

CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT (the “Agreement”) is made and entered into as of November 26, 2024 (the “Effective Date”), by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the “NMCRA”), having an address at 735 NE 125th Street, Suite 100, North Miami, Florida 33161, and **TRU-GREEN CONSTRUCTION, INC.**, a Florida corporation (the “Contractor”) having an address at 4952 N.W. 7th Avenue, Miami, Florida 33127.

RECITALS

1. The City of North Miami Procurement Department issued a Request for Qualifications (RFQ) No. 56-23-24 Pre-Qualified List of Contractors for the NMCRA Housing Rehabilitation Construction Program (the “RFQ”), on behalf of the NMCRA.

2. The RFQ was issued for the express purpose of seeking proposals from qualified, experienced and licensed contractors to create a pool of pre-qualified contractors to bid on residential rehabilitation construction projects for the NMCRA Housing Rehabilitation Construction Program.

3. Pursuant to Resolution No. 2024-019 adopted by the NMCRA Board on November 26, 2024, the Contractor was approved as one of the contractors on the Pre-Qualified List of Contractors for the NMCRA Housing Rehabilitation Construction Program.

4. The NMCRA and the Contractor desire to enter into this Agreement to set forth their respective rights and obligations in connection with the provision of the services by the Contractor to the NMCRA as may be requested by the NMCRA from time to time.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

1. General Intent; Effective Term.

1.1 General Intent. The general intent of this Agreement is to set forth the rights and obligations of the parties with respect to the provision by Contractor to the NMCRA of all necessary equipment, labor, materials and expertise to carry out and complete certain projects as may be designated from time to time by the NMCRA to the Contractor in a work order as may be provided in writing by the NMCRA to the Contractor (the “Work Order”). The Work Order shall contain a “Scope of Work,” a Fee (as defined below) and a Term (as defined below). The foregoing does not obligate the NMCRA to provide the Contractor with a Work Order, and the provision of a Work Order or multiple Work Orders shall be made by the NMCRA in its sole discretion. The performance by the Contractor of any Work Order including, but not limited to, the Scope of Work shall at all times be governed by the terms and conditions of this Agreement, subject to the Scope of Work, Fee, and Term set forth in the Work Order. The Contractor hereby agrees to accept the

Scope of Work, Fee, and Term set forth in each Work Order. In the event that the Contractor fails or refuses to accept the Work Order, the NMCRA shall have the right to terminate this Agreement in its sole discretion. The parties acknowledge and agree that each Work Order shall contain certain terms and conditions that are incorporated into this Agreement; provided, however in the event there is any conflict between the terms and conditions of this Agreement and the Work Order, the terms and conditions of this Agreement shall control. Each Work Order will include the necessary and appropriate plans and specifications which are incorporated into the Scope of Work for all intents and purposes hereunder. The "Contract Documents" consist of this Agreement and all schedules, exhibits and amendments hereto, the Work Order, the Scope of Work, the plans and specifications, shop drawings, all change orders and addenda, if any, the Contractor's bid or portions of addenda relating to bidding requirements, if any, including electronic files, tapes and discs.

1.2 Effective Term. This Agreement shall be for a term of three (3) years commencing on the Effective Date and terminating on November 26, 2027 (the "Initial Term"). The Initial Term may be extended at the discretion of the NMCRA Executive Director or designee for two (2) successive additional one-year terms. The Initial Term as such may be extended shall be defined herein as the Effective Term. This Agreement shall terminate upon the expiration of the Initial Term or the Effective Term, as applicable; provided however, this Agreement shall remain in effect with respect to any Work Orders in effect upon the expiration of the Initial Term or the Effective Term, as applicable, and thereafter terminate upon the completion of the Work Order. Additionally, any terms and provisions of this Agreement which expressly or by necessity survive the termination or expiration of this Agreement (e.g., Section 8 - Indemnification) shall remain in effect.

