CITY OF NORTH MIAMI
PROFESSIONAL JANITORIAL SERVICES AGREEMENT
(IFB 42-11-12)

THIS PROFESSIONAL JANITORIAL SERVICES AGREEMENT ("Agreement") is entered into this 1st day of December, 2012, by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 ("City") and **Atlanta Building Maintenance, Inc., a/k/a American Facility Services, Inc.**, a foreign for-profit corporation registered and authorized to do business in the State of Florida, having its principal office at 1325 Union Hill Industrial Court, Suite A, Alpharetta, GA 30004 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on August 6, 2012, the City advertised ***Invitation for Bid #42-11-12, Janitorial Services*** ("IFB"), to provide the City with the requisite labor, supervision, materials, supplies, equipment, tools, services and expertise necessary for the cleaning, sweeping, mopping, scrubbing, waxing, polishing, vacuuming, carpet cleaning and rug extraction, for City Hall and other public buildings and properties, including the Police Athletic League facility, in accordance with the terms, conditions and specifications contained in the IFB ("Services"); and

WHEREAS, in response to the IFB, Contractor submitted its sealed bid and was evaluated by City administration as the most responsive, responsible bidder whose overall bid, qualifications, price, and references demonstrated to be the most advantageous to the City; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to the terms, conditions, requirements and specifications of the IFB; and

WHEREAS, on November 13th, 2012, the Mayor and City Council passed and adopted Resolution No. R-2012-___, approving the selection of Contractor, and further authorized the City Manager and City Attorney to negotiate and execute an agreement for the provision of Services.

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 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 City's ***Invitation for Bid #42-11-12, Janitorial Services***, attached hereto by reference;

2.1.2 Contractor's response to the IFB, dated September 11, 2012 ("Bid"), attached hereto by reference;

2.1.3 City's tabulation of companies responding to the IFB, attached hereto as Exhibit "A"; and

2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to Contract Documents.

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

2.2.1 Specific written direction from the City Manager or City Manager's designee.
2.2.2 This Agreement.
2.2.3 The IFB.

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

ARTICLE 3 – TERM OF AGREEMENT

3.1 The Initial Term of this Agreement shall be a period of three (3) years from the date of execution ("Initial Term Period"), unless terminated earlier by the City. Contractor agrees that the performance of Services shall be pursued on schedule, diligently, uninterrupted and at a rate of progress which will ensure full completion of Services within the agreed time for performance. Failure to achieve timely performance of Services shall be regarded as a material breach of this Agreement and subject to the appropriate remedies available to the City at law.

3.2 Following the Initial Term Period, the City shall have at its sole discretion, the right to exercise two (2) options to renew this Agreement for one (1) year-term periods, subject to Contractor's acceptance and satisfactory performance of Services by Contractor. Upon any extension, the insurance requirements for this Agreement will be subject to review by the City's Risk Manager.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exists with respect to the Contractor's ability to perform Services 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.

ARTICLE 4 - COMPENSATION

4.1 The Contractor shall be paid an amount not to exceed Two Hundred Five Thousand Seven Hundred Sixty and no/100 Dollars ($205,760.00) per year, for Services rendered to the satisfaction of the City. This amount shall remain fixed throughout the Initial Term Period. 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.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all the required labor, supervision, transportation, materials, equipment, supplies, tools and services necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform Services shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.3 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the Services related to this Agreement shall be borne solely by Contractor.

5.4 Services shall be completed by the Contractor to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

ARTICLE 6 - INDEPENDENT CONTRACTOR

6.1 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 for any employee or agent of Contractor rendering services to the City under this Agreement.

ARTICLE 7 - CONFLICTS OF INTEREST

7.1 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.

7.2 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 Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 8 - DEFAULT

8.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving Notice of Default. 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 9 - CITY'S TERMINATION RIGHTS

9.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, loss of profits, or for any consequential or incidental damages.

ARTICLE 10 - NOTICES

10.1 All notices, demands, correspondence and communications between the City and Contractor 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:

To Contractor:
Atlanta Building Maintenance, Inc.
a/k/a American Facility Services, Inc.
Attn: Kevin McCann
1325 Union Hill Industrial Court, Suite A
Alpharetta, GA 300044
Phone: (770) 740-1613
Fax: (770) 475-7720

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

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

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

10.2 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.

10.3 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 11 - INDEMNIFICATION

11.1 Execution of the Agreement by Contractor is a representation that Contractor has visited the worksites and is familiar with the local conditions under which the Services 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.

11.2 The 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 the Services under this Agreement.

11.3 The 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.

11.4 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 12 – INSURANCE & BONDS

12.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance required in the IFB, and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any subcontractor to begin Services until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

12.2 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.

12.3 A payment and performance bond in the amount of 100% of the compensation amount of this Agreement shall be required by the Contractor prior to the commencement of Services. The payment bond shall secure and guarantee payment of all persons performing labor or providing materials for the Services rendered under this Agreement. 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.

ARTICLE 13 - FORCE MAJEURE

13.1 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.

ARTICLE 14 - PUBLIC RECORDS

14.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119,

Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 15 – COMMUNITY BENEFITS

15.1 As an inducement for the City to enter into this Agreement, Contractor reaffirms its commitment of providing the City with community benefits as may be defined, requested, and approved by the City Manager, in accordance with Section 2.25 of the IFB. The approved community benefits submitted by the Contractor shall be incorporated into and shall become a part of this Agreement. Such community benefits shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code. The Contractor further acknowledges that the City has relied upon these representations and commitments, as a basis of selecting Contractor for the provision of Services.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 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.

16.2 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 Services and termination or completion of the Agreement.

16.3 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.

16.4 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.

16.5 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.

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

16.7 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.

16.8 Services 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.

16.9 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.

16.10 The professional Services 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 Services.

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

16.12 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.

16.13 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.

16.14 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: Virginia Staffanell

Date: November 6, 2012

Atlanta Building Maintenance, Inc., a/k/a American Facility Services, Inc., a foreign for-profit corporation "**Contractor**":

By: _____

Print Name: Kevin McCann

Date: November 6, 2012

ATTEST:

By: _____
Michael A. Etienne
City Clerk

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

By: _____
Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney