RESOLUTION NO. 2014-R-74

A RESOLUTION OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, RATIFYING THE EXECUTION OF THE ATTACHED AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND ROADWAY CONSTRUCTION, LLC, PURSUANT TO RESOLUTION NO. 2014-R-56, FOR THE ENGINEERING, CONSTRUCTION AND COMMISSION OF A FORCE MAIN AT A COST NOT TO EXCEED THREE HUNDRED FORTY-NINE THOUSAND FOUR HUNDRED SIXTY-EIGHT DOLLARS AND FORTY-FOUR CENTS ($349,468.44), IN ACCORDANCE WITH INVITATION FOR BID NO. 33-13-14 NORTHWEST (NW) 2ND AVENUE - FORCE MAIN IMPROVEMENT PROJECT; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City") is responsible for the daily operation of the force main infrastructure to ensure, among other things, that untreated sewage does not back up into the water supply, posing a serious public health risk; and

WHEREAS, on May 2, 2014, the City advertised ***Invitation For Bid No. 33-13-14 Northwest (NW) 2nd Avenue - Force Main Improvement Project*** ("IFB") to obtain the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary to engineer, procure, construct, deliver, erect, commission, test and have permitted the Project, in accordance with the terms, conditions, and specifications contained in the Contract Documents ("Project"); and

WHEREAS, in response to the IFB, Roadway Construction, LLC ("Contractor"), timely submitted its sealed bid ("Bid") and was evaluated by City administration as the lowest responsive-responsible bidder whose Bid, qualifications and references demonstrated to be the most advantageous to the City in the procurement of the Project; and

WHEREAS, on July 8, 2014, the Vice Mayor as Acting Mayor and City Council adopted Resolution No. 2014-R-56, authorizing the City Manager, City Attorney and City Clerk to take all necessary action and to execute all documents affecting the health, safety and welfare of the City during the City Council's recess from July 9, 2014 through September 8, 2014, subject to ratification; and

WHEREAS, on August 11, 2014, the City Manager executed the attached Agreement with Contractor for the engineering, construction and commission of a force main for the proper discharge and operation of water and sewer piping services required for area; and

WHEREAS, the Vice Mayor as Acting Mayor and City Council, hereby find the ratification of the attached executed Agreement pursuant to Resolution No. 2014-R-56, is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Ratification of Force Main Improvement Project Agreement.** The Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, hereby ratify the execution of the attached agreement between the City of North Miami and Roadway Construction, LLC, pursuant to Resolution No. 2014-R-56, for the engineering, construction and commission of a force main at a cost not to exceed Three Hundred Forty-Nine Thousand Four Hundred Sixty-Eight Dollars and Forty-Four Cents ($349,468.44), in accordance with *Invitation for Bid No. 33-13-14 Northwest (NW) 2nd Avenue - Force Main Improvement Project.*

Section 2. **Effective Date.** This Resolution shall become immediately effective upon adoption.

PASSED AND ADOPTED by a 4-0 vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, this 9th day of September, 2014.

PHILIPPE BIEN-AIME
VICE MAYOR AS ACTING MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Galvin

Seconded by: Bien-Aime

Vote:

Vice Mayor as Acting Mayor Philippe Bien-Aime	X (Yes)	____ (No)
Councilperson Scott Galvin	X (Yes)	____ (No)
Councilperson Carol Keys, Esq.	X (Yes)	____ (No)
Councilperson Marie Erlande Steril	X (Yes)	____ (No)

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CITY OF NORTH MIAMI
NORTHWEST (NW) 2ND AVENUE
FORCE MAIN IMPROVEMENT PROJECT AGREEMENT
IFB No. 33-13-14

THIS FORCE MAIN IMPROVEMENT PROJECT AGREEMENT ("Agreement") is made and entered into this _____ day of 8/11/2014, 2014, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Roadway Construction, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal business office at 6750 North Andrews Avenue, Suite 200, Fort Lauderdale, FL 33309 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City is responsible for the daily operation of the force main infrastructure to ensure, among other things, that untreated sewage does not back up into the water supply, posing a serious public health risk; and

WHEREAS, from time to time, the City is required to install and maintain sections of the force main infrastructure for the proper discharge and operation of water and sewer piping functions throughout the City water service area; and

WHEREAS, on May 2, 2014, the City advertised ***Invitation For Bid No. 33-13-14 Northwest (NW) 2nd Avenue - Force Main Improvement Project*** ("IFB") to obtain the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary to engineer, procure, construct, deliver, erect, commission, test and have permitted the Project, in accordance with the terms, conditions, and specifications contained in the Contract Documents; and

WHEREAS, in response to the IFB, Contractor timely submitted its Bid and was evaluated by City administration as the lowest responsive-responsible bidder whose Bid, qualifications and references demonstrated to be the most advantageous to the City in the procurement of the Project; and