2. Services and Responsibilities

2.1 Contractor hereby agrees to perform the services described and for the fee set forth in the Scope of Work. The Contractor shall be solely responsible for the satisfactory and complete execution of the Scope Work. The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Scope of Work. The Scope of Work shall generally be performed at the direction of the NMCRA and completed and completed within that certain number of days from the issuance of a Work Order by the NMCRA to the Contractor (the "Term"). Time is of the essence in the performance of all obligations within the Term. Final Completion of the Scope of Work shall be completed prior to the expiration of the Term and the failure of the Contractor to do so shall be a material default under this Agreement. "Final Completion" shall mean (a) the Scope of Work has been fully completed including all punch list items substantially in accordance with plans and specifications, (b) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of the Project shall have been issued or obtained from the appropriate governmental authorities, (c) all construction costs and other costs and expenses incurred in connection with the Scope of Work including punch list items have been paid in full or bonded, (d) all contractor certificates and final waivers of lien for the Scope of Work have been obtained, and (e) all record drawings and electronic files have been delivered to the NMCRA. Additionally, the failure to achieve Final Completion by the end of the Term shall result in the Liquidated Damages of Five Hundred and 00/100 Dollars (\$500.00) per diem for each and every after the expiration of the Term

until Final Completion is achieved, and the Contractor hereby authorizes the NMCRA to charge and deduct from any fees owed to Contractor any such Liquidated Damages. In the event of any delay caused or claimed by the Contractor to be caused in whole or in part by the NMCRA, an extension of time shall be the Contractor's sole remedy and the Contractor hereby waives any claims for delay damages.

2.2 Contractor hereby represents and warrants to the NMCRA that it possesses (a) the skills necessary to perform the Scope of Work as required by this Agreement and (b) all necessary licenses to perform the Scope of Work as a general contractor including, but not limited to, a General Contractor's License issued by the State of Florida, as well as any licenses required by the State of Florida, Miami-Dade County and the City of North Miami.

2.3 Any work performed by the Contractor that fails to meet the requirements of this Agreement, or otherwise is defective or contains errors, conflicts, or omissions, will be promptly corrected by the Contractor at no cost to NMCRA. The Contractor will promptly reimburse NMCRA for any and all damages, including fines and incidental damages, without limitation, resulting from the defective work.

2.4 The Contractor shall perform the Scope of Work in a manner that complies with any governing codes, laws, or ordinances including the Florida Building Code. Although the NMCRA shall review all work completed by the Contractor, the NMCRA shall not be responsible to the Contractor for any failure to comply with any governing codes, laws, or ordinances including the Florida Building Code.

2.5 The Contractor shall maintain one record set of all plans and specifications in good order and marked currently to record all changes made during construction and an accurate location of all portions of the work sufficient to prepare accurate as-built plans and specifications. The as-built plans and specifications shall provide as much accuracy as possible, and submission of same to NMCRA upon Final Completion shall be a condition precedent to the final payment.

2.6 Contractor shall report to the NMCRA Executive Director or his designee. During the conduct of the performance of its services, Contractor shall schedule regular meetings with the NMCRA Executive Director or his designee to discuss the progress of the Scope of Work. The Contractor shall provide written progress reports and a final report to the NMCRA setting forth status and completion of milestones as well as other performance measures demonstrating Contractor's compliance with this Agreement and the Scope of Work as directed by the NMCRA Executive Director or his designee.

2.7 Contractor hereby represents to the NMCRA, with full knowledge that NMCRA is relying upon these representations when entering into this Agreement with Contractor, that Contractor has the professional expertise, experience and manpower to perform the services to be provided by Contractor pursuant to the terms of this Agreement. Contractor shall maintain during the term of this Agreement all necessary licenses and qualifications required by applicable law.

2.8 The Contractor shall pay when due all sales, consumer, use, and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Scope of Work.

2.9 The Contractor may not substitute general or specified construction materials of like quality without the written consent of the NMCRA in each instance. Contractor shall make no modifications to dimensions, within normal construction tolerances, without prior written consent from the NMCRA in each instance.

2.10 The Contractor warrants to the NMCRA that materials and equipment furnished under this Agreement will be of good quality and new, that the Scope of Work will be free from defects not inherent in the quality required or permitted, and that the Scope of Work will conform to the requirements of the Contract Documents and applicable laws. Any portion of the Scope of Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. All defective portions of the Scope of Work shall be replaced or repaired at Contractor's sole cost and expense.

2.11 Contractor agrees to repair, at Contractor's own cost and expense for a period of one (1) year from the date of Final Completion, any portion of the Scope of Work that may prove within the one (1) year period of time, to be defective in accordance with the standards of construction prevailing in Miami-Dade County, Florida.

2.12 Upon Final Completion and as a condition to the final payment, Contractor shall deliver to the NMCRA all manufacturer's warranties, if any, covering the consumer products to be conveyed to the NMCRA herein.

2.13 The Contractor represents that he has carefully examined the plans and specifications, that the Contractor has made any and all investigations essential to a full understanding of any difficulties which may be encountered at the site. Execution of this Agreement shall constitute acceptance by the Contractor of existing site conditions as a part of the requirements for this Scope of Work; it being expressly understood and agreed that the Contractor shall not be entitled to any additional compensation and/or fees for any pre-existing conditions including, but not limited to, concealed or unknown conditions at the Project site which may in any way affect the Scope of Work. Contractor has specifically examined the Project site and affirms that it is fit to receive the Scope of Work.

2.14 Before commencing the Scope of Work, the Contractor shall execute and record in the public records of Miami-Dade County, a payment and performance bond in compliance with the requirements of Section 255.05, Florida Statutes (the "Payment and Performance Bond").

3. Relationship of the Parties. The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the NMCRA to cooperate with the NMCRA and exercise the Contractor's skill and judgment in furthering the interests of the NMCRA; to furnish efficient business administration and supervision, and to perform the Scope of Work in an expeditious and economical manner consistent with the NMCRA's interests. The NMCRA agrees to

furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of this Agreement.

4. Compensation and Method of Payment

4.1 Compensation for the services provided by Contractor to the NMCRA shall be based on the fee provided in each Scope of Work, which fee shall be a guaranteed "not to exceed" fee (the "Fee"). Each Fee represents and contains all amounts due and payable for the services provided by Contractor as set forth in the Scope of Work including any out of pocket and third party costs which may be incurred and/or paid by Contractor. Payment by the NMCRA of the Fee for the Scope of Work performed shall be deemed full compensation to the Contractor for the performance of this Agreement. In the event additional labor, materials, costs or expenses are necessary to complete the Scope of Work in excess of the Fee, such amounts shall be the sole responsibility of Contractor; it being acknowledged and agreed that the not to exceed amount for the Scope of the Work shall be the maximum amount the NMCRA shall be required to pay for the Scope of Work unless the such amount was increased or decreased by a change order pursuant to Section 5 below.

4.2 Contractor shall submit to the NMCRA written invoices upon completion of each task listed in the Cost Proposal from Contractor's proposal no more often than on a monthly basis. Each invoice shall include a detailed billing statement for services rendered and any other supporting documentation as reasonably requested by the NMCRA. Notwithstanding the foregoing, as a condition to each progress payment, the Contractor shall have furnished NMCRA with a partial lien waiver and release signed by Contractor, conditioned upon payment, for all work performed that is included in the current invoice, in the form set forth in Florida Statutes Chapter 713, and shall have furnished NMCRA with partial lien waivers and releases signed by all persons or entities giving Notice to Owner for the furnishing any labor or material, equipment, services, and materials for the Project and for all work performed by same that is included in the respective prior invoice. With respect to the procedures for payment, the NMCRA and Contractor agree to comply with and be bound by the provisions of Part VII, Chapter 218, Florida Statutes, entitled the Local Government Prompt Payment Act.

4.3 There shall be ten percent (10%) retainage held on all subcontracts, labor costs and the Contractor's fee until fifty percent (50%) completion of the Scope of Work. After 50% completion of the Scope of Work and prior to final payment, there shall be a five percent (5%) retainage held on all subcontracts, labor costs and the Contractor's fee; provided, however, there shall be no retainage on material suppliers. The NMCRA may retain amounts greater than those set forth above that are the subject of a good faith dispute pursuant to Federal Statute 255.078(6), the subject of a claim brought pursuant to Section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the NMCRA or Contractor.

4.4 Final payment, constituting the entire unpaid balance of the amount owed to Contractor including retainage, shall be made by the NMCRA to the Contractor following Final Completion and when: (a) the Contractor has fully performed the Scope of Work and the CRA has accepted the Scope of Work including all punch list items and correction of any defects identified by the CRA; (b) a final certificate of occupancy or its equivalent has been issued by the

applicable governmental authorities; and (c) a final invoice has been submitted by Contractor and reviewed and approved by the NMCRA. Notwithstanding the foregoing or anything in this Agreement to the contrary, neither any progress payment or the final payment shall be due or owing to the Contractor until all of the requirements of this Agreement and Chapter 713, Florida Statutes, have been satisfied.

