project limits), copies of pertinent test results, correspondence, warranties, guarantees, operational manuals, spare parts, service contracts and tools.

1.20 [Intentionally Deleted].

1.21 Contractor: _____, its successors and assigns (the DESIGN-BUILD FIRM) shall also be the general contractor which shall perform the Work pursuant to this Agreement.

1.22 Hazardous Materials: As used in this Contract the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

- (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- (b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- (c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or
- (d) is any other material or substance giving rise to any liability, responsibility or duty upon the CITY with respect to any third person under any Hazardous Materials Law.

1.23 Hazardous Materials Laws: As used in this Contract, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§6901 et seq.), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

1.24 Material(s): Material(s) incorporated in this Project or used or consumed in the performance of the Work.

1.25 GUARANTEED MAXIMUM PRICE: THE MUTUALLY AGREED UPON CONTRACT PRICE TO BE PAID TO THE DESIGN/BUILD FIRM, AND THAT THE DESIGN / BUILD FIRM GUARANTEES NOT TO EXCEED, FOR ALL LABOR, EQUIPMENT, AND MATERIALS TO DESIGN, PERMIT, ADMINISTER, COORDINATE, INSPECT, CONSTRUCT, AND INSTALL THE PROJECT WITHIN THE CONTRACT TIME. THE GUARANTEED MAXIMUM PRICE IS

NOT SUBJECT TO INCREASE, EXCEPT AS EXPRESSLY ALLOWED WITHIN THE CONTRACT DOCUMENTS.

1.26 Notice-to-Proceed: A written document issued by the Contract Administrator informing the DESIGN/BUILD FIRM to officially begin the Project.

1.27 Plans and Specifications: The official graphic and descriptive representations of the Project which, upon written approval of CITY, shall become a part of the Contract Documents.

1.28 Project: The DESIGN/BUILD FIRM will be responsible for the design, construction and construction management of the water main, storm water collection/disposal, electrical, curb/gutter, sidewalk, hardscape, and roadway reconstruction for DESIGN/BUILD SERVICES FOR 54" REDUNDANT SEWER FORCE MAIN project. The Project limits consist of work within the boundaries defined 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. A DCP has been prepared by the Design Criteria Professional and includes and/or references in such DCP, as the case may be, conceptual construction drawings and technical specifications for the civil engineering and electrical engineering disciplines. The DESIGN/BUILD FIRM shall obtain all necessary permits for the construction of the Project including, but not limited to, the following: Miami-Dade Department of Health, Miami-Dade Department of Environmental Resources Management, Florida Department of Environmental Protection, South Florida Water Management District, Army Corps of Engineers, and the CITY's regulatory departments (i.e. Public Works, Fire, Building, etc.).

1.29 Project Manager: An authorized representative of CITY, who may be a CITY employee or a Resident Project Representative assigned to the Project by the CITY, assigned to make necessary observations of materials furnished by DESIGN/BUILD FIRM and of the Work performed by DESIGN/BUILD FIRM as detailed in Subsection 5.06.

1.30 Shop Drawings: Drawings, diagrams and schedules, and other data specially prepared by the DESIGN/BUILD FIRM or its Subcontractors, sub-Subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.31 Subconsultant: The person or entity who is a registered architect, professional engineer, professional land surveyor, and/or registered landscape architect having a contract with Consultant to provide professional services for the design of the Project and who is licensed by the State of Florida to provide said services.

1.32 Subcontractor: The person or entity having a direct contract with DESIGN/BUILD FIRM including one who furnishes material worked to a special design according to the Contract Documents for this Project, but does not include one who merely furnishes materials not so worked.

1.33 Substantial Completion: Subject to the requirements of Article 41, the date(s) certified by the Contract Administrator that all conditions of the permits and regulatory agencies have been met for the CITY's intended use of the Project, and all construction has been performed therein in accordance with the Contract Documents so CITY can fully occupy or utilize, as

opposed to partially occupy or utilize, the Project for its intended purpose. At a minimum, a Certificate of Substantial Completion is one of the requirements for Substantial Completion.

1.34 **Surety:** The surety company or individual which is bound by the performance bond and payment bonds with and for DESIGN/BUILD FIRM who is primarily liable and which surety company or individual is responsible for DESIGN/BUILD FIRM's acceptable performance of the Work under the Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.35 **Utilities:** The public or private systems on the Project site for rendering electrical power, light, heat, gas, water, communication, sewage systems, and the like.

1.36 **Work:** The completed construction required by the Contract Documents, as permitted, including all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 2 GENERAL PROVISIONS

2.01 **Generally:** DESIGN/BUILD FIRM hereby agrees to furnish all of the labor, Materials, equipment, Work, services, and incidentals necessary to perform all of the Work described in the Contract Documents, and related thereto for the Project, for the Guaranteed Maximum Price.

2.02 **Relationship of CITY and DESIGN/BUILD FIRM:** The DESIGN/BUILD FIRM accepts the relationship of trust and confidence established between it and the CITY by this Agreement. The DESIGN/BUILD FIRM represents that it will furnish its best skill and judgment in performing the Work, and shall always act to further the interest of the CITY in the expeditious completion of the Project at the lowest cost to the CITY, and in strict accordance with the Contract Documents and prudent and customary construction practices.

By signing this Contract, the DESIGN/BUILD FIRM accepts a fiduciary duty with the CITY and warrants and represents to the CITY that the DESIGN/BUILD FIRM: (a) has all licenses and certifications required by Applicable Laws; (b) is experienced in all aspects of pre-construction and construction planning for projects similar to the Project; (c) will act in the CITY'S highest and best interests in performing the Work; and (d) that no employee or affiliate of the DESIGN/BUILD FIRM, including all Subconsultants, Subcontractors, and suppliers, at any tier, has been convicted of a public entity crime, fraud, theft and/or a property damage crime within the preceding thirty-six (36) months from the time this Contract is executed, pursuant to Section 287.133, Florida Statutes.

2.03 **Intention of CITY:** It is the intent of CITY to describe in this Agreement and the DCP a functionally complete Project to be designed and constructed in accordance with the Contract Documents, for the Guaranteed Maximum Price, and in accordance to all Applicable Laws governing construction of the Project. Any Work, services, Materials, or equipment that may reasonably be inferred from the Agreement and the DCP as being required to produce the intended result shall be supplied by DESIGN/BUILD FIRM whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals, or codes of any technical society, organization or associations, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of issuance of all applicable permits. If a conflict exists between two or more referenced standards, the most stringent shall apply. The CITY shall have no duties other than those duties and obligations expressly set forth within the Agreement and the DCP.

2.04 Preliminary Matters:

2.04.01 Within five (5) calendar days prior to the project initiation meeting described in Subsection 2.04.02, DESIGN/BUILD FIRM shall submit the following to Project Manager, for Project Manager's review and approval:

2.04.01.01 A CPM Project "Base Line" Schedule, one (1) copy on a CD, and one (1) hard copy (activities arranged in "waterfall"), in the indicated form for final review and approval:

- Bar Chart
- Modified CPM
- CPM
- Computerized CPM **using the latest edition of the Primavera software**

(CPM shall be interpreted to be generally as outlined in the Association of General Contractors (AGC) publication, "The Use of CPM in Construction.")

DESIGN/BUILD FIRM shall provide a preliminary man loaded, logic based CPM Project "Base Line" Schedule using "Early Start" and "Early Finish" dates for each activity. The DESIGN/BUILD FIRM shall include, in addition to normal work activity input, input that encompasses all submittal approvals; delivery durations for important materials and/or equipment; logic relationships of activities, including physical and site restraints; and shall clearly identify the Project's critical path. This input shall be precedence based CPM scheduling using the most recent version of Primavera software. DESIGN/BUILD FIRM shall provide Project Manager with a copy of the software.

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.

DESIGN/BUILD FIRM shall submit monthly, with each requisition 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 or Final Completion date) showing the progress for the

month. DESIGN/BUILD FIRM SHALL SUBMIT ONE HARD COPY AND ONE ELECTRONIC COPY. In addition to the CPM Project "Base Line" Schedule, DESIGN/BUILD FIRM shall include a narrative report of the month's progress, an explanation of any delays and or additions/deletions to activities.

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

DESIGN/BUILD FIRM shall attend weekly progress meetings and provide an updated (3) week look ahead schedule for review and discussion and, monthly, be prepared to discuss any:

- 1) Proposed changes to the CPM Project "Base Line" Schedule logic;
- 2) Explain and provide a narrative for reasons why logic changes should be made;
- 3) Update to individual subcontractor activities; and
- 4) Integration of changes into the schedule.

The CPM Project "Base Line" Schedule shall be the basis of the DESIGN/BUILD FIRM's Work and shall be complied with in all respects.

If the DESIGN/BUILD FIRM's Work becomes more than (30) days behind schedule DESIGN/BUILD FIRM shall be required to submit a "Make-Up" schedule to Project Manager, for review and approval, that demonstrates "Catch Up" within thirty (30) days. DESIGN/BUILD FIRM shall provide, at DESIGN/BUILD FIRM's sole expense, the necessary additional labor and or equipment necessary to make-up the lost time. Failure to provide a "Make-Up" schedule or vigorously follow the "Make-Up" schedule shall be reason to default DESIGN/BUILD FIRM.

2.04.01.02 After award, but prior to the submission of the final CPM Project "Base Line" Schedule, Project Manager, Contract Administrator and DESIGN/BUILD FIRM 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 by the utility owners.

2.04.01.03 A preliminary schedule of Shop Drawing submissions; and

2.04.01.04 A preliminary Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work which will be confirmed in writing by DESIGN/BUILD FIRM at the time of submission.

2.04.02 At a time specified by Project Manager, but before DESIGN/BUILD FIRM commences the Work at the Project site, a conference attended by DESIGN/BUILD FIRM, Project Manager and others, as deemed appropriate by Contract Administrator, will be held to discuss the schedules referred to in Subsection 2.04.01; to discuss procedures for handling Shop Drawings and other submittals; for processing requisitions for payment; and to establish a working understanding among the parties as to the Work.

2.04.03 Within ten (10) Calendar days after the Project Initiation Date (as set forth in the first Notice-to-Proceed), a conference attended by DESIGN/BUILD FIRM, Project Manager and others, as deemed appropriate by Contract Administrator, will be held to finalize the schedules submitted in accordance with Subsection 2.04.01. Within twenty (20) days after the Project Initiation Date (as set forth in the first Notice-to-Proceed), the DESIGN/BUILD FIRM shall revise the original schedule submittal to address all review comments from the CPM review conference and resubmit for Project Manager review. The finalized CPM Project "Base Line" Schedule will be accepted by Project Manager only as providing an orderly progression of the Work to completion within the Contract Time, but 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 such acceptance will not impose on the CITY responsibility for the progress or scheduling of the Work, nor relieve DESIGN/BUILD FIRM from full responsibility therefore. The finalized schedule of Shop Drawing submissions must be acceptable to Project Manager as providing a workable arrangement for processing the submissions. The finalized Schedule of Values pursuant to Subsection 2.04.01.03 above must be acceptable to Project Manager as to form and substance.

2.05 The DESIGN/BUILD FIRM agrees that the Work shall be performed in a good and professional manner, free from defects in Materials and workmanship, conflicts, and that all Materials shall be new and approved by and acceptable to the Project Manager and Contract Administrator, except as otherwise expressly provided for in the Contract Documents. The DESIGN/BUILD FIRM shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project improvements.

ARTICLE 3 INTENTION OF AGREEMENT

It is the intent of the Agreement and the DCP to describe a functionally complete Project to be designed and constructed by the DESIGN/BUILD FIRM in accordance with the Contract Documents and for the Guaranteed Maximum Price. Any Work, Materials, services or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, Materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to Applicable Laws including, without limitation, reference to standard specifications, manuals or codes of any technical society, organization or association, or to laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of issuance of all

applicable permits. Applicable Laws that may be changed after a permit is issued may result in additional compensation should additional Work or services be required on behalf of the DESIGN/BUILD FIRM.

ARTICLE 4 CONTRACT DOCUMENTS

4.01 The Contract Documents shall be followed as to Work, Materials, and dimensions except when the Contract Administrator may authorize, in his/her sole discretion, and in writing, an exception.

4.02 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Consultant, with concurrent written notice to Contract Administrator and Project Manager. DESIGN/BUILD FIRM shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Consultant, with concurrent written notice to Contract Administrator and Project Manager.

4.03 DESIGN/BUILD FIRM shall maintain four (4) copies of the Contract Documents; two (2) of which shall be preserved and always kept accessible at the site for the Contract Administrator, Project Manager, and/or their authorized representatives.

4.04 This Contract incorporates by reference the Contract Documents defined in Subsection 1.12. The following documents listed in Subsection 1.12 have the following order of precedence, beginning with the most important:

1. This Agreement (Contract) and all exhibits, addendums, and amendments thereto;
2. Change Orders (to the extent permitted under this Agreement);
3. The Specifications (approved and permitted);
4. The Plans (approved and permitted);
5. The DCP;
6. CPM Project Schedule and Schedule of Values.

ARTICLE 5 SCOPE OF WORK

5.01 DESIGN/BUILD FIRM 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 all of the Work described in the Contract Documents, to be prepared by the DESIGN/BUILD FIRM, including drawings and addenda thereto for the construction of the Project, to be constructed in accordance with the requirements and provisions of said Contract Documents and for the Guaranteed Maximum Price.