WHEREAS, the Contractor has expressed the capability, willingness and expertise to perform the Project pursuant to the Contract Documents; and

WHEREAS, the City is desirous of implementing the Work for the expeditious use and public benefit presented by the important function of the Project; and

WHEREAS, on July 8, 2014, the Vice Mayor as acting Mayor and City Council adopted Resolution No. 2014-R-56, authorizing the City Manager, City Attorney and City Clerk to take all necessary action and to execute all documents affecting the health, safety and welfare of the City during the City Council's recess from July 9, 2014 through September 8, 2014, subject to ratification; and

WHEREAS, the City Manager has determined that it is in the best interest of the City to enter into this Agreement with Contractor for the provision of prompt, efficient and cost effective installation of Project, to prevent potential interruptions in the official service operations of the City Public Works Department.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - DEFINITIONS

2.1 The following words, terms and phrases, when used in this Agreement, shall have the following meanings, except when it is clear from the context that another meaning is intended:

Agreement – this written Agreement between the City and Contractor covering the Work to be performed for completion of the Project, including the Contract Documents that are attached to or incorporated herein.

Change Order – a written document signed by the Parties authorizing an addition, deletion or revision to the Work performed on the Project pursuant to this Agreement and within the general scope of work; or an adjustment to the Time Schedule or compensation, issued on or after the effective date of the Agreement.

City's Project Budget – funds budgeted by the City for the completion of the Project. The City's Project Budget is not to exceed Three Hundred Forty Nine Thousand Four Hundred Sixty Eight Dollars and forty-four cents ($349,468.44). This amount is the equivalent of the Guaranteed Maximum Price.

Contract Documents – shall consist of preliminary and final Drawings, plans and specifications; the IFB and all corresponding amendments, addendums, clarifications and inquiries posted in writing by the City; *Florida Department of Environmental Protection State Revolving Fund Program Supplementary Conditions for Formally Advertised Construction Procurement*; Miami-Dade County Department of Regulatory and Economic Resources Notice of Permit Issuance; U.S, Environmental Protection Agency Application of Buy American Requirements to Fiscal Year 2014 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements; City Force Main Rehabilitation Project Bid Set; Contractor's response to the IFB ("Bid"); City Solicitation Tabulation Sheet, dated June 3, 2014; City Recommendation of Award Letter, dated July 21, 2014; Resolution No. 2014-R-56, passed and adopted on July 8, 2014, by the Vice Mayor as acting Mayor and City Council; Notice to Proceed; Certificates of Insurance; Payment and Performance Bonds; copies of current licenses; Project manuals and specifications (if any); any additional documents which are required to be submitted under this Agreement; and all amendments, modifications and supplements, and Change Orders, issued on or after the effective date of this Agreement. Contract Documents are hereby incorporated into and

made part of this Agreement. Nothing contained in the Contract Documents shall be construed to create a contractual relationship of any kind: 1) between the City and a Subcontractor or supplier, or 2) between any persons or entities other than the City and Contractor.

Day – shall mean a consecutive "calendar day," unless specifically designated otherwise.

Drawings – are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, specifications and dimensions of the Project generally including plans, engineering depictions, elevations, as-built drawings, sections, details, schedules, diagrams and construction documents.

Guaranteed Maximum Price ("GMP") – maximum price guaranteed to the City by the Contractor for the entire cost of the Project as measured by the City's Project Budget.

Notice to Proceed – a written notice given by the City to the Contractor fixing the date on which the provision of Work shall commence on the Project, and may set forth the date of Substantial Completion and final completion of the Project.

Permitting Authority – means (in its singular or plural forms) the City of North Miami, Miami-Dade County, the State of Florida, and/or any other governmental body having jurisdiction over the Project.

Project – means the total sum of all Services/Work to be performed under this Agreement for the completion of the *Northwest (NW) 2nd Avenue - Force Main Improvement Project*, in accordance with the terms, conditions, and specifications contained in the Contract Documents, and including but not limited to, planning, engineering, permitting, construction services, and final inspections and permits necessary to furnish and install a code compliant, functional force main on Northwest 2nd Avenue.

Project Manager – a designated representative of the City fully acquainted with the Project and with authority to render decisions necessary to expedite the completion of the Project. The Project Manager will provide direct interface with the Contractor, with respect to the City's responsibilities and Contractor's obligations hereunder.

Services or *Work* – means the act of providing the labor, supervision, materials, equipment, tools, machinery, expertise, and other services necessary to engineer, procure, construct, deliver, erect, commission, test and have permitted approvals of the Project, and all services required by the Contract Documents, including those things reasonably inferable from the Contract Documents necessary to complete a code compliant Project, and all other labor, materials, equipment and services provided or to be provided by the Contractor or Subcontractor to fulfill their obligations to the City under this Agreement.

Subcontractor – a party, person or entity retained by Contractor to provide labor, materials, equipment, services or supplies, necessary to complete specific Services/Work or portion of

the Project. Subcontractor shall include all sub-Subcontractors, retained directly or indirectly by Contractor.

Substantial Completion – is that stage in the progress of the Work when the Project is sufficiently complete in accordance with the Contract Documents, the City can utilize the Project for its intended purpose.

Time Schedule or *Term of Agreement* – means the period of time not to exceed one hundred fifty (150) Days following the City's issuance of its Notice to Proceed to Contractor, which shall constitute the guaranteed maximum time upon which Contractor is to complete the Project in accordance with the terms, conditions and specifications contained in this Agreement, unless terminated earlier by the City.

ARTICLE 3 – INTENT OF AGREEMENT

3.1 Execution of this Agreement is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Project, the worksite, the specific conditions under which the Services are to be performed, and all matters which may in any way affect the Work or its performance. The Contractor further represents that, as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

3.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the intended results.

3.3 In the event of conflicting provisions in the specifications or the Drawings, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; and the more expensive item will take precedence over the less expensive. On all Drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the Contractor's own risk.

3.4 Organization of the specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

3.6 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

3.6.1 The *Florida Department of Environmental Protection State Revolving Fund Program Supplementary Conditions for Formally Advertised Construction Procurement.*

3.6.2 City Force Main Rehabilitation Project Bid Set.

3.6.3 Miami-Dade County Department of Regulatory and Economic Resources Notice of Permit Issuance

3.6.4 This Agreement.

3.6.5 Specific written direction from the City Manager or City Manager's designee.

3.7 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the IFB prior to Contractor submitting its Bid or the right to clarify same shall be waived.

ARTICLE 4 – TERM OF AGREEMENT

4.1 Subject to authorized adjustments, the Term of Agreement shall be the period of time not to exceed one hundred fifty (150) Days following the City's issuance of its Notice to Proceed to Contractor, which shall constitute the guaranteed time upon which Contractor is to complete the Project in accordance with the terms, conditions and specifications contained in this Agreement, unless terminated earlier by the City.

4.2 Contractor agrees that the Work shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed Time Schedule. Failure to achieve timely final Project completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of the Project by the Contractor and the City's acceptance of the Project.

4.3 Minor adjustments to the time for performance which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the Time Schedule for completion of Work will be modified accordingly.

4.4 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Work or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

4.5 Contractor shall be required to show just cause for delays or for additional time requests. Failure to comply with this subparagraph shall be sufficient grounds for the City to find the Contractor in substantial default and certify that sufficient cause exists to terminate the Agreement or to withhold payment to the Contractor until an updated Time Schedule, acceptable to the City, is obtained. Such failure shall not be cause for additional time.

4.6 In the event the Term of Agreement date is extended, regardless of whether delay is caused by any act or neglect of the City or Force-Majeure Event, or is attributable to the City, the Contractor's sole and exclusive remedy is an equal extension of time.

ARTICLE 5 – GUARANTEED MAXIMUM PRICE/PROJECT BUDGET

5.1 Contractor shall be paid an amount not to exceed Three Hundred Forty Nine Thousand Four Hundred Sixty Eight Dollars and forty-four cents ($349,468.44) as full compensation for the Project, pursuant to Contract Documents. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) Days written notice to Contractor.

5.2 The Contractor shall not withhold payments to Subcontractors if such payments have been made to the Contractor. Before issuance of a final payment, Subcontractors shall submit satisfactory evidence, releases, or waivers that all payrolls, material and supply bills, and other indebtedness connected with the Project have been paid or otherwise satisfied.

5.3 The acceptance of the final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled prior to the time of final payment.

5.4 The making of final payment shall not constitute a waiver of any claims by the City and shall not relieve the Contractor of the responsibility for negligence, defects of manufacture, faulty materials, or workmanship to the extent within the period provided by law and by the warranties provided herein. Upon written notice by the City, the Contractor shall remedy any defects due thereto and pay all expenses for any damages to other Work resulting therefrom.

ARTICLE 6 – CONTRACTOR'S SCOPE OF WORK

6.1 Contractor hereby agrees that it will exert every reasonable and diligent effort to ensure that all labor employed by Contractor, including that of its Subcontractors for Work on the Project, shall be in accordance with the Contract Documents and shall incorporate the requirements set forth by applicable rules, regulations, codes and statutes of Permitting Authority.

6.2 Contractor covenants to furnish its best skill and judgment in furthering the interests of the City. Contractor agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the City.

6.3 Contractor shall provide pre-installation Work which includes, but shall not be limited to, the following:

6.3.1 Provide or review Project requirements, on-site and off-site development, survey requirements, deed and municipal requirements / restrictions, preliminary budget and make recommendations for revisions.

6.3.2 Prepare Project Time Schedule which clearly illustrates critical path elements, responsibilities of the City, Contractor, architect-engineer (if any), Permitting Authorities, and outside agencies, including periodic updates throughout the duration of the Agreement.

6.3.3 Provide Project delivery options for the timely completion of all phases for efficient scheduling, cost control, and financial resource management.

6.3.4 Utilize an information and reporting system acceptable to the City to provide the Project Manager with accurate and current cost control, Work status, including but not limited to a Work narrative, Work completed and anticipated, and the Time Schedule of the Project at all times.

6.3.5 Provide procedures to ensure maximum local business and workforce preference requirements are realized in the production of the Project.

6.3.6 Provide value engineering recommendations to maximize the City's capital outlay and operations resources.

6.3.7 Review all design documents for constructability and compliance with applicable laws, rules, codes, design standards and ordinances.

6.3.8 Update cost estimates and make recommendations to keep the Project within the GMP amount.

6.3.9 Update the Project Time Schedule and make recommendations for recovery of lost time and shortening the Term of Agreement.

6.3.10 Secure and monitor the review and approval process of Permitting Authorities.

6.3.11 Maintain a list of Subcontractors, including local business and workforce participation.

6.3.12 Hold subcontracts and assure bonding for Subcontractors.

6.4 The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the Work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and available to the City on a monthly basis.

6.5 Contractor shall prepare written reports as described hereunder. The Project report shall include, but is not limited to the following reports:

6.5.1 A monthly summary which provides an overview of current issues, pending decisions, future developments, expected achievements, and any problems or delays, including code violations found by Permitting Authorities.

6.5.2 A monthly cost narrative describing the current cost estimate status of the Project or phase.

6.5.3 A monthly narrative summarizing the current status of the overall Time Schedule, as necessary to compare planned performance with actual performance.

6.5.4 Contractor shall provide sufficient timely data and detail to permit the Project Manager to control and adjust the Project requirements, needs, materials, equipment and systems and site elements so that the installation will be completed at a cost which, together with all other Project costs, will not exceed the Guaranteed Maximum Price.

6.6 Contractor shall become thoroughly familiar with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. Contractor shall submit to the City, and Permitting Authorities such comments as may be appropriate concerning construction feasibility and practicality.

6.7 Contractor shall be responsible for technically deficient Drawings, designs, reports, or studies due to Contractor's errors and omissions, and shall promptly correct or replace all such deficient Work without cost to City. The Contractor shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

6.8 The City disclaims any warranty that the Drawings, plans and specifications for the Project are accurate, practical, consistent and/or constructible.

6.9 Contractor shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of local labor and materials, community relations and any other factors pertinent to saving time and cost, considering fully the goal of increased local business and workforce participation.

6.10 Contractor shall take such measures as appropriate to provide that construction requirements will be covered in the separate subcontracts performed without duplication or overlap, sequenced to maintain completion of all Work on schedule.

6.11 Work which the Contractor shall provide includes but is not limited to, the following:

6.11.1 Develop and implement procedures to monitor, record, review and approve all submittals, Drawings, Change Orders, pay requests and field orders for budget and schedule impact and compliance with the Contract Documents.

6.11.2 Provide inspection of all Work, materials and tests prior to Substantial Completion and final inspections by appropriate certified inspectors and Permitting Authorities.

6.11.3 Ensure the replacement of nonconforming or substandard Work on the Project.

6.11.4 Assist the City in the warranty inspections and completion of all required warranty Work generated by the inspections.

6.12 Contractor shall supervise and direct the Work, using the highest quality established by industry standards. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

6.13 Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, Subcontractors and their agents and any employees and other persons performing portions of the Work under contract with the Contractor.

6.14 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the architect-engineer, or by tests, inspections or approvals required or performed by persons other than the Contractor. The Contractor shall be responsible for inspections or portions or Work already performed under this Agreement (if any) and to determine that such portions are in proper condition.

6.15 Contractor shall inspect all materials delivered to the site and shall reject any materials that do not conform to the Contract Documents.

6.16 Contractor shall be responsible for and coordinate any and all inspections required by the Permitting Authorities having jurisdiction over the Project. Failure to obtain any required approval because of failure of the Contractor to conform to the Contract Documents shall not extend the Term of Agreement, and the Contractor shall not be entitled to an increase in the GMP.

6.17 Contractor shall employ sufficient, competent personnel who shall be in attendance at the Project site during the performance of the Work.

6.18 Contractor shall secure all necessary permits from the Permitting Authority, the cost of which shall be obtained by the Contractor and included in the Guaranteed Maximum Price.

6.19 Contractor shall arrange for all worksite facilities necessary to enable the Contractor, Subcontractors, and Project Manager to perform their respective duties in the management, conduct, inspection, and supervision of Work.

6.20 Contractor shall provide Project administrative functions including but not limited to the following:

6.20.1 Develop and implement a procedure for review, processing, and payment of invoices by Subcontractors for progress and final payments.