5. Changes in Scope of Work. NMCRA may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement including the approval of the NMCRA Board of Directors.

6. Termination.

6.1 Termination by the Contractor. The Contractor may terminate the Agreement if the NMCRA fails to make a payment as required by the Agreement followed by written notice thereof from Contractor to NMCRA and NMCRA's continued failure to make such payment for fifteen (15) days following the receipt of such notice. If the Contractor terminates the Agreement as set forth in the previous sentence, the Contractor shall be entitled to recover from the NMCRA payment for the Scope Work executed up to the date of termination but shall not be entitled to any other damages including, but not limited to, consequential and/or punitive damages. Any termination or purported termination by the Contractor for any reason other than NMCRA's nonpayment shall be void thereby entitling the NMCRA to its rights and remedies available at law and in equity.

6.2 Termination by the NMCRA for Cause. The NMCRA may terminate this Agreement if the Contractor:

6.2.1 Persistently or repeatedly refuses or fails to follow NMCRA's directions relative to the performance of the Scope of Work including, but not limited to, failing to perform the Scope of Work or any portion thereof within agreed upon time frames;

6.2.2 Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

6.2.3 Otherwise materially breaches any provision of this Agreement.

When any of the above reasons exist, the NMCRA may without prejudice to any other rights or remedies and after giving the Contractor seven (7) days' written notice, terminate this Agreement and the employment of the Contractor. The Contractor shall not be entitled to receive payment for the Scope of Work completed until the remainder of the Scope of Work is finished and, in addition to any other rights available to the NMCRA at law or in equity, the Contractor shall be liable to NMCRA for all reasonable excess completion costs and costs to correct as a result of said termination including, but not limited to, monetary damages and attorneys' fees and costs. Any amounts owed by the Contractor to the NMCRA pursuant to the previous sentence may be offset and credited by the NMCRA against any payments owed by the NMCRA to the Contractor at the time of termination.

6.3 Termination by the NMCRA for Convenience. Notwithstanding anything in the Agreement to the contrary, NMCRA shall have the right, for whatever reason and in its sole discretion, to terminate the Agreement without penalty or liability by providing the Contractor with seven (7) days written notice thereof. Upon such termination, this Agreement shall be null and void, except that Contractor shall be entitled to payment for the Scope Work executed up to the date of termination. Any of Contractor's then outstanding and/or unfulfilled duties and/or obligations under the Agreement accruing prior to such termination shall survive the termination of the Agreement.

6.4 Waiver of Consequential and Punitive Damages. Contractor acknowledges and agrees that Contractor shall not be entitled to, and hereby waives any claims for consequential or punitive damages in connection with the termination of this Agreement by either the Contractor or the NMCRA as set forth in Sections 6.1, 6.2 and/or 6.3 above, as well as in connection with, arising from or related to any other matter whatsoever between the parties including, but not limited to claims, lawsuits, arbitrations and mediations.

7. Insurance. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the provision of the Scope of Work and thereafter for the period of the applicable Statue of Limitations and applicable Statute of Repose the following insurance coverage's, limits, including endorsements described herein. The requirements contained herein, as well as NMCRA's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under any resulting contract.

Builder's Risk Insurance (including flood insurance). Contractor agrees that during any period of construction of improvements upon the Project site insuring such improvements against all casualties on a progressively insured basis for not less than 100% of the replacement cost.

Commercial General Liability. Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$1,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability

Business Automobile Liability. Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Worker's Compensation Insurance & Employers Liability. Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440.

Professional Errors & Omissions Liability. Contractor agrees to maintain Professional Error's & Omissions Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000

Annual Aggregate... The Contractor agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective of the Contract, or the performance of services hereunder. The Contractor agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

Additional Insured. Contractor agrees to endorse NMCRA as an Additional Insured with a CG 2026 07 04 Additional - Insured – Designated Person or Organization endorsement or CG 2010 19 01 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization or CG 2010 07 04 Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or organization in combination with CO 2037 07 04 Additional Insured - Owners. Lessees Contractors- Completed Operations, or similar endorsements, to the Builders Risk Insurance (including flood insurance) and Commercial General Liability. The Additional Insured shall read “North Miami Community Redevelopment Agency”

Waiver of Subrogation. Contractor agrees by entering into this contract to a *Waiver* of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor to enter into an pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify *the* insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance. Contractor agrees to provide NMCRA a Certificate(s) of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

City of North Miami
Risk Manager
776 N.E. 125th Street
North Miami, FL 33161

Umbrella or Excess Liability. Contractor may satisfy the minimum liability limits required above for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest “Each Occurrence” limit for either Commercial General Liability or Business Auto Liability. Contractor agrees to endorse NMCRA as an “Additional Insured” on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a “Follow-Form” basis.