5.02 DESIGN/BUILD FIRM agrees to meet with Contract Administrator and/or Project Manager or their designees at reasonable times and with reasonable notice.

5.03 Prior to the Final Completion of construction services under this Agreement, and as a condition precedent to final payment, there shall be established a record set of Plans and Specifications, on CD Rom, non-compressed, formatted in the latest version of AutoCAD, which

shall bear the approvals of DESIGN/BUILD FIRM and Contract Administrator. Such approval shall be indicated by the written signature of both parties. In addition, prior to the commencement of construction services under this Agreement, DESIGN/BUILD FIRM shall submit to the Contract Administrator a CPM Project "Base Line" Schedule, and such other items as required in Subsection 2.04.03, for the planning and execution of the Construction Phase of the Project, for prior written approval by Project Manager.

5.04 DESIGN/BUILD FIRM herein represents that Construction Manager, at a minimum, will provide the following services:

5.04.01 At least thirty (30) days prior to the commencement of the Construction Phase of the Project, the DESIGN/BUILD FIRM will identify and provide the qualifications of a suitably qualified and experienced Construction Manager who will be full time, on site at the Project.

5.04.02 DESIGN/BUILD FIRM will use reasonable efforts to have the same Construction Manager on the Project full time to its conclusion, and any new representative will first be approved in writing by Contract Administrator before permanent assignment. Approval shall not be unreasonably withheld.

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

5.04.04 Construction Manager will administer the Contractor's Work.

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

5.04.06 The Construction Manager shall coordinate the processing of shop drawings and material submittals.

5.04.07 The Construction Manager will endeavor to achieve satisfactory performance by Contractor and, if required, will require corrections to Contractor's Work including, but not limited to, maintaining punch lists and observing testing.

5.04.08 The Construction Manager will monitor the cost of the Project, including payment applications and the preparation thereof.

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

5.04.10 The Construction Manager will observe testing and start-up activities of machinery and utilities.

5.04.11 The Construction Manager will secure all equipment brochures and warranties from the Contractor.

5.04.12 The Construction Manager will coordinate the correction and completion of the Work including that required by the punch list.

5.05 DESIGN/BUILD FIRM herein represents that Consultant, at a minimum, will provide the following services:

5.05.01 Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.

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

5.05.03 Consultant shall prepare the Plans and Specifications, 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.

Consultant shall also submit the Plans and Specifications to the Design Criteria Professional, with a copy to Contract Administrator, for his/her review and written approval. Design Criteria Professional shall expeditiously review and approve the Plans and Specifications in accordance with the accepted Project Schedule. Design Criteria Professional's approval of the Plans and Specifications shall not constitute acceptance of any design work which does not comply with Applicable Laws, the DCP, and/or with the terms of this Contract. Except as provided in, and to the extent limited by, the preceding sentence, the approval of the Plans and Specifications by the Design Criteria Professional, shall constitute a representation by the Design Criteria Professional that the Project, if constructed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors, and those in the building trade; and include documents necessary for regulatory agency and other governmental approvals.

5.05.04 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.

5.05.05 Consultant shall receive and review for compliance with the Contract Documents all written warranties and related documents required hereby to be assembled upon Substantial Completion and issue Applications for Payment performed in compliance with the requirements of the Contract Documents;

5.05.06 The approved and permitted Plans and Specifications, shall constitute a representation by Consultant to CITY that the Project, if constructed as required by the

Contract Documents, will be sufficient for its purposes. The Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors, and those in the building trade; and include documents necessary for regulatory agency and other governmental approvals.

5.06 Project Manager will provide the following services:

5.06.01 The Project Manager shall review Applications for Payment and coordinate the processing thereof with the CITY.

5.06.02 The Project Manager shall monitor the schedule(s).

5.06.03 The Project Manager shall track, log and review all required Project related documents and subsequently address any and all concerns with DESIGN / BUILD FIRM.

5.06.04 The Project Manager shall review and observe the Work and testing thereof for general conformance and compliance with the intent of the DCP.

5.06.05 The Project Manager shall attend all required meetings and maintain and distribute meeting minutes, with the exception of weekly construction progress meetings as noted in 5.04.03.

5.06.06 At all times the Project Manager will act as liaison between the parties to this Agreement, and Contract Administrator.

ARTICLE 6 COMPLETION DATE

6.01 Time is of the essence for the DESIGN/BUILD FIRM'S performance of the Work pursuant to this Contract. The DESIGN/BUILD FIRM agrees to complete the Work in accordance with the accepted CPM Project Schedule and to achieve Substantial Completion of the Work, in accordance with this Contract, and within the Contract Time. DESIGN/BUILD FIRM acknowledges that failure to achieve Substantial Completion will result in substantial damages to the CITY, such as loss of beneficial use and/or occupancy of the Project. Completion of the Work shall be achieved no later than thirty (30) calendar days after issuance of a Certificate of Substantial Completion by the Contract Administrator.

6.02 DESIGN/BUILD FIRM shall be instructed to commence the Work by written instructions in the form of a Purchase Order issued by the CITY's Procurement Director, and Notices-to-Proceed issued by the Contract Administrator. As contemplated in subsection 6.02.01 hereof, and following the issuance of the first Notice-to-Proceed, the City's MAY issue multiple Notices-to-Proceed for the construction phase of this Contract. DESIGN/BUILD FIRM shall commence scheduling activities, permit applications, and other preconstruction work within five (5) calendar days after the Project Initiation Date, which shall be the same as the date of the first Notice-to-Proceed. The first Notice-to-Proceed and Purchase Order will not be issued until DESIGN/BUILD FIRM'S submission to CITY of all required documents and after execution of the Contract by both parties.

- 6.02.01 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. The receipt of all necessary permits by DESIGN/BUILD FIRM and review, approval, and acceptance of the CPM Project Schedule by CITY, in accordance with the technical specifications, submittal schedule, and Schedule of Values, is a condition precedent to the issuance of any subsequent Notices-to-Proceed to mobilize on the Project site and commence with physical construction work. DESIGN/BUILD FIRM shall bear the responsibility for all re-work, including design and permitting costs, should the respective regulatory agencies require. Contractor shall submit all necessary documents required by this provision within twenty-one (21) calendar days of the issuance of the first Notice-to-Proceed.
- 6.02.02 The DESIGN / BUILD FIRM shall complete the design and permitting phase within 180 calendar days of the Notice-to-Proceed No. 1.
- 6.02.03 The DESIGN / BUILD FIRM shall substantially complete the construction phase within 330 calendar days from the first issuance of a Notice-to-Proceed No. 2.

6.03 TIME IS OF THE ESSENCE THROUGHOUT THIS CONTRACT. THE WORK SHALL BE SUBSTANTIALLY COMPLETED WITHIN TWO HUNDRED AND FORTY (240) CALENDAR DAYS FROM THE DATE SPECIFIED IN THE FIRST NOTICE-TO-PROCEED (I.E. WITHIN TWO HUNDRED AND FORTY 240) CALENDAR DAYS FROM THE PROJECT INITIATION DATE), AND COMPLETED AND READY FOR FINAL PAYMENT IN ACCORDANCE WITH ARTICLE 8, WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE CERTIFIED BY CONTRACT ADMINISTRATOR AS THE DATE OF SUBSTANTIAL COMPLETION.

6.04 Upon failure of DESIGN/BUILD FIRM to substantially complete the entire Contract within the total specified period of time, plus approved time extensions, DESIGN/BUILD FIRM shall pay to CITY the sum of Three Thousand Five Hundred and 00/100 Dollars (\$ 3,500.00) for each calendar day after the time specified in Article 6 (plus any approved time extensions) for Substantial Completion on the entire Project. After Substantial Completion, should DESIGN/BUILD FIRM fail to complete the remaining Work within ten (10) calendar days after said sixty (60) calendar day period for completion and readiness for final payment, DESIGN/BUILD FIRM shall pay to CITY the sum of One Thousand Four Hundred and 00/100 Dollars (\$ 1,400.00) for each calendar day after said ten (10) calendar day period, for completion and readiness for final payment. The time frame for liquidated damages shall not commence and thus shall not be tolled until the Contract Administrator submits the punch list to the DESIGN/BUILD FIRM. These amounts are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of DESIGN/BUILD FIRM to complete the Contract on time.

6.05 CITY is authorized to deduct liquidated damages from monies withheld due to DESIGN/BUILD FIRM for the Work under this Contract or as much thereof as CITY may, in its

sole discretion, deem just and reasonable. The CITY shall first deduct the liquidated damages from the monies referenced in Subsection 8.02.

6.06 DESIGN/BUILD FIRM shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by Project Manager in administering the construction of the Project beyond the completion date specified above. All such costs shall be deducted from the monies due DESIGN/BUILD FIRM for performance of Work under this Contract by means of unilateral credit Change Orders issued by CITY as costs are incurred by Project Manager and agreed to by Contract Administrator.

ARTICLE 7 DESIGN/BUILD FIRM'S RESPONSIBILITY

7.01 The parties acknowledge and agree that the DESIGN/BUILD FIRM will be responsible for the design, construction and construction management of the water main, storm water collection/ disposal, hardscape, electrical, curb/gutter, sidewalk, and road reconstruction scope of work for the 54" REDUNDANT SEWER FORCE MAIN project. The DCP has been prepared by the Design Criteria Professional and includes (or references therein as the case may be) conceptual construction drawings and technical specifications for the civil engineering and electrical engineering disciplines. The DESIGN/BUILD FIRM shall obtain all necessary permits for the construction of the Project including but not limited to the following: Miami-Dade Department of Health, Miami-Dade Department of Environmental Resources Management, Florida Department of Environmental Protection, South Florida Water Management District, Army Corps of Engineers, and the CITY's regulatory departments (ie. Public Works, Fire, Building, etc.).

7.02 DESIGN/BUILD FIRM shall be fully responsible for applying for and securing all permits and approvals from all governmental authorities having jurisdiction over the Project. All permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Project by DESIGN/BUILD FIRM pursuant to this Agreement shall be secured and paid for by DESIGN/BUILD FIRM. It is DESIGN/BUILD FIRM'S responsibility to have and maintain appropriate certificate(s) of competency, valid for the Work to be performed and for all persons working on the Project for whom a certificate of competency is required.

7.03 DESIGN/BUILD FIRM shall be fully responsible for the actions of all its agents, servants, employees including, but not limited to: the Contractor, Consultant, Subcontractors, Subconsultants, sub-Subcontractors, sub-Subconsultants, material persons (pursuant to Chapter 713, Florida Statutes), and any and all other persons working for it in conjunction with the design and construction of the Project.

7.04 DESIGN/BUILD FIRM shall be fully responsible for all acts or omissions of its Contractor, Consultant, Subcontractors, Subconsultants, sub-Subcontractors, sub-Subconsultants, material persons, and any and all other persons working for DESIGN/BUILD FIRM in conjunction with the design and construction of the Project; any and all persons working for Contractor, Consultant, Subcontractors or Subconsultant; and any and all persons for whose acts any of the aforesaid may be liable, to the same extent DESIGN/BUILD FIRM is responsible for the acts and omissions of persons directly employed by DESIGN/BUILD FIRM. Nothing in this Agreement shall create any contractual relationship between CITY and Consultant, or CITY and any Subcontractor, Subconsultant, sub-Subcontractor, sub-

Subconsultant, or any other person working either for DESIGN/BUILD FIRM or for any of the aforesated parties in conjunction with the design and construction of the Project; including, without limitation, any obligation on the part of CITY to pay or to see to the payment of any monies due to any of the aforesated parties.

7.05 DESIGN/BUILD FIRM agrees to bind its Consultant, Subcontractors, and Subconsultants to the applicable terms and conditions of this Agreement for the benefit of CITY.

7.06 Unless otherwise provided herein, DESIGN/BUILD FIRM shall provide and pay for all architecture, engineering, landscape architecture, land surveying services, Materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the design and construction of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.

7.07 DESIGN/BUILD FIRM shall at all times enforce strict discipline and good order among its employees, Consultants, Subcontractors and Subconsultants at the Project site, and shall not employ on the Project any unfit person or anyone not skilled in the work and/or services assigned to him or her.

7.08 [Intentionally omitted]

7.09 DESIGN/BUILD FIRM shall keep itself fully informed of, and shall take into account and comply with any and all Applicable Laws affecting those engaged or employed in the Project; or the Materials used or employed in the design and construction of the Project; or in any way affecting the conduct of the Project; including, without limitation, all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is in violation of any such Applicable Laws, DESIGN/BUILD FIRM shall forthwith report the same to the Contract Administrator in writing. DESIGN/BUILD FIRM shall cause all its employees, agents, Consultant, Subcontractors, Subconsultants, and sub-Subcontractors to observe and comply with all Applicable Laws.

7.10 In the event of a change after the issuance of any applicable permit for the Project in any Applicable Law which in any manner affects the Project, DESIGN/BUILD FIRM shall advise the Contract Administrator, in writing, and the Contract Administrator may initiate a Changer Order request to the DESIGN/BUILD FIRM and process a Change Order, the purpose of which shall be to bring the Project into compliance with such Applicable Law, as amended or enacted.

7.11 DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent State statutes involving State taxes and complying with all requirements.

7.12 CITY shall have the right to inspect and copy, at CITY'S expense, the books and records and accounts of the DESIGN BUILD/FIRM which directly relate to the Project, and to any claim for additional compensation made by the DESIGN BUILD/FIRM, and to conduct an audit of the financial and accounting records of the DESIGN BUILD/FIRM which relate to the Project and to any claim for additional compensation made by the DESIGN BUILD/FIRM. DESIGN

BUILD/FIRM shall retain and make available to CITY all such books and records and accounts or portions thereof, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following Final Completion of the Project. During the Project and the three (3) year period following Final Completion of the Project, the DESIGN BUILD/FIRM shall provide CITY access to its books and records subject to this section upon three (3) business day's written notice.

7.13 The DESIGN/BUILD FIRM shall perform the Work and complete the Project for the Guaranteed Maximum Price, in accordance with the Contract Documents, and shall achieve Substantial Completion of the Work within the Contract Time. Completion of the Work shall be achieved no later than sixty (60) calendar days after issuance of a Certificate of Substantial Completion, as referenced by Article 6 of the Contract.

7.14 DESIGN/BUILD FIRM shall furnish efficient business administration, coordination, management and supervision of the Work and services required to complete the Project, and shall cooperate with the Project Manager and the Contract Administrator, and their respective representatives, in furthering the interests of CITY in the expeditious completion of the Project at the lowest cost to CITY, consistent with the requirements of the Contract Documents and prudent and customary construction practices.

7.14.01 The DESIGN/BUILD FIRM shall perform the Work, and shall cause Contractor and Subcontractors to perform the Work, in strict accordance with all Applicable Laws. By signing this Agreement, the DESIGN/BUILD FIRM represents and warrants that it is familiar with all Applicable Laws that govern the Work.

7.14.02 If DESIGN/BUILD FIRM has knowledge that the Contract Documents do not comply with Applicable Laws, in any respect, the DESIGN/BUILD FIRM shall promptly notify the Project Manager, in writing, and any necessary changes shall be adjusted by appropriate revisions. If the DESIGN/BUILD FIRM performs any Work not in accordance with Applicable Laws, and without such notice to the Project Manager, the DESIGN/BUILD FIRM shall assume full responsibility therefore, and shall bear all costs attributable thereto.

7.14.03 In the event that Work is deemed by competent authority not to comply with Applicable Laws, the DESIGN/BUILD FIRM shall bring such Work into compliance with such Applicable Laws. If an Applicable Law(s) is enacted after the issuance of an applicable permit for the Project, and the DESIGN/BUILD FIRM had no reasonable prior knowledge of such a change to the Applicable Law(s), such change shall be considered an unforeseeable and unavoidable cost, and the CITY shall approve a Change Order to bring such Work into compliance with such Applicable Law(s). New interpretations of existing Applicable Laws shall not be considered an unforeseeable and unavoidable cost.

7.15 The DESIGN/BUILD FIRM 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 complete and sufficiently coordinated to perform the Work for the Guaranteed Maximum Price and the Contract Time. DESIGN/BUILD FIRM warrants to CITY that the DCP is consistent, practical, feasible and constructible. DESIGN/BUILD FIRM further warrants to CITY that the Work

described in the DCP is constructible for the Guaranteed Maximum Price and the Contract Time.

THE CITY DISCLAIMS ANY WARRANTY THAT THE DCP, FOR THE PROJECT IS ACCURATE, PRACTICAL, CONSISTENT, AND / OR CONSTRUCTIBLE.

7.16 The DESIGN/BUILD FIRM accepts the Project site in its observable and/or documented condition existing at the time of this Agreement, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project. By signing this Contract, the DESIGN/BUILD FIRM represents to the CITY that it has: (a) visited the Project site to become familiar with the conditions under which the Work is to be performed; (b) become familiar with all information provided (without warranty) by the CITY pertaining to the Project site; and (c) correlated its observations with the information furnished by the CITY (without warranty), and the Contract Documents. The DESIGN/BUILD FIRM hereby waives additional time or compensation for additional work made necessary by observable and/or documented conditions existing at the Project site, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project.

7.17 The DESIGN/BUILD FIRM agrees specifically that no Change Orders shall be required by the DESIGN/BUILD FIRM or considered by the City for reasons involving conflicts in the Contract Documents; questions of clarity with regard to the Contract Documents; and incompatibility or conflicts between the Contract Documents and the existing Project site conditions including, without limitation, utilities and unforeseen underground conditions. The DESIGN/BUILD FIRM acknowledges that it has ascertained all correct locations for points of connection for all utilities required for this Project.

7.18 The DESIGN/BUILD FIRM shall, as may be required for the proper execution and completion of the Work, secure all necessary permits and revisions thereto, fees, and licenses, as required by Applicable Laws to complete the Project including, but not limited to, all necessary utility connection permits and fees.

7.19 The DESIGN/BUILD FIRM shall comply with all conditions of any permits issued by government authorities.

**ARTICLE 8 THE CONTRACT PRICE (GUARANTEED MAXIMUM PRICE)
AND METHOD OF PAYMENT**

8.01 The Contract Price is the Guaranteed Maximum Price agreed to by the DESIGN/BUILD FIRM and CITY under this Contract, payable to complete the Work in accordance with the Agreement and DCP, and, to the extent permitted by this Agreement, as may be increased or decreased by Change Order.

8.01.01 The Contract Price for the Project, which is also the Guaranteed Maximum Price as is specifically defined and delineated in the Design Criteria Package to this Contract, which is attached and incorporated hereto.

8.01.02 In the event that the DESIGN/BUILD FIRM'S total approved expenditures for the Project exceed the Guaranteed Maximum Price, the

DESIGN/BUILD FIRM shall pay such excess from its own funds. CITY shall not be required to pay any amount that exceeds the Guaranteed Maximum Price and the DESIGN/BUILD FIRM shall have no claim against the CITY on account thereof.

8.02 METHOD OF BILLING AND PAYMENT

8.02.01 During the Construction Documents Phase, DESIGN/BUILD FIRM may submit a request for payment monthly based upon percentage of completion of the (final construction) Plans and Specification. During the Construction Phase, DESIGN/BUILD FIRM may submit a request for payment thirty (30) calendar days after beginning field operations, subject to the second Notice-to-Proceed, and every thirty (30) calendar days thereafter. Payment during the Construction Phase will be based upon percentage of work completed for each item in the approved Schedule of Values. DESIGN/BUILD FIRM's requisition for payment shall show a complete breakdown of the Project components, and the amount due, together with such supporting evidence, as may be required by the Contract Administrator. At a minimum, the requisition for payment shall be accompanied by a completed certification of Work; consent of surety in the applicable amount; list of Subcontractors that performed Work during the payment application period being submitted; releases of liens from the Contractor for the previous period being billed; releases of liens from Subcontractors that have performed Work during the previous billing period unless payment for the previous period has not been received by the DESIGN/BUILD FIRM; aerials and photographs of the areas of Work for the applicable billing period; an accepted, updated CPM Project Schedule (as approved); and back up for all items being billed. The certification of Work will mean compliance by DESIGN/BUILD FIRM with the approved CPM Project Schedule; that as-built drawings of improvements are current for the prior period; and Applicable Laws are being met and complied with. Each requisition for payment shall be submitted in triplicate to the Project Manager for approval. Payment for Work performed will be made within thirty (30) calendar days after receipt of a proper requisition for payment, but not more frequently than once a month (i.e. every thirty [30] days). The Contract Administrator shall verify completion of the various phases, as noted, and authorize payment accordingly. Should the Project fall behind schedule as indicated in the CPM Project Schedule, DESIGN/BUILD FIRM shall include a written plan demonstrating how the Final Completion date shall be maintained.

8.02.02 CITY agrees that it will pay DESIGN/BUILD FIRM within thirty (30) calendar days of receipt of DESIGN/BUILD FIRM's proper requisition for payment, as provided above.

8.02.03 Ten percent (10%) of all monies earned by DESIGN/BUILD FIRM shall be retained by CITY until the Project has obtained Final Completion and been accepted by CITY, except that upon completion of the Construction Documents Phase and approval by CITY of the Work performed under such phase, the Contract Administrator may release the entire amount of the retainage pertaining to the Consultant fees associated with the Construction Documents Phase. After fifty percent (50%) of the Construction Phase of the Project has been completed, the Contract Administrator, upon written request of the DESIGN/BUILD FIRM and written Consent of Surety in support of said request, may reduce the retainage to five percent (5%) of all monies earned subsequent

to the Construction Documents Phase. Any interest earned on retainage shall accrue to the benefit of CITY.

8.02.04 Undisputed amounts remaining unpaid thirty (30) calendar days after CITY's receipt of DESIGN/BUILD FIRM's proper requisition for payment for conforming Work shall bear interest at the rate set forth in Section 218.74 (4), Florida Statutes. This section shall not apply if the CITY has a right to withhold any portion of the payment under this Agreement.

8.03 Upon receipt of written notice from DESIGN/BUILD FIRM that the Project is ready for final inspection and acceptance, the Contract Administrator shall, within fourteen (14) calendar days, make an inspection thereof. If the Contract Administrator finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the Contract Administrator, over his/her own signature, stating that the Work required by this Agreement has been completed and is accepted under the terms and conditions thereof.

8.04 Before issuance of the Final Certificate for Payment, DESIGN/BUILD FIRM shall deliver to the Contract Administrator a complete release of all liens arising out of this Agreement, or receipts in full in lieu thereof, and an affidavit certifying that all suppliers, Consultant, Subcontractors, and Subconsultants have been paid in full, and that all other indebtedness connected with the Project has been paid, and a consent of the surety to final payment. All as-builts, warranties, guarantees, operational manuals, and instructions in operation must be delivered to CITY at this time. Contractor shall submit a completed as-built drawings package (two (2) full-size (24"x36") and two (2) half-size (11"x17"), to-scale, hard reproducible copies and two (2) CD Rom non-compressed formatted in the latest version of AutoCAD), signed and sealed by a land surveyor registered in the State of Florida and as approved by the CITY's Public Works Department, and proof that all permits have been closed; which shall be delivered prior to requesting final payment. A Certificate of Occupancy, and/or Certificate of Completion (CC), will be obtained prior to final payment being made, if required.

8.05 CITY may withhold final payment or any progress payment to such extent as may be necessary on account of:

8.05.01 Defective Work not remedied.

8.05.02 Claims filed or written notices of nonpayment indicating probable filing of claims as may be prescribed by law by other parties against DESIGN/BUILD FIRM.

8.05.03 Failure of DESIGN/BUILD FIRM to make payments properly to Consultant, Subcontractors or Subconsultants, or for material or labor.

8.05.04 Damage to another Subcontractor, Subconsultant, supplier, material person (as provided for in F.S. 713), party, or person not remedied which are attributable to DESIGN/BUILD FIRM, its agents, servants, employees, Contractor, Consultant, Subconsultants, Subcontractors, sub-Subcontractors, sub-Subconsultants, material person and suppliers.

8.05.05 Liquidated damages pursuant to Article 6 hereof.

8.05.06 As-built drawings not being in a current and acceptable state.

8.05.07 The DESIGN/BUILD FIRM warrants to the CITY that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all Work will be of good quality and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Contract Administrator, may be considered defective. If required by the CITY, the DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the origin, nature and quality of materials and equipment used for the Project. DESIGN/BUILD FIRM shall properly store and protect all construction materials. Materials which become defective through improper storage shall be replaced with new materials at no additional costs. The DESIGN/BUILD FIRM's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the DESIGN/BUILD FIRM, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

When the above grounds are removed or resolved, or DESIGN/BUILD FIRM provides a surety bond or a consent of surety satisfactory to CITY which will protect CITY in the amount withheld, payment may be made in whole or in part, as applicable.

8.06 If, after the Project has been substantially completed, full completion thereof is delayed through no fault of DESIGN/BUILD FIRM, or by issuance of Change Orders affecting final completion, and the Contract Administrator so certifies, CITY shall, upon certification of the Contract Administrator, and without terminating the Contract, make payment of the balance due for that portion of the Project fully completed and accepted. Such payment shall be made as required by law under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

8.07 The making and acceptance of the final payment shall constitute a waiver of all claims by CITY, other than those arising from faulty or defective Work, failure of the Project to comply with requirements of the Contract Documents, or terms of any warranties required by the Contract Documents. It shall also constitute a waiver of all claims by DESIGN/BUILD FIRM, except those previously made in writing and identified by DESIGN/BUILD FIRM as unsettled at the time of the final application for payment.

8.08 If the Contract Administrator, in its reasonable judgment, determines that the portion of the Guaranteed Maximum Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the DESIGN/BUILD FIRM hereunder unless and until the DESIGN BUILD FIRM, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the Contract Administrator to be sufficient to so complete the Work.

8.09 DESIGN/BUILD FIRM shall remain liable for Subcontractors' Work and for any unpaid laborers, material suppliers or Subcontractors in the event it is later discovered that said Work is deficient or that any Subcontractors, laborers, or material suppliers did not receive payments

due to them on the Project.

8.10 The DESIGN/BUILD FIRM shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the DESIGN/BUILD FIRM in performance of the Work.