6.20.2 Determine when the Work or designated portions thereof are ready for the Substantial Completion inspection.

6.20.3 Monitor provide notice to the City that the Project is ready for final inspection, and secure and transmit to the Project Manager, all required guarantees, affidavits, releases, Bonds and waivers, manuals, record Drawings, and maintenance books as are applicable.

6.20.4 Keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the City or its authorized representative during performance of the Work and until three (3) years after final payment.

6.20.5 Contractor shall be the single point of interface with all Subcontractors for the City and all of its agents and representatives.

6.21 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

6.22 Contractor shall develop and maintain a program to assure quality control of the Work. Contractor shall supervise the Work of all Subcontractors providing instructions to each when their Work does not conform to the requirements of the Contract Documents and shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. The City shall be the final judge of performance and acceptability.

6.23 Contractor shall enforce strict discipline and good order among the Contractor's employees and Subcontractors, while on the worksite. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

6.24 Contractor shall perform the Work in accordance with the Contract Documents. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the City, it shall assume full responsibility for such Work, and shall bear the attributable costs.

6.25 All inspections shall be made for conformance with the applicable building codes, compliance with Drawings and specifications, and quality. Costs for any re-inspections of Work found defective and subsequently repaired shall be borne by the Contractor.

6.26 Contractor warrants and accepts that any and all repair work required at any phase of the Project, irrespective of the cause, shall be deemed the responsibility of the Contractor at no additional cost to the City.

6.27 Finally, the Contractor accepts, understands and agrees that these provisions of the Agreement constitute a material inducement for the City to enter into this Agreement and that the City has indeed relied on these particular provisions in making its decision to enter into this Agreement with Contractor.

ARTICLE 7 – CONTRACTOR RESPONSIBILITIES

7.1 Contractor shall confine operations at the worksite to areas permitted by law, ordinances, permits and Contract Documents, and shall not unreasonably encumber the worksite with personnel, materials or equipment.

7.2 Contractor shall keep the worksite premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. At completion, the Contractor shall remove from the worksite all waste materials, debris, rubbish, tools, equipment, machinery and surplus materials. Failure to clean worksite as provided herein may cause the City to do so, and the cost thereof shall be charged to the Guaranteed Maximum Price.

ARTICLE 8 – CITY'S RESPONSIBILITY

8.1 The City shall provide information regarding its requirements for the Project, with reasonable promptness to avoid delay in the orderly progress of the Work.

8.2 The City shall designate a Project Manager who shall be fully acquainted with the Project and shall define the lines of City authority to approve Change Orders and render decisions promptly and furnish information expeditiously.

8.3 The City, unless otherwise agreed, shall furnish the site of the Project, all surveys describing the physical characteristics, soil reports, subsurface investigations, legal limitations, known utility locations, covenants, deed restrictions and a legal description if required for the Project.

8.4 If the City becomes aware of any fault or defect in a phase of the Project or non-conformance with the Drawings and specifications, the City shall give prompt written notice thereof to the Contractor.

8.5 The Project Manager shall communicate with Subcontractors or suppliers only through the Contractor, while such method of communication is effective in maintaining the Project's Time Schedule and quality standards.

8.6 The City expects the Contractor to recognize, coordinate and comply with the Permitting Authorities.

8.7 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the

requirements of the Contract Documents, Florida Building Code, and State of Florida, Miami-Dade County and City codes, rules and regulations, then the City Manager, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the City to stop Work on the Project shall not give rise to a duty on the part of the City, to the benefit of the Contractor, Subcontractors, or any other person or entity.

ARTICLE 9 – SUBCONTRACTORS

9.1 By an appropriate written agreement, the Contractor shall require that each Subcontractor, to the extent of the Work to be performed by the Subcontractor, be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor by these Contract Documents, assumes towards the City. Said agreements shall preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights.

9.2 The Contractor shall make available to each proposed Subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the Subcontractor will be bound to.

9.3 On subcontracts where the amount exceeds One Hundred Thousand Dollars ($100,000.00), the Contractor shall require Subcontractors to provide a performance Bond and a labor and material payment Bond for One Hundred percent (100%) of the subcontract value, for each of the two Bonds. The Bonds shall be issued from a Surety company authorized to do business in the State of Florida by the Department of Insurance. If the Contractor wishes to award subcontracts to Subcontractors unable to supply this bonding, Contractor shall request special authorization by the City to do so. Upon providing justifiable background information, such authorization shall not be unreasonably withheld.

9.4 Subcontractor must submit experience, bonding capability and financial condition to Contractor. The Subcontractors experience, bonding capability and financial condition must demonstrate that adequate assets and equipment are available to properly perform the subcontract.

9.5 Subcontractors' exclusive remedy for delays in the performance of the Agreement caused by Force Majeure events or by delays claimed to be caused by the City, or attributable to the City, or on claims based on breach of contract or negligence, shall be an extension of its subcontract time.