Right to Revise or Reject. NMCRA reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, NMCRA reserves the

right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

8. Indemnification. In consideration of the entry of this Agreement, and to the extent permitted by Chapter 725, Florida Statutes, as may be amended, the Contractor agrees the Contractor agrees, to indemnify, protect, defend, and hold harmless the NMCRA its members, managers, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the Scope of Work. The foregoing indemnity is limited to \$1,000,000 per occurrence, which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement; provided, however, that the Contractor's indemnity obligations hereunder are not limited by the availability of insurance proceeds. In the event that any claims are brought or actions are filed against the NMCRA with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. To the extent this indemnification clause or any other indemnification clause in this Agreement does not comply with Chapter 725, Florida Statutes, as may be amended, this provision and all aspects of the Scope of Work shall hereby be interpreted as the parties' intention for the indemnification clauses and the Scope of Work to comply with Chapter 725, Florida Statutes, as may be amended. The provisions of this Section 8 shall survive the termination or expiration of this Agreement.

9. Weather.

9.1 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten years of weather data as recorded by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station.

9.2 No more than one day of time extension shall be granted for each day the precipitation, in inches exceeds one (1) inch at the Weather Station, and only when fifty percent or more of the scheduled construction work force cannot work due occurrence of such precipitation on the day claimed.

10. Permits, Licenses And Impact Fees.

10.1 Except as otherwise provided within any supplemental conditions, all permits and licenses required by federal, state, local or county laws, rules and regulations necessary for the execution of the work undertaken by the Contractor pursuant to this Contract shall be secured and paid by the Contractor. It is the Contractor's responsibility to determine that all zoning requirements have been met prior to obtaining any permits or licenses. It is the Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the type of work to be performed and for the jurisdiction in which the work is to be completed.

10.2 Impact fees levied by any municipality and/or county shall be paid by the Contractor. Contractor shall be reimbursed only for the actual amount of the impact fee levied by the municipality and/or county as evidenced by an invoice or other acceptable documentation issued by the municipality and/or county. Reimbursement to the Contractor in no event shall include profit or overhead of the Contractor.

10.3 Necessity of complying with permit requirements. Contractor and the NMCRA agree that the failure of the Agreement to address a particular permit, condition, fee, term or restriction, shall not relieve Contractor of the necessity of complying with the law governing said permitting requirements, conditions, fee, terms and restrictions.

11. "Or Equal" Clause.

11.1 Whenever a material, article or piece of equipment is identified in the Scope of Work including drawings (design plans) and specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, it is intended merely to establish a standard; and, unless it is followed by words indicating that no substitution is permitted because of form fit function and quality. Any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the materials, article or equipment so proposed is, in the opinion of the NMCRA, equal in substance, quality and function.

11.2 NMCRA will be the sole judge of acceptability, and no substitute will be ordered, installed or used without the NMCRA's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. NMCRA may require Contractor to furnish at Contractor's expense a special performance bond or other surety with respect to any substitute.

12. Defective Work.

12.1 NMCRA shall have the authority to reject or disapprove work which it finds to be defective. The Contractor shall promptly either, as directed, correct all defective work or remove it from the site and replace it with non-defective work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

12.2 If, within one year after substantial completion or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly without cost to the NMCRA, after receipt of written notice from the NMCRA to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents.

12.3 Should the Contractor fail or refuse to remove or correct any defective work performed or to make any necessary repairs in an acceptable manner, and in accordance with the

requirements of the Contract Documents with the time indicated in writing, the NMCRA shall have the authority to cause the unacceptable or defective work to be removed or renewed, or make such repairs as may be necessary to be made at the Contractor's expense. Any expense incurred by the NMCRA in which the Contractor has failed or refused to make shall be paid for out of any monies due or which may become due to the Contractor, or may be charged against the Payment and Performance Bond. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs promptly, fully, and to declare this Agreement forfeited, in which case the NMCRA at its option, may purchase materials, tools, and equipment and employ labor or may contract with other individual, firm or corporation, or may proceed with its own forces to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any monies due, or which may become due to him, or shall be charged against the Payment and Performance Bond. Any special work performed, as described herein, shall not relieve the Contractor in any way from his responsibility for the work performed by him.