8.11 Payment will be made to DESIGN/BUILD FIRM at:

ARTICLE 9 ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK

Without invalidating the Agreement and without notice to any surety, CITY reserves and shall have the right to make such changes from time to time in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the Project in a satisfactory manner. Any extra or additional work within the scope of this Project may be accomplished by means of appropriate Field Orders, and/or fully executed and approved Change Orders.

ARTICLE 10 CITY'S RESPONSIBILITIES

10.01 CITY shall assist DESIGN/BUILD FIRM by placing at its disposal any available information pertinent to the Project including previous reports, laboratory tests and inspections of samples, materials and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed and other land use restrictions.

10.02 CITY shall arrange for access to and make all provisions for DESIGN/BUILD FIRM to enter upon public property as required for DESIGN/BUILD FIRM to perform its services.

ARTICLE 11 RESOLUTION OF DISPUTES

11.01 To attempt to prevent all disputes and litigation, it is agreed by the parties hereto that Contract Administrator shall first decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any Work done and Materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents, and Contract Administrator's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Section 11.02. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of CITY and DESIGN/BUILD FIRM shall be submitted to Contract Administrator, in writing, within twenty-one (21) calendar days of the discovery of the occurrence. Unless a different period of time is set forth herein, Contract Administrator shall notify DESIGN/BUILD FIRM in writing of the decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless Contract Administrator requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During

the pendency of any dispute and after a determination thereof, DESIGN/BUILD FIRM and CITY shall act in good faith to mitigate any potential damages, including utilization of construction schedule changes and alternate means of construction.

11.02 In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the Contract Administrator's determination must notify the other party in writing within ten (10) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Price or Contract Time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to avoid litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

11.03 Pending final resolution of a claim, including mediation, unless otherwise agreed in writing by the CITY, DESIGN/BUILD FIRM shall proceed diligently with performance of the Contract and the CITY shall continue to make payments in accordance with the Contract Documents.

11.04 Any mediator used shall be certified in accordance with State of Florida law. Mediation will be conducted in Miami-Dade County.

ARTICLE 12 SUBCONTRACT REQUIREMENTS

12.01 [Intentionally omitted]

12.02 [Intentionally omitted]

12.03 [Intentionally omitted]

12.04 [Intentionally omitted]

12.05 All Subcontracts shall require the following:

12.05.01 That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the CITY or Consultant or attributable to the CITY or Consultant and including claims based on breach of contract or negligence, shall be an extension of its Contract Time.

12.05.02 In the event of a change in the Work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 7% for overhead and profit and bond costs.

12.05.03 Each subcontract shall require the Subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the Contract Price, damages, losses, or additional compensation.

12.05.04 Each subcontract shall require that any claims by Subcontractor for delay or additional cost must be submitted to DESIGN/BUILD FIRM within the time and in the manner in which the DESIGN/BUILD FIRM must submit such claims to the CITY, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

12.05.05 Each subcontract shall include a provision stating that the subcontract is assignable to the CITY in the event of a termination of all or part of the Contract. Said assignment shall be at the sole option and discretion of the CITY and, if agreed to by CITY shall be upon the same terms and conditions as the original subcontract, unless otherwise mutually negotiated by CITY and Subcontractor.

12.05.06 The DESIGN/BUILD FIRM shall be solely responsible to the CITY for the acts and omissions of its employees and agents and its Contractor, Consultant, Subcontractors, Subconsultants, and their agents and employees, and all other persons performing any of the work or services or supplying materials under a contract to the DESIGN/BUILD FIRM.

12.05.07 The DESIGN/BUILD FIRM shall provide the Project Manager with a copy of each subcontract, including the general supplementary conditions.

ARTICLE 13 [This Article left intentionally blank]

ARTICLE 14 [This Article left intentionally blank]

ARTICLE 15 SECURITY [This Article left intentionally blank]

ARTICLE 16 INSPECTION OF PROJECT

16.01 The CITY, Contract Administrator, and their authorized representatives, shall have access to the Project at all times and DESIGN/BUILD FIRM shall provide proper facilities for such access. Such access shall be in accordance with the reasonable rules of the DESIGN/BUILD FIRM.

16.01.01 Should the Contract Documents, any Applicable Laws, or any public authority require any Work for the Project to be specially tested or approved, DESIGN/BUILD FIRM shall give to the Contract Administrator timely notice of readiness of the Work for inspection. If the testing or approval is to be made by an authority other than CITY, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and, where practicable, at the source of supply. Within a reasonable time from execution of this Agreement, CITY shall provide DESIGN/BUILD FIRM with a letter (or e-mail) listing the areas of Work the CITY will inspect. If defined Work for the Project should be covered up without required inspection/approval, it must,

if required by the Contract Administrator, be uncovered for examination, and properly restored at DESIGN/BUILD FIRM's expense.

16.01.02 Re-examination and retesting of any Work may be ordered by the Contract Administrator and, if so ordered, such Work must be uncovered by DESIGN/BUILD FIRM. If such Work is found to be in accordance with the Contract Documents, CITY shall pay the cost of re-examination, re-testing and replacement. If such Work is not in accordance with the Contract Documents, DESIGN/BUILD FIRM shall pay such cost.

16.02 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by DESIGN/BUILD FIRM to any inspector is forbidden, and any such act on the part of DESIGN/BUILD FIRM will constitute a breach of this Agreement.

ARTICLE 17 SUPERINTENDENCE AND SUPERVISION

17.01 The orders of the CITY are to be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case, provided that they are in accordance with this Contract and the other Contract Documents. Construction Manager shall keep on the Project during its progress, a full-time, competent, English speaking supervisor who shall serve as the superintendent, and any necessary assistants, all satisfactory to the Project Manager.

17.02 Construction Manager or Contractor's superintendent shall prepare, on a daily basis, and keep on the Project site, a bound log setting forth at a minimum, for each day: the weather conditions and 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. The daily bound log shall be available for inspection by the CITY, or its authorized designee, at all times during the Project, without previous notice.

17.03 If DESIGN/BUILD FIRM, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the site, or any errors or omissions in the Contract Documents including, but not limited to, the Plans and Specifications, it shall be DESIGN/BUILD FIRM's sole obligation and duty to immediately inform the Contract Administrator, in writing, and the Contract Administrator will promptly verify same.

Any Work done prior to or after such discovery will be done at DESIGN/BUILD FIRM's sole risk. **NOTWITHSTANDING THE PRECEDING, OR ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, DESIGN/BUILD FIRM HEREBY ACKNOWLEDGES AND AGREES THAT THIS IS A DESIGN/BUILD PROJECT AND, ACCORDINGLY, ANY ERRORS OR OMISSIONS SHALL BE CORRECTED AT THE SOLE COST AND EXPENSE OF DESIGN BUILD/FIRM AND WITHOUT A CLAIM FOR ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE.**

17.04 DESIGN/BUILD FIRM shall coordinate, supervise and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform and complete the Project in accordance with the Contract Documents. DESIGN/BUILD FIRM shall be solely responsible for the design, preparation of Construction Documents, means, methods, techniques, safety, sequences and procedures of construction. DESIGN/BUILD FIRM shall give efficient supervision to the Work, using DESIGN/BUILD FIRM's best skill, attention, and judgment.

ARTICLE 18 CITY'S RIGHT TO TERMINATE AGREEMENT

18.01 If DESIGN/BUILD FIRM fails to begin the design and construction of the Project within the time specified; or fails to perform the Project with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Project, in accordance with the Contract Documents and schedules; or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable; or shall discontinue the prosecution of the Project, except for excused delays in accordance with this Agreement; or if DESIGN/BUILD FIRM shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors; or shall not carry on the Project in accordance with the Contract Documents, then the CITY shall give notice, in writing, to DESIGN/BUILD FIRM and its surety of such delay, neglect or default, specifying the same. If DESIGN/BUILD FIRM, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may, upon written notice from the Contract Administrator of the fact of such delay, neglect or default and DESIGN/BUILD FIRM's failure to comply with such notice, terminate the services of DESIGN/BUILD FIRM, exclude DESIGN/BUILD FIRM from the Project site, and take the prosecution of the Project out of the hands of DESIGN/BUILD FIRM, as appropriate, or use any or all materials and equipment on the Project site as may be suitable and acceptable, in the City's reasonable discretion. In such case, DESIGN/BUILD FIRM shall not be entitled to receive any further payment until the Project is finished. In addition, CITY may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in its opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY shall be deducted from any monies due or which may become due to said DESIGN/BUILD FIRM. Actions will be instituted to recover on the posted bonds. In case the damages and expense so incurred by CITY shall be less than the sum which would have been payable under this Agreement, if it had been completed by said DESIGN/BUILD FIRM, then DESIGN/BUILD FIRM shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then DESIGN/BUILD FIRM shall be liable and shall pay to CITY the amount of said excess.

18.02 If, after Notice of Termination of DESIGN/BUILD FIRM's right to proceed, it is determined for any reason that DESIGN/BUILD FIRM was not in default, the rights and obligations of CITY and DESIGN/BUILD FIRM shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause, as set forth in Section 18.03 below.

18.03 Notwithstanding any other provision in this Agreement, the performance of work under this Agreement may be terminated in writing by CITY, for convenience and without cause, upon ten (10) business days from the date of DESIGN/BUILD FIRM'S receipt of the written notice to

DESIGN/BUILD FIRM of intent to terminate and the date on which such termination becomes effective. In such case, DESIGN/BUILD FIRM shall be paid for all work and reimbursables executed, and expenses incurred, such as materials stored, cost of severance of leases/contracts directly associated with the Project, and demobilization prior to termination. PAYMENT SHALL INCLUDE REASONABLE PROFIT FOR SERVICES ACTUALLY PERFORMED IN FULL PRIOR TO TERMINATION DATE, BUT SHALL EXCLUDE ALL LOST PROFITS, INDIRECT CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.

18.04 Upon receipt of Notice of Termination pursuant to Sections 18.01 or 18.03 above, DESIGN/BUILD FIRM shall, at its sole cost and expense and as a condition precedent to any further payment obligation by the CITY, promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver to CITY within seven (7) calendar days of termination, all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents, whether completed or in process. Compensation shall be withheld until all documents are provided to CITY pursuant to this Article.

ARTICLE 19 DESIGN/BUILD FIRM'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

19.01 If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of DESIGN/BUILD FIRM or of anyone employed by DESIGN/BUILD FIRM; or if the Contract Administrator should fail to review and approve or state in writing reasons for non-approval of any requisition for payment within twenty (20) business days after it is presented; or if CITY fails to pay DESIGN/BUILD FIRM within thirty (30) calendar days after submittal of a proper requisition for payment, as approved by the Project Manager or Contract Administrator (as applicable), then DESIGN/BUILD FIRM may give written notice to CITY, through Contract Administrator, of such delay, neglect, or default, specifying the same. If CITY, within a period of ten (10) business days after such written notice, shall not remedy the delay, neglect, or default upon which notice is based, then DESIGN/BUILD FIRM may stop work until payment is made, or terminate this Agreement and recover from CITY payment for all Work executed and reasonable expense sustained, But excluding any claim for payments for lost profits, indirect, special, consequential, or other damages.

ARTICLE 20 "OR EQUAL" CLAUSE

20.01 Whenever a material, article or piece of equipment is identified in the Contract Documents, including without limitation, in the Plans and Specifications, 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, in the opinion of the Contract Administrator:

20.01.01 At least equal in quality, durability, appearance, strength and design;

20.01.02 Performs at least equally the function imposed in the general design for the Project;

20.01.03 Conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Plans and Specifications; and

20.01.04 Carries the same guaranty or warranty of the specified equipment.

All substitution requests will be made via written request which shall be attached to a shop drawing and/or Change Order which shall be attached to a detailed description of the specified item and a detailed description of the proposed substitution. A comparison letter itemizing all deviations from specified items must be included for the Contract Administrator to properly evaluate substitution. Failure to provide the deviation comparison sheet shall automatically deny the request.

Any changes, inclusive of design changes, made necessary to accommodate substituted equipment under this paragraph shall be at the expense of DESIGN/BUILD FIRM.

20.02 Contract Administrator's written consent will be required as to acceptability, and no substitute will be ordered, installed or utilized without Contract Administrator's prior written acceptance, which will be evidenced by either a Change Order or an accepted shop drawing. CITY may require DESIGN/BUILD FIRM to furnish, at DESIGN/BUILD FIRM'S expense, a special performance guarantee or other surety with respect to any substitute.

ARTICLE 21 PLANS AND SPECIFICATIONS

21.01 CITY, through its Contract Administrator, shall have the right to require DESIGN/BUILD FIRM to modify the details of the Plans and Specifications, to supplement same with additional plans, drawings, specifications, or additional information as the Project proceeds which 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 plans, general and detail, are to be deemed a part of this Agreement, and the Plans and Specifications and other Contract Documents are to be considered together, and are intended to be mutually complementary, so that any work shown on the Plans, though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is to be executed by DESIGN/BUILD FIRM as part of the Contract Documents. All things which, in the opinion of the Contract Administrator, may reasonably be inferred from the Contract Documents, including, but not limited to, the Plans and Specifications, are to be executed by DESIGN/BUILD FIRM under the terms of the Contract Documents; and the Contract Administrator shall determine whether said Plans and Specifications conform to the Contract Documents. In the event the work requested under this Article expands the scope of the Project, DESIGN/BUILD FIRM may seek a Change Order pursuant to Article 37.