9.6 Contractor shall be responsible to the City for the acts and omissions of its employees, agents and Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the Contractor.

ARTICLE 10 - INDEPENDENT CONTRACTOR

10.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the

City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of Contractor rendering Work to the City under this Agreement.

ARTICLE 11 - CHANGES IN THE WORK

11.1 The City, without invalidating this Agreement, may order changes in the work within the general scope of this Agreement consisting of additions, deletions or other revisions. The GMP and the Substantial Completion date may be adjusted accordingly upon executed amendments. All other minor changes in the Project shall be authorized by Change Order, subject to any limitations in the Contract Documents.

11.2 Changes in the Project shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order. Before any Work is begun on any Change Order, a written authorization from the City must be issued and then forward the same to the Architect-Engineer for its review.

ARTICLE 12 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

12.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement.

12.2 Contractor shall provide a safety program for the Project to meet U.S. Department of Labor Occupational Safety and Health Administration (OSHA) requirements and monitor Subcontractors for compliance in the performance of Work in accordance with the best acceptable safety practice.

12.3 Contractor shall schedule the services of independent testing laboratories required by Permitting Authorities to provide the necessary testing of materials to ensure conformance with environmental regulations.

12.4 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

12.4.1 Workers on the Project and all other persons who may be affected thereby.

12.4.2 Materials and equipment to be incorporated in the Project, whether in storage on or off the worksite, under care, custody or control of the Contractor or Subcontractors;

12.4.3 Other public or private property at the worksite and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;

12.4.4 All alcoholic beverages, smoking and drugs shall be prohibited from the Project worksite.

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12.5 All workers on the Project site shall wear appropriate and uniform-like attire and shall have visible identification as being employees of the Contractor or Subcontractor.

12.6 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, their protection from damage, injury or loss in accordance with the Safety and Health Regulations for Construction, 29 C.F.R. § 1926 (2010).

12.7 Contractor shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.

12.8 When the removal of asbestos, PCB's, petroleum, radioactive material or any other toxic or hazardous material, in whatever form or states, is necessary for the execution of the Work, the Contractor shall immediately notify the City and exercise the utmost care to carry on such activities by and under the supervision of properly qualified personnel. Contractor covenants that any such removal must be performed by a Florida licensed toxic or hazardous materials abatement contractor in accordance with all applicable federal, state, and local rules and regulations.

12.9 Contractor shall promptly remedy any damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by either of them and whose acts are not attributable to the fault or negligence of the Contractor.

12.10 Contractor shall designate a responsible person at the worksite whose duty shall be prevention of accidents or injury to property or person.

12.11 Contractor shall not load or permit any part of the worksite to be so loaded or congested, so as to endanger the site, any property or produce a decrease in safety.

12.12 Contractor shall promptly report to the City and all accidents arising out of or in connection with the Work.

ARTICLE 13 – TESTS AND INSPECTIONS

13.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate Permitting Authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so as to allow

him the opportunity to observe such procedures, if needed. The Contractor shall support and cooperate with all tests and inspections.

13.2 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures.

13.3 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the City.

13.4 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.5 It is understood and agreed by the Contractor that the North Miami Building Department and its inspectors are professionals who are dedicated to providing efficient and courteous service to all residents, professionals, contractors and the public at large through plans processing, inspections and building maintenance, which ensures the protection of the citizens and enhances the quality of life within the City. For the purposes of this Project, the Building Department is not a surrogate of the City. All decisions by the Building Department as to whether some aspect of the Project is or is not in compliance with the Florida Building Code, Florida Fire Prevention Code and/or any other applicable codes, regulations, laws and ordinances are independent of and not deemed to be an act or a decision by the City. The Contractor agrees that it shall be the responsibility of the Contractor to ensure compliance with all applicable codes, regulations, law and ordinances. The Contractor warrants and accepts that any and all work necessitated by inspections which is not prescribed in the plans, specifications or Drawings, but necessitated to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures and/or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the City.

ARTICLE 14 – CORRECTION OF WORK

14.1 The Contractor shall promptly correct Work rejected by the City or Permitting Authorities or failing to conform to the requirements of the Contract Documents, whether observed before or after the completion of the Project. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections.

14.2 If, within one (1) year after the date of completion of the Project, or after the date for commencement of warranties and guarantees established under by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition.

14.3 Contractor shall remove from the worksite and then correct any portions of the Work which are not in accordance with the requirements of the Contract Documents.

14.4 Contractor shall bear the cost of correcting destroyed or damaged portions of the Project, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

14.5 If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 15 - CONFLICTS OF INTEREST

15.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

15.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 16 - TERMINATION OF AGREEMENT

16.1 The City reserves the right, in its best interests, to cancel this Agreement by giving written notice to Contractor thirty (30) Days prior to the effective date of such cancellation. The City shall reimburse the Contractor for any unpaid cost of the Project which is due to Contractor. In the event of such termination of Agreement the City shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the City may require.