ARTICLE 22 DESIGN/BUILD FIRM TO CHECK DRAWINGS AND DATA

22.01 DESIGN/BUILD FIRM shall take measurements and verify all dimensions, conditions, quantities and details shown on the Plans and Specifications including, but not limited to, the

drawings, schedules, or other data. Failure to discover or correct errors, conflicts or discrepancies shall not relieve DESIGN/BUILD FIRM of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom, nor from rectifying such condition at DESIGN/BUILD FIRM'S own expense. DESIGN/BUILD FIRM will not be allowed to take advantage of any error or omissions.

ARTICLE 23 WARRANTY

23.01 DESIGN/BUILD FIRM warrants to CITY that all Materials and equipment furnished for the Project will be new unless otherwise specified and that all Work for the Project will be of good quality, free from faults and defects and in conformance with the Contract Documents. The standard of quality shall be at least that employed by similarly qualified design/build firms that are duly qualified and licensed to perform similar projects. All Work for the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If Materials or equipment are improperly stored and become altered as a result of such improper storage, DESIGN/BUILD FIRM shall replace said Materials and/or equipment with new ones at no additional cost. DESIGN/BUILD FIRM shall be responsible for proper storage and safeguarding of all Materials and equipment. If required by the Contract Administrator, DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the kind and quality of Materials and equipment. The warranty requirements set forth in the Contract Documents as herein defined shall govern warranty terms and conditions for all warranty items expressed or implied. The DESIGN/BUILD FIRM'S warranty period under this Article shall be one (1) year from the date of Substantial Completion of the Project. However, this section shall not abridge the times or impede the rights and remedies afforded the CITY against other entities or persons under the Contract Documents, or by law.

ARTICLE 24 SUPPLEMENTARY DRAWINGS

24.01 When, in the opinion of DESIGN/BUILD FIRM and/or CITY, it becomes necessary to explain more fully the Work to be done, or to illustrate the Project further to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by the Consultant and submitted by DESIGN/BUILD FIRM to the Contract Administrator for review and written acceptance.

24.02 The authorized supplementary drawings shall be binding upon DESIGN/BUILD FIRM with the same force as the Contract Documents. Where such supplementary drawings require either less or more than the estimated quantities of work, appropriate adjustments shall be made pursuant to Change Order.

ARTICLE 25 [This Article left intentionally blank]

ARTICLE 26 GENERAL WORKMANSHIP

26.01 Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions. DESIGN/BUILD FIRM shall, if required, furnish satisfactory evidence as to kind and quality of the materials. Should materials arrive to the

jobsite new and be improperly stored and deteriorate from new condition, the materials shall be replaced at no additional cost to CITY.

26.02 DESIGN/BUILD FIRM shall apply, install, connect, and erect manufactured items or materials according to recommendations of manufacturer when such recommendations are not in conflict with the Contract Documents. If there is conflict between manufacturer recommendations and the Contract Documents, Contract Administrator shall be notified and shall approve, in writing, any corrective actions prior to implementation of same.

ARTICLE 27 DEFECTIVE WORK

27.01 Contract Administrator shall have the authority to reject or disapprove Work for the Project which Contract Administrator finds to be defective. Defective work is defined as Work not in accordance with the Contract Documents; not in conformance with Applicable Laws; installed in violation of the manufacturer's written instructions where the installation has caused new materials to be detrimentally affected; where the life expectancy of the material installed is reduced; or otherwise installed in a non-workmanlike manner. If required by Contract Administrator, DESIGN/BUILD FIRM shall promptly either (as directed) correct all defective work or remove it from the Project site, and replace it with non-defective work. DESIGN/BUILD FIRM shall bear all costs of such removal or correction.

27.02 If, within one (1) year after Substantial Completion, any Work is found to be defective or not in accordance with the Contract Documents, DESIGN/BUILD FIRM shall correct it promptly without cost to CITY, after receipt of written notice from CITY to do so, unless CITY has given DESIGN/BUILD FIRM a written acceptance of such conditions. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which DESIGN/BUILD FIRM might have under Applicable Laws.

27.03 Should DESIGN/BUILD FIRM fail or refuse to remove or correct any defective work performed for the Project, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of this Agreement within a reasonable time, indicated in writing, CITY shall have the authority to cause the unacceptable or defective work to be removed or corrected, or make such repairs as may be necessary, to be made at DESIGN/BUILD FIRM'S expense. Any expense incurred by CITY in making these removals, corrections or repairs, which DESIGN/BUILD FIRM has failed or refused to make shall be paid for out of any monies due or which may become due to DESIGN/BUILD FIRM, or may be charged against the bond (or other guaranty if applicable). Continued failure or refusal on the part of DESIGN/BUILD FIRM to make any or all necessary repairs promptly, fully, and in acceptable manner shall be sufficient cause for CITY to declare this Agreement terminated, in which case CITY, at its option, may purchase Materials, tools, and equipment, and employ labor, or may contract with any other individual, firm or corporation, or may proceed with its own forces, to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting DESIGN/BUILD FIRM, and the amount thereof deducted from any monies due, or which may become due, to DESIGN/BUILD FIRM, or shall be charged against the bond (or other guaranty). Any special work performed, as described herein, shall not relieve DESIGN/BUILD FIRM in any way from its responsibility for the work performed by it.

27.04 Failure to reject any defective work or Materials shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.

ARTICLE 28 SUBCONTRACTS

28.01 DESIGN/BUILD FIRM shall, at such times as DESIGN/BUILD FIRM decides which Subcontractors will perform the various portions of the Work, promptly notify the Contract Administrator, in writing, of the names of Subcontractors for the Project, and identify the portion of the Work for the Project each will perform. DESIGN/BUILD FIRM shall have a continuing obligation to notify the Contract Administrator of any change in Subcontractors. Notification of the names of Subcontractors shall not relieve DESIGN/BUILD FIRM from the primary responsibility, without limitation, of full and complete satisfactory performance of all contractual obligations.

ARTICLE 29 SEPARATE CONTRACTS

29.01 CITY reserves the right to let other contracts in connection with this Project, provided it does not interfere with DESIGN/BUILD FIRM'S Work or schedule. DESIGN/BUILD FIRM shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs subject to provision of acceptable insurance coverage, including DESIGN/BUILD FIRM as an additional insured. CITY will request that its separate contractors coordinate their activities with the Work of the DESIGN/BUILD FIRM.

29.02 If any part of DESIGN/BUILD FIRM'S Work depends for proper execution or results upon the work of any other contractor or the CITY, DESIGN/BUILD FIRM shall inspect and promptly report to the Contract Administrator any defects in such work that render it unsuitable for such proper execution and results. DESIGN/BUILD FIRM'S failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of DESIGN/BUILD FIRM'S Work, except as to defects which may develop in other contractor's work after the execution of DESIGN/BUILD FIRM'S Work. However, DESIGN/BUILD FIRM shall not be responsible or liable to CITY for any work performed by any other separate contractor not under the auspices or control of DESIGN/BUILD FIRM.

29.03 To insure the proper execution of its subsequent Work, DESIGN/BUILD FIRM shall inspect the work already in place and shall at once report to the Contract Administrator any discrepancy between the executed work and the requirements of the Contract Documents.

ARTICLE 30 CITY'S OPTION FOR USE OF COMPLETED PORTIONS

30.01 In the event of Substantial Completion of a portion of the Project, **which determination and option shall be solely and exclusively within the CITY's authority and discretion whether to allow and accept Substantial Completion of a portion or portions of the Project (versus requiring Substantial Completion of the entire Project at one time)**, CITY shall have the right to take possession of, for maintenance and/or for use, of any such completed or partially completed portion(s) of the Project. However, prior to any possession, a punch list will be issued for the area to be occupied. Such possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

If such possession or use delays the Project, DESIGN/BUILD FIRM may be entitled to a reasonable extension of time as determined by Contract Administrator.

30.02 In the event CITY takes possession, the following shall occur:

~~30.02.01 CITY shall give notice to DESIGN/BUILD FIRM at least thirty (30) calendar days in advance on intent to occupy a designated area.~~

30.02.02 DESIGN/BUILD FIRM shall bring the designated area to point of Substantial Completion. When DESIGN/BUILD FIRM considers that the designated area of the Project is substantially complete, DESIGN/BUILD FIRM shall so notify the Contract Administrator, in writing, and shall prepare for submission to the Contract Administrator a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete work on the designated area in accordance with the Contract Documents. The Contract Administrator shall conduct an inspection to determine that the designated portion of the Project is substantially complete. The Contract Administrator will then instruct DESIGN/BUILD FIRM to deliver to CITY a Certificate of Occupancy (CO) pertinent to the designated portion, which CO shall be issued by the appropriate authority having jurisdiction over the Project. The Contract Administrator and DESIGN/BUILD FIRM shall agree on the time within which DESIGN/BUILD FIRM shall complete the items listed.

30.02.03 Upon issuance and acceptance of Certificate of Substantial Completion, CITY will assume full responsibility for maintenance, utilities, subsequent damages of CITY and public, adjustment of insurance coverages and start of warranty for occupied area. DESIGN/BUILD FIRM shall remain responsible for all items listed to be completed or corrected as submitted to Contract Administrator as required in Substantial Completion process.

30.02.04 If CITY finds it necessary to occupy or use a portion or portions of the Project prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by CITY and DESIGN/BUILD FIRM and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of DESIGN/BUILD FIRM and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

ARTICLE 31 CONSTRUCTION AREA

31.01 DESIGN/BUILD FIRM shall use areas approved by the Contract Administrator for deliveries and personnel. Contract limits of construction area are indicated on the concept drawings as issued by the Contract Administrator. Equipment, materials, and personnel shall be in conformance with this Contract.

31.02 To provide for maximum safety and security, DESIGN/BUILD FIRM shall erect and maintain all necessary barricades, and any other temporary walls and structures as required, and boarding or fencing to protect life and property during the period of construction.

ARTICLE 32 LANDS FOR WORK

32.01 CITY shall provide, as indicated in the Contract Documents, the lands upon which the Project is to be performed, rights-of-way and easements for access thereto and such other lands as are designated for the use of DESIGN/BUILD FIRM. No claim for damages or other claim other than for an extension of time shall be made or asserted against CITY by reason of any delay arising as a result of any failure of CITY to provide such lands on the date needed by DESIGN/BUILD FIRM. The provisions of Article 40 shall apply herein.

ARTICLE 33 LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS

33.01 DESIGN/BUILD FIRM shall conform to all Applicable Laws with regard to labor employed, hours of work, and DESIGN/BUILD FIRM'S general operations. DESIGN/BUILD FIRM shall also 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.

ARTICLE 34 DAMAGE TO EXISTING FACILITIES, EQUIPMENT OR UTILITIES

34.01 Existing utilities have been shown in the Contract Documents insofar as information is reasonably available; however, it will be DESIGN/BUILD FIRM'S sole responsibility to verify such information and to preserve all existing utilities, whether shown in the Contract Documents or not. If utility conflicts are encountered by DESIGN/BUILD FIRM during construction, DESIGN/BUILD FIRM 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/BUILD FIRM to resolve any conflicts and make all necessary adjustments, at no additional cost to the CITY.

34.02 DESIGN/BUILD FIRM shall exercise care and take all precautions during excavation and construction operations to prevent damage to any existing facilities, equipment, or utilities. Any damage caused by DESIGN/BUILD FIRM shall be reported immediately to the Contract Administrator, and such work shall be repaired and/or replaced by DESIGN/BUILD FIRM in a manner approved by CITY. All costs to repair and/or replace any damage to existing facilities, equipment, or utilities shall be the sole responsibility of DESIGN/BUILD FIRM, and such repair or replacement shall be performed expeditiously without cost to CITY.

34.03 DESIGN/BUILD FIRM shall provide that type of required protection for finished Work at all times and protect adjacent Work during cleaning operations, and make good any damage resulting from neglect of this precaution.

34.04 Protection of Work shall include protecting of Work that is factory finished, during transportation, storage, during and after installation. Where applicable, and as required, DESIGN/BUILD FIRM shall close off spaces of areas where certain Work has been completed to protect it from any damages caused by others during their operations.

34.05 DESIGN/BUILD FIRM shall store Materials, and shall be responsible for and shall maintain partly or wholly finished Work during the continuance of the Contract and until the final

acceptance 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/BUILD FIRM shall satisfactorily repair and replace the same at DESIGN/BUILD FIRM'S own cost. The DESIGN/BUILD FIRM shall maintain suitable and sufficient guards, if necessary, and barriers, and at night, suitable and sufficient lighting for the prevention of accidents.

34.06 To all applicable sections where preparatory work is part of Work thereon, DESIGN/BUILD FIRM shall carefully examine surfaces over which finished work is to be installed, laid or applied, before commencing with the work. DESIGN/BUILD FIRM shall not proceed with said work until defective surfaces on which work is to be applied are corrected to the satisfaction of the Contract Administrator. Commencement of work shall be considered acceptance of surfaces and conditions.

34.07 It will be the DESIGN/BUILD FIRM'S responsibility to preserve all existing utilities within the Project limits or as otherwise affected by DESIGN/BUILD FIRM. If utility conflicts are encountered by the DESIGN/BUILD FIRM during construction, it is anticipated that DESIGN/BUILD FIRM shall re-design its proposed improvements, at its sole cost, so as to avoid utility conflicts, and/or provide sufficient notice to their owners and compensate owners of the utilities from its funds so that they may make the necessary adjustments. Damage to any utilities, which in the sole reasonable opinion of the CITY is caused by negligence on the part of the DESIGN/BUILD FIRM, shall be repaired at the DESIGN/BUILD FIRM'S expense.

ARTICLE 35 CONTINUING THE WORK

35.01 DESIGN/BUILD FIRM shall carry on the Project and adhere to the CPM Project Schedule during all disputes or disagreements with CITY, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time. No work shall be delayed or postponed pending resolution of any disputes or disagreements. The provisions of this Article shall be subject to all other applicable provisions of this Agreement.

ARTICLE 36 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS

36.01 The Contract Administrator shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents to Construction Manager and ordering minor changes in contract execution, providing the Field Order involves no change in the Contract Price or the Contract Time.

36.02 The Contract Administrator shall have the right to approve and issue to DESIGN/BUILD FIRM supplemental instructions setting forth the written orders, instructions, or interpretations concerning the Contract Documents or performance therein, provided they make no major changes in Contract execution and involve no change in the Contract Price or the Contract Time.

ARTICLE 37 CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

37.01 Without invalidating the Contract and without notice to any surety, CITY reserves, and shall have the right from time to time, to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional

work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions, or Change Orders.

37.02 Changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by CITY as hereinafter provided.

37.03 The actual cost of the Payment and Performance Bond as a result of accepted changes in the Work shall be added to or deducted from the cost of the changes in the Work.

37.04 Notification of Change of Contract Time or Contract Price

37.04.01 Any claim for a change in the Contract Time or Contract Price shall be made by written notice delivered by DESIGN/BUILD FIRM to the Contract Administrator within five (5) calendar days of the commencement of the event giving rise to the claim (which may include an occurrence or omission that DESIGN/BUILD FIRM contends delays the Work, or receipt of an order, instruction, Contract Administrator's supplemental information, or other directive changing the Work, or any other occurrence that DESIGN/BUILD FIRM contends causes a change in Contract Time or Contract Price) and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered, unless Contract Administrator and DESIGN/BUILD FIRM allows an additional period of time to ascertain more accurate data in support of the claim, and shall be accompanied by DESIGN/BUILD FIRM's written statement that the adjustment claimed is the entire adjustment to which the DESIGN/BUILD FIRM has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time or Contract Price shall be determined by Project Manager and Contract Administrator in accordance with Article 11 hereof, if Project Manager, Contract Administrator and DESIGN/BUILD FIRM cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID UNLESS IT IS SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

37.04.02 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault, negligence, or act or omission of DESIGN/BUILD FIRM if a claim is made therefore as required by the Contract. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions, acts of God, or acts of terrorism.

37.04.03 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to this Article 37. These time extensions are justified only when rain or other inclement weather conditions or related adverse soil conditions prevent DESIGN/BUILD FIRM from productively performing controlling items of work; identified on the accepted schedule or

updates resulting in: (1) DESIGN/BUILD FIRM being unable to work at least fifty percent (50%) of the normal work day on controlling items of work identified on the accepted CPM Project Schedule or updates due to adverse weather conditions; or (2) DESIGN/BUILD FIRM must make major repairs to the Work damaged by weather, provided the damage was not attributable to a failure or neglect by DESIGN/BUILD FIRM; and provided that DESIGN/BUILD FIRM was unable to work at least fifty percent (50%) of the normal work day on controlling items of work identified on the accepted CPM Project Schedule or approved updates. No time extension will be allowed for weekend rains unless the DESIGN/BUILD FIRM has been working weekends on a regular basis on exterior Work.

37.04.04 The DESIGN/BUILD FIRM agrees and acknowledges that no ground for an extension to the Contract Time or Contract Price shall arise as a result of any reasonably foreseeable condition at the Project site, or as a result of anything contained in the Contract Documents.

37.05 Change Orders

37.05.01 Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved and issued by CITY to the extent permitted under this Agreement.

37.05.02 The Project Manager, as authorized by the Contract Administrator, may initiate a Change Order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the DESIGN/BUILD FIRM shall review the Change Order Request with the Project Manager and Contract Administrator prior to furnishing to the Project Manager a statement setting forth in detail, with a suitable detailed breakdown in Construction Specifications Institute (CSI) format, including a breakdown of labor and materials, the DESIGN/BUILD FIRM's estimate of the changes in the cost of the Work and changes to any other Contract Price elements attributable to the changes set forth in such Change Order Request, and proposed adjustments, if any, to the Contract Time resulting from such Change Order Request. If the Contract Administrator accepts such DESIGN/BUILD FIRM's estimate, a Change Order shall be processed by the CITY and delivered to the DESIGN/BUILD FIRM for execution. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the cost of the Work, DESIGN/BUILD FIRM's, Guaranteed Maximum Price, or the Contract Time, subject to performance thereof and payment therefore pursuant to the terms of this Contract and such Change Order. Changes in Contract Time will only be considered by the CITY when Contractor provides sufficient documentation delineating the daily impact to controlling items (Critical Path) identified in the original approved CPM Project Schedule.

37.05.03 The DESIGN/BUILD FIRM's fee on such changes shall be a percentage of the net change to the cost of the Work resulting from the Change Order, not to exceed ten percent (10%).

Subcontractor's percentage markup on Change Orders for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractor's overhead and profit markups exceed seven and a half percent (7.5%) of the Subcontractor's cost of the Work. In the event Subcontractor is affiliated with the Contractor by common ownership or management, or is effectively controlled by the Contractor, no fee will be allowed on the Subcontractor's costs. In the event there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all of the Subcontractors' percentage markups for overhead and profit shall not, in the aggregate, exceed ten percent (10%) of the cost of the Work. Subcontractor's cost of the Work shall be determined in accordance with Article 12, hereof.

37.05.04 Contractor shall not start work on any alteration requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the CITY unless there is an immediate need to perform the work to maintain the CPM Project Schedule. If there were such a need, the Contract Administrator will issue direction to perform the work on the basis of a preliminary estimate provided by the Contractor and approved by the Project Manager. Upon receipt of a Change Order Contractor shall promptly proceed with the work set forth within the document.

37.05.05 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to Project Manager and Contract Administrator as set forth in Article 11, hereof. During the pendency of the dispute, and upon receipt of a Change Order, DESIGN/BUILD FIRM shall promptly proceed with the change in the Work involved and advise the Project Manager and Contract Administrator in writing within five (5) calendar days of DESIGN/BUILD FIRM's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

37.05.06 Upon approval of any Contract change increasing the Contract Price, DESIGN/BUILD FIRM shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total Contract Price as increased.

37.05.07 Change Orders may be issued unilaterally by CITY.

37.05.08 The DESIGN/BUILD FIRM hereby waives any claim not made with a timely request for a Change Order.

37.05.09 Notwithstanding anything in this Article 37, or in any other term or condition of this Agreement, DESIGN/BUILD FIRM acknowledges and agrees that after the Guaranteed Maximum Price has been established, no Change Order shall be approved in the case where the DESIGN/BUILD FIRM encounters a DCP discrepancy and has failed to foresee and/or coordinate any conditions in the

Work, including conflicts between the Contract Documents, Plans and Specifications, and the existing Project site conditions, utilities, and unforeseen underground conditions, which will cause an increase to the Contract Price or the Contract Time.

~~37.05.10~~ No change in the Guaranteed Maximum Price shall be allowed for delays caused by labor disputes and strikes specific to the Project, or for other delay caused by the DESIGN/BUILD FIRM or its Subcontractors or suppliers of any tier.

37.05.11 The DESIGN/BUILD FIRM waives all claims for additional time or additional compensation for Work performed without a written Change Order, unless as stated in Subsection 37.05.04.

37.05.12 The DESIGN/BUILD FIRM agrees that, regardless of the pendency of any claim for additional compensation or time, the DESIGN/BUILD FIRM shall continue to execute all Work. The DESIGN/BUILD FIRM shall take all reasonable measures to minimize the effect of the pendency of a claim.

37.05.13 Should a material discrepancy be found between the DCP and the Contract Documents, and provided only that said discrepancy results from the regulatory review of an agency that has regulatory authority over the permitting process, the CITY shall issue a Change Order to the DESIGN/BUILD FIRM.

37.05.14 DESIGN/BUILD FIRM shall not include or request payment on any Change Orders that have not been formally and fully approved and executed by the appropriate parties.

ARTICLE 38 DIFFERING SITE CONDITIONS

38.01 No equitable adjustment to the Contract shall be allowed for DESIGN/BUILD FIRM and no change to Contract Price or Contract Time, in the event that during the course of the Work DESIGN/BUILD FIRM encounters an existing condition that was not shown on the Contract Documents; or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents.

ARTICLE 39 (This Article left intentionally blank)

ARTICLE 40 NO DAMAGES FOR DELAY

40.01 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. DESIGN/BUILD FIRM shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact, or other costs, expenses or damages including, but not limited to, costs of acceleration or inefficiency arising

because of delay, diYGuption, interference or hindrance from any cause whatsoever, whether such delay, diYGuption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, DESIGN/BUILD FIRM hindrances or delays are not due solely to fraud, bad faith or active interference on the part of CITY or its agents. Unless the delay is due solely to fraud, bad faith, or active interference by the City, DESIGN/BUILD FIRM shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided above. The specific application of this Article to other provisions of this Agreement shall not be construed as a limitation of any sort upon the further application of this Article. Ten Dollars (\$10.00) of DESIGN/BUILD FIRM'S fee is acknowledged as separate and independent consideration for the covenants contained in this Article.

ARTICLE 41 SUBSTANTIAL COMPLETION

41.01 When DESIGN/BUILD FIRM considers that the Project, or a designated portion thereof, which is acceptable to CITY (in the event CITY chooses to accept same pursuant to the sole authority and discretion afforded to it under Article 30 hereof), is substantially complete, DESIGN/BUILD FIRM shall so notify the Contract Administrator and Project Manager, in writing, and shall prepare for submission to the Contract Administrator and Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete all Work in accordance with the Contract Documents. The Contract Administrator, Project Manager, and such other persons as they may deem necessary, shall conduct a joint inspection to determine that the Project (or designated portion thereof) is substantially complete. The Contract Administrator will then instruct DESIGN/BUILD FIRM to prepare and deliver to the Contract Administrator a Certificate of Substantial Completion which shall establish the date of Substantial Completion for the Project (or that portion of the Project). After review of the certificate by the Contract Administrator, CITY shall either accept or reject the certificate. Acceptance of Substantial Completion by CITY shall be based upon compliance with the Contract Documents and Applicable Laws. DESIGN/BUILD FIRM shall have thirty (30) days to complete the items listed therein. Warranties required by the Contract Documents and submitted in appropriate form to the Contract Administrator along with the request for Substantial Completion shall commence on the date of Substantial Completion of the Project (or for that portion of the Project). The Certificate of Substantial Completion shall be submitted to CITY through the Contract Administrator and DESIGN/BUILD FIRM for their written acceptance of the responsibilities assigned to them in such Certificate.

ARTICLE 42 SHOP DRAWINGS AND SCHEDULE OF VALUES

42.01 DESIGN/BUILD FIRM shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of a Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.

42.02 DESIGN/BUILD FIRM shall submit to the Contract Administrator, within thirty (30) calendar days following the application for a building permit, a complete list of preliminary data on items for which Shop Drawings are to be submitted. Approval of this list by the Contract

Administrator, which approval shall be in writing, shall in no way relieve DESIGN/BUILD FIRM from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

~~42.03 After the approval of the list of items required in Subsection 42.02, DESIGN/BUILD FIRM shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.~~

42.04 DESIGN/BUILD FIRM shall thoroughly review and check the Shop Drawings and each and every copy shall show DESIGN/BUILD FIRM'S approval thereon.

42.05 If the Shop Drawings show or indicate departures from the Contract requirements, DESIGN/BUILD FIRM shall make specific mention thereof in its shop drawing submittal and a separate letter. Failure to point out such departures shall not relieve DESIGN/BUILD FIRM from its responsibility to comply with the Contract Documents. Contract Administrator shall determine acceptability of change and, in considering said change, may require data, technical comparisons, cost comparisons, quality comparisons and/or calculations to determine the equality of deviations. Contract Administrator is not obligated to accept deviations.

42.06 No work called for by Shop Drawings shall be done until the said Drawings have been furnished to and accepted, in writing, by the Contract Administrator. Contract Administrator shall respond to Shop Drawings pre-approved by Consultant with objections or acceptance within ten (10) business days of receipt. Acceptance is for design intent only and shall not relieve DESIGN/BUILD FIRM and Consultant from responsibility for fit, form, function, quantity or for errors or omissions of any sort on the Shop Drawings.

42.07 No acceptance will be given to partial submittal of Shop Drawings for items which interconnect and/or are interdependent. It is DESIGN/BUILD FIRM'S responsibility to assemble the Shop Drawings for all such interconnecting and/or independent items, check them, and then make one (1) submittal to the Contract Administrator, along with DESIGN/BUILD FIRM'S comments as to compliance, noncompliance, or features requiring special attention.