ARTICLE 17 - NOTICES

17.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor:

Roadway Construction, LLC
Attn: Silvio Rubi, Manager
6750 N. Andrews Avenue, Suite 200
Fort Lauderdale, FL 33309
Phone: (305) 200-7873
Fax: (954) 417-3677

DocuSign Envelope ID: 76CE15BF-9F87-4B84-8C60-4DE44EDEFDFC

Email: silvio@roadway-construction.co

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

17.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

17.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 18 - INDEMNIFICATION

18.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, Subcontractors, employees and managers in the performance of Work under this Agreement.

18.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, Subcontractors, suppliers, or other persons directly or indirectly employed by its Subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

18.3 The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment's or discharge of such obligations.

18.4 If any Subcontractor, supplier, laborer, or materialmen of Contractor or any other person directly or indirectly acting for or through Contractor files or attempts to file a mechanic's or construction lien against the real property on which the Work is performed or any part or against any personal property or improvements or make a claim against any monies due or to become due from the City to Contractor or from Contractor to a Subcontractor, for or on account of any Work, labor, construction services, material, equipment, or other items furnished in connection with the Work, Contractor agrees to satisfy, remove, or discharge such lien or claim at its own expense by

bond, payment, or otherwise within ten (10) Days of the filing or from receipt of written notice from the City.

18.5 Contractor has visited the worksite and is familiar with the local conditions under which the Work are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

18.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 19 - WARRANTY

19.1 The Contractor warrants to the City that all materials and equipment included in the Project will be new except where indicated otherwise in the Contract Documents, and that such materials and equipment will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. The Contractor further agrees to correct all Work found by the City to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of completion or for such longer periods of time as may be set forth in specific warranties contained in the specifications. The Contractor shall collect and deliver to the City any specific written warranties given by others as required by the Contract Documents.

19.2 If, within one (1) year after the date of final completion or such longer period of time as may be prescribed by laws or regulations, or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, whether observed before or after acceptance by City, Contractor shall promptly, without cost to City, either correct such defective Work, or, if it has been rejected by City, remove it from the site and replace it with non-defective Work that is satisfactorily correct to the City. If Contractor does not promptly comply with the terms of such instructions, the City may have the defective Work corrected and all direct, indirect and consequential costs of such removal and replacement, including but not limited to fees and charges of engineers, attorneys and other professionals, shall be paid by Contractor.

19.3 If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the City all monies that the latter may be compelled to pay in discharging such liens or claims, including all costs and reasonable Attorney's fees. Any Subcontractor may seek relief from the surety and Contractor under Section 255.05, Florida Statutes.

19.4 In addition, the Contractor represents and warrants the following to the City, as an inducement to the City to enter into this Agreement, which representations and warranties shall survive the execution of the Agreement, final completion of the Project and final payment hereof:

> 19.4.1 Contractor shall furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform their obligations under the Contract Documents, and shall have sufficient experience and competence to do so;

19.4.2 Contractor is authorized to do business in the State of Florida and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Contractor and the Project; and

19.4.3 The persons executing this Agreement, on behalf of the Contractor, are properly authorized to do so.

19.5 Contractor warrants that any and all 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 by the Contractor at its own cost, whether or not specifically called for.

19.6 Contractor warrants and accepts that any and all Work, materials, services or equipment necessitated by the inspections of City and/or Miami-Dade County agencies, or other regulatory agencies as are applicable, to bring the Project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the City.

ARTICLE 20 - INSURANCE

20.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all minimum required coverage pursuant to Contract Documents, and provide that the City is an additional named insured, with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Work under this Agreement until after Contractor has obtained all of the minimum insurance prescribed in the Contract Documents and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

20.2 Contractor shall not permit any Subcontractor to begin Work until after similar minimum insurance to cover Subcontractor has been obtained and approved.

20.3 In the event the insurance certificate provided by Contractor or Subcontractor indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) Days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Work required by this Agreement unless all required insurance coverage remains in full force and effect.

20.4 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 21 - PERFORMANCE AND PAYMENT BONDS

21.1 The Contractor is required to furnish to the City a Performance Bond and Payment Bond, each in the amount of One Hundred percent (100%) of the total Project value ("Bonds"). Such

Bonds may be in the following form: 1) a Cashier's Check, made payable to the City of North Miami; 2) Bonds written by a surety company authorized to do business in the State of Florida, in accordance with Section 255.05, Florida Statutes; or 3) an Irrevocable Letter of Credit. If the latter is chosen, it must be written on a bank located in Miami-Dade County, be in the amount of the Agreement and should clearly and expressly state that it cannot be revoked until express written approval has been given by the City. The City, to draw on same, would merely have to give written notice to the bank with a copy to the Contractor.

21.2 The Performance Bond shall secure and guarantee Contractor's faithful performance of this Agreement, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all Subcontractors performing labor on the Project under this Agreement and furnishing supplies, materials or services in connection herewith. These Bonds shall be in effect through the duration of the Agreement plus the warranty period as required by the Contract Documents.

21.3 Each Bond shall be written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The Bonds required hereunder shall be executed by a responsible surety licensed in the State of Florida, and have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: B+ to A+. The Contractor shall require the attorney in fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

21.4 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, Contractor shall within three (3) Days substitute another Bond and surety, both of which must be acceptable to City. If Contractor fails to make such substitution, City may procure such required Bonds on behalf of Contractor at Contractor's expense.

21.5 The City may, in the City's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Contractor under the Contract Documents and obtain consents as necessary to protect the City's rights, interest, privileges and benefits under and pursuant to any Bond issued in connection with the Project.

21.6 Contractor shall indemnify and hold harmless the City and any agents, employees, representative from and against any claims, expenses, losses, costs, including reasonable attorneys' fees, as a result of any failure of Contractor to procure the Bonds required herein.

ARTICLE 22 - FORCE MAJEURE

22.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation

pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

22.2 If conditions are encountered at the worksite which are: 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or 2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed, and in no event later than ten (10) Days after first observance of such conditions. The Project Manager will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for performance of any part of the Work, will recommend an equitable adjustment in the GMP or to the Term of Agreement or both. If the Project Manager determines that the conditions at the worksite are not materially different from those indicated in the Contract Documents and that no change in the GMP or to the Term of Agreement is justified, the City shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within ten (10) Days after the City has given notice of the decision.

ARTICLE 23 – LIQUIDATED DAMAGES

23.1 It is mutually agreed by and between the Parties hereto that time shall be an essential part of this Agreement, and that in case of the failure on the part of the Contractor to achieve contractually scheduled completion of the milestones established in the Project schedule within the time specified and agreed upon, the City will be damaged thereby. The amount of said damages, inclusive of expenses for inspection(s), as well as additional personnel superintendence, and necessary traveling expenses, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be Four Hundred Dollars ($400.00) for each Day delayed in finishing the Project, in excess of the number of Days prescribed in Article 4. The Contractor hereby agrees that said sum shall be deducted from monies due Contractor under the Agreement, or if no money is due the Contractor, the Contractor hereby agrees to pay to the City as liquidated damages, and not by way of penalty, the amount of Four Hundred Dollars ($400.00) for each Day delayed in finishing the Project, in excess of the number of Days prescribed in Article 4.

ARTICLE 24 – NON-EXCLUSIVE AGREEMENT

24.1 The Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Work.

24.2 The City reserves the right to perform Work or operations related to the Project with the City's own forces, or through the award of one or more separate contracts to one or more separate contractors if the scope of the work changes during the term of this Agreement and the City and Contractor are unable to agree as to the Contractor's timely performance of such changed scope of work. Additionally, the City reserves the right to award separate contracts in connection with other portions of the Project or other construction or operations on the worksite under conditions identical or substantially similar to these.

ARTICLE 25 – EMERGENCIES

25.1 In any emergency affecting the safety of persons or property, the Contractor shall act at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 26 - OWNERSHIP OF DOCUMENTS

26.1 All documents developed by Contractor under this Agreement shall be delivered to the City by the Contractor upon completion of the Work and shall become property of the City, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

26.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

26.3 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the City.

26.4 In the event the Agreement is terminated, Contractor agrees to provide the City all such documents within ten (10) Days from the date the Agreement is terminated.

ARTICLE 27 - DEFAULT

27.1 In the event the Contractor fails to comply with any provision of this Agreement, the City may declare the Contractor in default by written notification. The City shall have the right to terminate this Agreement if the Contractor fails to cure the default within ten (10) Days after receiving notice of default from the City. If the Contractor fails to cure the default, the Contractor will only be compensated for completed Work. In the event partial payment has been made for such Work not completed, the Contractor shall return such sums due to the City within ten (10)

Days after notice that such sums are due. The Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 28 - MISCELLANEOUS PROVISIONS

28.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

28.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

28.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

28.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

28.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

28.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Work and for a period of three years after final payment is made under this Agreement.

28.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

28.8 Work shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

28.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

28.10 The professional Work to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Work.

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28.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

28.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

28.13 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

28.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

28.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: _____

Print Name: _____

Date: _____

Roadway Construction, LLC, a Florida limited liability company,

"**Contractor**":

DocuSigned by:
Silvio Rubi
C4AD44E825804D2...

By: _____

Silvio Rubi

Print Name: _____

8/6/2014

Date: _____

ATTEST:

DocuSigned by:
2C7010872EE8414...

By: _____

Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation:
"**City**"

DocuSigned by:
Aleem Ghany
AD8C42C3AFAE44B...

By: _____

Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

DocuSigned by:
Regine Monestime
9787DB61BC7F413...

By: _____

Regine M. Monestime
City Attorney