42.08 If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. Catalog sheet with multiple options shall be highlighted to depict specific pertinent data including options.

42.09 DESIGN/BUILD FIRM shall submit to Contract Administrator eight (8) copies. Re-submissions of Shop Drawings shall be made in the same quantity until final acceptance is obtained.

42.10 Contract Administrator's acceptance of the Shop Drawings, as approved by DESIGN/BUILD FIRM, will be for general compliance with the Plans and Specifications, and shall not relieve DESIGN/BUILD FIRM of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the Work, nor for the furnishing of the Materials or Work required by the Contract and not indicated on the Drawings.

42.11 DESIGN/BUILD FIRM shall keep one (1) set of Shop Drawings, marked with the Contract Administrator's acceptance, at the Project site at all times.

42.12 The DESIGN/BUILD FIRM shall submit a Schedule of Values to the Contract Administrator as specified in the Technical Specifications. DESIGN/BUILD FIRM shall submit to the Contract Administrator a separate Schedule of Values for demolition, abatement, and site work thirty (30) calendar days prior to commencing such portion of the Work. The schedule will be typed on 8-1/2" x 11" white paper listing: title of Project, location, Project number, Consultant, Contractor, Contract designation, and date of submission. The schedule shall list the installed value of the component parts of the work in sufficient detail to serve as a basis for computing values for progress payments during the construction. The table of contents of the specifications shall establish the format for listing the component items. Each line item will be identified by the number and title of the respective major section of the specifications. For each line item, DESIGN/BUILD FIRM shall list the sub-values of major products or operations under the item. Each item shall include the proportion of DESIGN/BUILD FIRM'S overhead and profit. For any items for which progress payments will be requested for stored materials, the value will be broken down with:

42.12.01 The cost of materials delivered, unloaded, properly stored and safeguarded, with taxes paid; and

42.12.02 The total installed value.

ARTICLE 43 FIELD ENGINEERING

43.01 The DESIGN/BUILD FIRM shall provide and pay for field engineering services required for the Project. This work shall include the following elements:

43.01.01 Survey work required in execution of the Project.

43.01.02 Civil, structural or other professional engineering, architectural, landscape architectural, or land surveying services specified, or required to execute the DESIGN/BUILD FIRM'S construction methods.

43.02 The survey completed by DESIGN/BUILD FIRM will identify the qualified engineer or registered land surveyor, acceptable to the CITY, and he or she shall be retained by the DESIGN/BUILD FIRM at the outset of this Project.

43.03 The survey will locate and protect control points prior to starting site work, and will preserve all permanent reference points during construction.

43.03.01 No changes or relocations will be made without prior written notice to the Contract Administrator.

43.03.02 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.

43.03.03 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 state law.

43.03.04 Replacements shall be established based upon original survey control.

ARTICLE 44 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

44.01 The entire responsibility for establishing and maintaining a line and grade in the field lies with DESIGN/BUILD FIRM. DESIGN/BUILD FIRM 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, etc. encountered or installed during construction. DESIGN/BUILD FIRM 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.

44.02 DESIGN/BUILD FIRM shall maintain in a safe place at the site, one (1) record copy of the Plans and Specifications, addenda, written amendments, Change Orders and written interpretations and clarifications, in good order and annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to Contract Administrator for reference. Upon completion of the Project, these record documents, samples and Shop Drawings shall be delivered to Contract Administrator.

44.03 At the completion of the Project, the DESIGN/BUILD FIRM shall turn over to the CITY a set of reproducible drawings (Mylars) and a complete set of all drawings in the latest version of AutoCAD on Compact Disk, not compressed, which accurately reflect the "as-built" conditions of the new facilities. All changes made to the Construction Documents, either as clarifications or as changes, will be reflected in the plans. The changes shall be submitted on Mylar at least monthly 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 prior to final payments.

ARTICLE 45 SAFETY AND PROTECTION

45.01 DESIGN/BUILD FIRM shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. DESIGN/BUILD FIRM shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

45.01.01 All employees on the Project and other persons who may be affected thereby;

45.01.02 All the work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

45.01.03 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

45.02 DESIGN/BUILD FIRM shall comply with all Applicable Laws, for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. DESIGN/BUILD FIRM shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in Sections 45.01.02 and 45.01.03 above, caused directly or indirectly, in whole or in part, by DESIGN/BUILD FIRM, any Subcontractor or Consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by DESIGN/BUILD FIRM; however, DESIGN/BUILD FIRM shall not be liable for injury or damage caused by the gross negligence or willful misconduct of the CITY, its employees, consultants or its separate contractors. DESIGN/BUILD FIRM'S duties and responsibilities for the safety and protection of the Project shall continue until such time as all the Project is completed and the Contract Administrator has issued a notice to DESIGN/BUILD FIRM that the Project is acceptable except, as otherwise provided in Article 30.

45.03 DESIGN/BUILD FIRM shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be DESIGN/BUILD FIRM'S Project Representative unless otherwise designated in writing by DESIGN/BUILD FIRM to CITY.

ARTICLE 46 (This Article left intentionally blank)

ARTICLE 47 (This Article left intentionally blank)

ARTICLE 48 CLEANING UP AND REMOVAL OF EQUIPMENT

48.01 DESIGN/BUILD FIRM shall at all times keep the Project site free from accumulation of waste materials or rubbish caused by DESIGN/BUILD FIRM'S operations. At the completion of the Project, DESIGN/BUILD FIRM shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If DESIGN/BUILD FIRM fails to clean up at the completion of the Project, CITY may do so, and the cost thereof shall be charged to DESIGN/BUILD FIRM.

48.02 CITY'S Right to Clean-Up: If a dispute arises between DESIGN/BUILD FIRM and separate contractors as to responsibility for cleaning up, CITY may clean up and charge the cost thereof to the contractors responsible therefore, as the Contract Administrator shall determine to be just. This provision is solely for cleaning.

48.03 Removal of Equipment: In case of termination of this Agreement before completion for any cause whatever, DESIGN/BUILD FIRM, if notified to do so by CITY, shall promptly remove any part or all of DESIGN/BUILD FIRM'S equipment and supplies from the property of CITY, failing which CITY shall have the right to remove such equipment and supplies at the expense of DESIGN/BUILD FIRM.

ARTICLE 49 (This Article left intentionally blank)

ARTICLE 50 BONDS AND INSURANCE

DESIGN/BUILD FIRM shall furnish, or cause to be furnished, on or before fifteen (15) days after execution of this Agreement, the following:

50.01 Performance Bond and Payment Bond (Surety):

50.01.01 A performance bond and payment bond of the form and containing all the provisions attached hereto and made a part hereof. Payment and Performance bonds may be in the form of dual obligee bonds from the Contractor in the amount of the contract between the DESIGN/BUILD FIRM and the Contractor, naming the CITY and DESIGN/BUILD FIRM as dual obligees. DESIGN/BUILD FIRM shall provide payment and performance bonds in the remaining amount of the Contract Price naming the CITY as the obligee on those bonds.

50.01.02 The Bonds shall be in the amount of one hundred percent (100%) of the Contract amount guaranteeing to CITY the completion and performance of the Project covered in this Agreement as well as full payment of all suppliers, material persons, laborers, or Subcontractors employed pursuant to this Project. Such Bonds shall be with a surety company which is qualified pursuant to Section 50.03.

50.01.03 Such Bonds shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the Contract Price, or an additional bond shall be conditioned that DESIGN/BUILD FIRM will, upon notification by CITY, correct any defective or faulty work or materials which appear within one year after completion and acceptance of the Project.

-OR-

50.02 Performance and Payment Guaranty:

50.02.01 In lieu of a performance bond and payment bond, DESIGN/BUILD FIRM may furnish an alternate form of security which may be in the form of cash, money order, certified check, cashiers check or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by CITY for one year after completion and acceptance of the Project.

50.03 Qualifications of Surety:

50.03.01 A separate performance bond and payment bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

50.03.02 In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

50.03.02.01 The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the 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 methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner.

50.03.02.02 The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

Amount of Bond	Ratings	Category
500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 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

50.04 INDEMNIFICATION OF CITY

50.04.01 In consideration of twenty-five dollars (\$25.00), separately acknowledged by DESIGN/BUILD FIRM, and other valuable consideration, DESIGN/BUILD FIRM shall indemnify and save harmless CITY, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any construction activities of DESIGN/BUILD FIRM its Consultant, Contractor, or any Subcontractors, Subconsultants, agents, servants, or employees connected with the Project; or by or in consequence of any negligence of DESIGN/BUILD FIRM, its Consultant, Contractor, or any Subcontractors, Subconsultants, agents, servants, or employees (excluding gross negligence or willful misconduct of CITY), in connection with the construction activities of the DESIGN/BUILD FIRM its Consultant, Contractor or any Subcontractors, Subconsultants, agents, servants, or employees connected with the Project; or by use of any improper materials; or by or on account of any act, error or omission of DESIGN/BUILD FIRM its Consultant, Contractor, or any Subcontractor, Subconsultants, agents, servants or employees, except to the extent caused by CITY. DESIGN/BUILD FIRM agrees to indemnify and save harmless CITY against any claims or liability arising from or based upon the violation of any federal, state, CITY or city laws, bylaws, ordinances or regulations by DESIGN/BUILD FIRM, its Consultant, Contractor, Subcontractors, Subconsultants, agents, servants or employees (excluding gross negligence or willful misconduct of CITY). DESIGN/BUILD FIRM further agrees to indemnify and save harmless CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against CITY on account of any claims, fees, royalties,

or costs for any invention or patent, and from any and all suits and actions that may be brought against CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation. This consideration is separate and distinct from any other consideration received by DESIGN/BUILD FIRM.

~~50.04.02~~ DESIGN/BUILD FIRM further agrees to indemnify, save harmless and defend CITY, its agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any negligent conduct or misconduct of DESIGN/BUILD FIRM not included in Section 50.04.01 above and for which CITY, its Consultant, Contractor, Subcontractors, Subconsultants, agents, servants or employees, are alleged to be liable.

50.04.03 The indemnification provided above shall obligate DESIGN/BUILD FIRM to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at CITY'S option, any and all claims of liability and all suits and actions of every name and description that may be brought against CITY which may result from the operations and activities under this Agreement whether the construction operations be performed by DESIGN/BUILD FIRM, its Consultant, Contractor, Subcontractors, its Subconsultants, or by anyone directly or indirectly employed by any of the above.

50.04.04 The execution of this Agreement by DESIGN/BUILD FIRM shall obligate DESIGN/BUILD FIRM to comply with the foregoing indemnification provision. The obligations under this Section 50.04 shall survive termination and/or other expiration of this Agreement.

50.05 INSURANCE: The contractor 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 insurance coverage has been obtained which meets the requirements as outlined below:

- A. **Worker's Compensation Insurance** for all employees of the vendor as required by Florida Statute 440.
- B. **Commercial General Liability** on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **City of Miami Beach must be shown as an additional insured with respect to this coverage.**
- C. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. **Professional (Design Errors & Omissions) Liability** Insurance in an amount not less than \$1,000,000 with the deductible per claim, if any, not to exceed 10% of the limit of liability. The policy must be endorsed to provide coverage for up to

three (3) years after project completion. The policy is to be on a primary basis if other professional liability is carried.

- E. **Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this project. City of Miami Beach 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.

All deductibles for insurance required in this Agreement are the responsibility of the Contractor.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the vendor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

CERTIFICATE HOLDER MUST READ:

**CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE, 3rd FLOOR
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

ARTICLE 51 MISCELLANEOUS

51.01 ROYALTIES AND PATENTS: All fees, royalties, and claims for any invention, or pretended invention, or patent of any article, material, arrangement, appliance or method that may be used upon or in any manner be connected with the construction of this Project or appurtenances, are hereby included in the prices stipulated in this Agreement for said Project.

51.02 DATUM: All elevations are to refer to the North American Vertical Datum of 1988 (NAVD).

51.03 RIGHTS OF VARIOUS INTERESTS: Whenever work being done by CITY'S forces or by other contractors is contiguous to work covered by this Agreement, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the work in general harmony.

51.04 ASSIGNMENT: This Agreement shall not be assigned or subcontracted a whole without the written consent of the City, nor shall DESIGN/BUILD FIRM assign any monies due or to become due to it hereunder, without the prior written consent of the City.

51.05 NO INTEREST: Any monies not paid by CITY when claimed to be due to DESIGN/BUILD FIRM under this Agreement shall not be subject to interest. However, the provisions of CITY'S prompt payment ordinance, as such relates to timeliness of payment, and the provisions of Section 218.74(4), Florida Statutes, as such relates to the payment of interest, shall apply to valid and proper invoices.

51.06 OWNERSHIP OF DOCUMENTS: Drawing, specifications, design, models, photographs, computer AutoCAD disks, reports, surveys, and other data provided in connection with this Agreement and for which CITY has rendered payment, are and shall become and remain the property of CITY whether the Project for which they are made is executed or not. If this Agreement is terminated for any reason prior to completion of the Work, CITY may, in its discretion, use any design and documents prepared hereunder for the purpose of completing the Project, provided that CITY has paid for same; and provided further that if such termination occurs prior to completion of documents and/or through no fault of DESIGN/BUILD FIRM; DESIGN/BUILD FIRM shall have no liability for such use; and provided further that any reuse without the written verification or adaptation of DESIGN/BUILD FIRM for the specific purpose intended will be without liability or legal exposure to DESIGN/BUILD FIRM. At the completion of the Project, as part of the Project closeout, copies of all drawings on AutoCAD disks shall be transmitted from DESIGN/BUILD FIRM to the Contract Administrator within seven (7) calendar days of termination of this Agreement in addition to the record drawing. The provisions of this clause shall survive termination or expiration of this Agreement and shall thereafter remain in full force and effect. Any compensation due to DESIGN/BUILD FIRM shall be withheld until all documents are received as provided herein. Notwithstanding the foregoing, the CITY retains ownership of any and all documents provided to the DESIGN/BUILD FIRM and has full use thereof without any further payment.

51.07 RECORDS

DESIGN/BUILD FIRM shall keep such records and accounts and require its Contractor, Consultant, and Subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of three (3) years after the completion of the Project pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

51.08 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

DESIGN/BUILD FIRM shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act in the course of providing any services funded in whole or in part by CITY, including Titles I and 11 of the (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

DESIGN/BUILD FIRM'S decisions regarding the delivery of work and services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

DESIGN/BUILD FIRM shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, DESIGN/BUILD FIRM shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

DESIGN/BUILD FIRM shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

DESIGN/BUILD FIRM shall not engage in or commit any discriminatory practice in violation of the CITY'S Human Rights Ordinance, as same may be amended from time to time, in performing the Scope of Services or any part of the Scope of Services of this Agreement.

51.09 NO CONTINGENT FEE: DESIGN/BUILD FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for DESIGN/BUILD FIRM 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/BUILD FIRM, 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 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.

51.10 ALL PRIOR AGREEMENTS SUPERSEDED: AMENDMENTS: The Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements or

understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

51.11 NOTICES: Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY:
City of Miami Beach
Capital Improvement Projects Office
1700 Convention Center Drive
Miami Beach, Florida 33139
c/o CIP Director

WITH COPY TO:
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
c/o City Manager

and

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
c/o City Attorney

FOR DESIGN/BUILD FIRM:

51.12 TRUTH-IN-NEGOTIATION CERTIFICATE: Signature of this Agreement by DESIGN/BUILD FIRM shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original Contract Price and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the Contract Price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such Contract adjustments shall be made within one (1) year following completion and acceptance of the Project.

51.13 INTERPRETATION: The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

51.14 RECYCLED CONTENT: In support of the Florida Waste Management Law, DESIGN/BUILD FIRM 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.

51.15 PUBLIC ENTITY CRIMES ACT: In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a 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 as a contractor supplier, Subcontractor or consultant 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.

51.16 APPLICABLE LAW AND VENUE: This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida. BY ENTERING INTO THIS CONTRACT, DESIGN/BUILD FIRM 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/BUILD FIRM SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS AND ANY AND ALL SUBCONTRACTORS TO THE PROVISIONS OF THE CONTRACT.

51.17 PUBLIC INFORMATION: This DESIGN/BUILD FIRM shall employ or subcontract a professional Public Information Officer, approved by the Contract Administrator, to coordinate the public information component of the Work. The Public Information Officer shall be responsible for writing public involvement plans for the Project; identifying potential impacts to

the public as a result of Contract Documents; preparing and disseminating collateral materials to the public; developing strategic alliances and partnerships with the community; preparing and presenting project information for meetings; coordinating resolution of issues; maintaining a database of stakeholders; preparing information for CITY website updates; performing media responses in writing, as needed; coordinating formal and informal public meetings; and executing other duties relevant to the position, as deemed necessary by the Contract Administrator. At a minimum, the DESIGN/BUILD FIRM'S public relations, community involvement and customer service work, as it relates to the Project, shall include, at no additional cost to the CITY, the following:

1. Developing a Public Involvement Plan;
2. Developing Project-related informational material;
3. Communicating Project information and addressing concerns;
4. Preparing related media communications and informational materials;
5. Coordinating emergency communications;
6. Developing presentations and talking points;
7. Planning, organizing and attending special events and meetings ;
8. Preparing audio/video presentations;
9. Writing newsletters and feature stories; and
10. Translating collateral material developed.

IN WRFPESS WHEREOF, the parties have set their hands and seals the day and year first above written.

ATTEST:

THE CITY OF MIAMI BEACH, FLORIDA

City Clerk

Mayor

DESIGN/BUILD FIRM MUST EXECUTE THIS CONTRACT AS INDICATED BELOW.

[If incorporated sign below]

DESIGN/BUILD FIRM/

ATTEST:

(Secretary)

By:

(President)

(Corporate Seal)

(Print Name and Title)

____ day of _____, 20____

CITY REQUIRES FIVE (5) FULLY-EXECUTED CONTRACTS, FOR DISTRIBUTION.

00708. FORM CERTIFICATE OF INSURANCE

A certificate of insurance form will be attached here.

00710. FORM OF PERFORMANCE BOND

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

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: _____, awarded the _____ day of _____, 20____, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the Contract between Contractor and City for construction of _____, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays City all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that City sustains as a result of default by Contractor under the Contract; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

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

- 3.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or
- 3.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Proposer, or, if City elects, upon determination by City and Surety jointly of the lowest responsible Proposer, arrange for a contract between such Proposer and City, and make available as work

progresses (even though there should be a default or a succession of defaults under the Contract

FORM OF PERFORMANCE BOND (Continued)

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 Contractor under the Contract and any amendments thereto, less the amount properly paid by City to Contractor.

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

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 Surety's obligation under this Bond.

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

WRFPESES:

(Name of Corporation)

Secretary

By: _____
(Signature)

(CORPORATE SEAL)

(Print Name and Title)

IN THE PRESENCE OF:

INSURANCE COMPANY:

By: _____
Agent and Attorney-in-Fact

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____

00720. FORM OF PAYMENT BOND

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

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: _____, awarded the _____ day of _____, 20____, with City which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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

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

- 2.1. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish to Contractor a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- 2.3. No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.

2.4. Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

~~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.~~

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

Contractor

ATTEST:

(Name of Corporation)

(Secretary)

By:

(Signature)

(Corporate Seal)

(Print Name and Title)

____ day of _____, 20____.

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:

Agent and Attorney-in-Fact

Address:

(Street)

(City/State/Zip Code)

Telephone No.:

00721. CERTIFICATE AS TO CORPORATE PRINCIPAL

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

Secretary (on behalf of)

Corporation

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

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared _____ to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond (Performance Bond and Payment Bond) on behalf of Contractor named therein in favor of City.

Subscribed and Sworn to before me this _____ day of _____, 20____.

My commission expires:

Notary Public, State of Florida at Large

Bonded by _____

00735. PERFORMANCE AND PAYMENT GUARANTY FORM
UNCONDITIONAL LETTER OF CREDIT:

Date of Issue _____

Issuing Bank's No. _____

Beneficiary:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Applicant:

Amount: _____
in United States Funds

Expiry:
(Date)

Bid/Contract Number _____

We hereby authorize you to draw on _____
(Bank, Issuer name)

at _____ by order
(branch address)

of and for the account of _____
(contractor, applicant, customer)

up to an aggregate amount, in United States Funds, of _____ available by your
drafts at sight, accompanied by:

1. A signed statement from the City Manager or his authorized designee, that the drawing is due to default in performance of certain obligations on the part _____ (contractor, applicant, customer) agreed upon by and between the City of Miami Beach, Florida and _____ (contractor), pursuant to the _____ (applicant, customer) Bid/Contract No. _____ for _____ (name of project) and Section 255.05, Florida Statutes.

Drafts must be drawn and negotiated not later than _____
(expiration date)

Drafts must bear the clause: "Drawn under Letter of Credit No. _____
(Number), of _____ (Bank name) dated _____.

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the City of Miami Beach with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notification to the City that this

Letter of Credit will expire prior to performance of the contractor's obligations will be deemed a default.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, or amplified by reference to any documents, instrument, or agreement referred to herein or to which this Letter of Credit is referred or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon presentation to the drawee.

Obligations under this Letter of Credit shall be released one (1) year after the Final Completion of the Project by the _____.
(contractor, applicant, customer)

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (1993 revision), Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

Authorized Signature

00900. SUPPLEMENTARY SPECIFICATIONS

(Not Applicable)

f

00920. ADDITIONAL ARTICLES:

[] 1. Prevailing Wage Rate Ordinance [N/A]

This Project is not federally funded. City of Miami Beach Ordinance No, 94-2960 provides that in all non-federally funded construction contracts in excess of one million dollars to which the City of Miami Beach is a party, the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall not be less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work, as established by the Federal Register, in the City of Miami Beach, Florida. The provisions of this Ordinance shall not apply to the following projects:

- a. water, except water treatment facilities and lift stations;
- b. sewer, except sewage treatment facilities and lift stations;
- c. storm drainage;
- d. road construction, except bridges or structures requiring pilings; and
- e. beautification projects, which may include resurfacing new curbs, gutters, pavers, sidewalks, landscaping, new lighting, bus shelters, bus benches and signage.

[*NOTE: INSERT IF APPLICABLE]

[] 2. Federal Grant Projects: [N/A]

- 2.1. By virtue of the fact that the funding of this Project will be delivered in full or in part from the United States government through _____, federal assurances must follow the grant application in addition to any and all supervening assurances set forth in Rules and Regulations published in Federal Register or CFR.
- 2.2. Clauses, terms or conditions required by federal grantor agency are hereby attached and made a part of this Project Manual.00922.

00923. STATEMENT OF COMPLIANCE
(DAVIS BACON ACT)

No. _____

Contract No. _____

Project Title _____

The undersigned Contractor hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by the Davis Bacon Act and the applicable conditions of the Contract.

Dated _____, 20__

 Contractor

By: _____
 (Signature)

By: _____
 (Print Name and Title)

STATE OF)
) SS
 COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WRFPESS my hand and official seal, this _____ day of _____, 20__.

(NOTARY SEAL)

 (Signature of person taking acknowledgment)

 (Name of officer taking acknowledgment)
 (typed, printed or stamped)

 (Title or rank)

 (Serial number, if any)

My commission expires:

00925. CERTIFICATE OF SUBSTANTIAL COMPLETION:

PROJECT:
(name, address)

Consultant:

BID/CONTRACT NUMBER:

TO (City):

Contractor :

CONTRACT FOR:

NOTICE TO PROCEED DATE:

DATE OF ISSUANCE:

PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

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

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or portion thereof designated by City is the date certified by Consultant when all conditions and requirements of permits and regulatory agencies have been satisfied and the Work, is sufficiently complete in accordance with the Contract Documents, so the Project is available for beneficial occupancy by City. A Certificate of Occupancy must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion.

A list of items to be completed or corrected, prepared by Consultant and approved by City, is attached hereto. The failure to include any items on such list does not alter the

responsibility of Contractor to complete all work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed in writing.

Consultant _____ BY _____ DATE _____

In accordance with Section 2.2 of the Contract, Contractor will complete or correct the work on the list of items attached hereto within _____ from the above Date of Substantial Completion.

Consultant _____ BY _____ DATE _____

City, through the Contract Administrator, accepts the Work or portion thereof designated by City as substantially complete and will assume full possession thereof at _____ (time) on _____ (date).

City of Miami Beach, Florida _____
By Contract Administrator _____ Date _____

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

00926. FINAL CERTIFICATE OF PAYMENT:

PROJECT:
(name, address)

Consultant:

BID/CONTRACT NUMBER:

TO (City):

Contractor:

CONTRACT FOR:

NOTICE TO PROCEED DATE:

DATE OF ISSUANCE:

All conditions or requirements of any permits or regulatory agencies have been satisfied. The documents required by Section 5.2 of the Contract, and the final bill of materials, if required, 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 provision of the Contract Documents and is accepted under the terms and conditions thereof.

Consultant BY _____ DATE _____

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 _____

00930. FORM OF FINAL RECEIPT:

[The following form will be used to show receipt of final payment for this Contract.]

FINAL RECEIPT FOR CONTRACT NO. _____

Received this _____ day of _____, 20____, from City of Miami Beach, Florida, the sum of _____ Dollars (\$_____) as full and final payment to Contractor for all work and materials for the Project described as:

This sum includes full and final payment for all extra work and material and all incidentals.

Contractor hereby indemnifies and releases City from all liens and claims whatsoever arising out of the Contract and Project.

Contractor hereby certifies that all persons doing work upon or furnishing materials or supplies for the Project have been paid in full. In lieu of this certification regarding payment for work, materials and supplies, Contractor may submit a consent of surety to final payment in a form satisfactory to City.

Contractor further certifies that all taxes imposed by Chapter 212, Florida Statutes (Sales and Use Tax Act), as amended, have been paid and discharged.

[If incorporated sign below.]

Contractor

ATTEST:

(Name of Corporation)

(Secretary)

By: _____
(Signature)

(Corporate Seal)

(Print Name and Title)

incorporated sign below.]

____ day of _____, 20____ [If not

Contractor

WRFPESES:

By: _____
(Name of Firm)
(Signature)

(Print Name and Title)

____ day of _____, 20____.