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

12.5 The provisions of this Section 12 shall survive the termination or expiration of this Agreement.

13. Subcontracts.

13.1 The Contractor shall, within fifteen (15) calendar days after the signing of the Agreement, notify the NMCRA in writing of the names of subcontractors (each a "Subcontractor" and collectively the "Subcontractors") proposed for the work. Such Subcontractor must be in compliance with the provisions of the Miami-Dade County Code of Ordinances and/or state law as it relates to Certificates of Competency. The Contractor shall have a continuing obligation to notify the NMCRA of any change in Subcontractors.

13.2 Contractor shall not employ any Subcontractor against whom NMCRA may have a reasonable objection. Contractor shall not be required to employ any Subcontractor against whom Contractor has a reasonable objection.

13.3 The Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by its Subcontractors and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by the Contractor. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the NMCRA or any obligation on the part of the NMCRA to pay or to see the payment of any monies due any Subcontractor. The NMCRA may furnish to any Subcontractor evidence of amounts paid to the Contractor on account of specific work performed.

13.4 The Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the NMCRA.

14. Damage to Existing Facilities, Equipment or Utilities.

14.1 Contractor shall have full responsibility for reviewing and checking such information and data, for locating all underground facilities shown or indicated in the Contract Documents, for coordination of the work with the owners of such underground facilities during construction, for the safety and protection thereof and for repairing any damage thereto resulting from the work, the cost of all of which will be considered as having been included in the Fee.

14.2 During construction of buildings and/or during improvements, Contractor covenants and agrees that it shall safely maintain the site of construction activities and protect against damage to persons and property by reason of construction activities and will provide adequate security during non-construction periods. In the case of damage or loss to the building and/or improvements constructed on the property by Contractor in accordance with this Agreement, Contractor shall, as soon as possible after the occurrence of such loss or damage, repair or rebuild the buildings and/or improvements in such manner that the buildings and/or improvements after such repairing or rebuilding shall be of the same general character as set forth in this Agreement and the approved Scope of Work and at least equal in value to the buildings and improvements prior to such loss or damage. Such repairs shall begin within ninety (90) calendar days after such occurrence or if rebuilding is required, such rebuilding shall be begun within one hundred eighty (180) calendar days after such occurrence and in either case shall be completed in a reasonable time, subject to extension for delays permitted by this Agreement only; provided insurance funds are made available to Contractor for such repair or rebuilding, in which event Contractor shall commence repairs or rebuilding within one hundred eighty (180) days from the date of occurrence. Contractor shall have the reasonable right to extend the time period for rebuilding in the event of a major catastrophic event (similar in scope and widespread damage to Hurricane Andrew) which would reasonably affect the ability to secure insurance proceeds, labor, public services, and other required elements to reasonably begin said rebuilding. Contractor shall pay for all such repairing and rebuilding so that the property and the buildings and improvements shall be free and clear of all liens of mechanics and materials and similar liens arising out of such repair, rebuilding or reconstruction of the buildings and improvements.

15. Monitoring Reports. Contractor shall provide the NMCRA, in a format reasonably acceptable to the NMCRA and Contractor, information, data and reports to be used by the NMCRA in monitoring Contractor's performance in carrying out the Scope of Work.

16. Differing Site Conditions.

16.1 In the event that during the course of the work the Contractor encounters subsurface or concealed conditions at the project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents and any supplementary conditions; or unknown physical conditions of the project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents in the locales such as that where the work is to be done, Contractor shall, within twenty-four (24) hours of their discovery, notify the NMCRA in writing of the existence of the aforesaid conditions. NMCRA shall, within two (2) business days

after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of the NMCRA, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, NMCRA shall recommend an equitable adjustment to the Fee, or the Term, or both. If NMCRA and Contractor cannot agree on an adjustment in the Fee or Term, the adjustment shall be referred to City Engineer for determination in accordance with the provision for resolving disputes. Should City Engineer determine that the conditions of the project site are not so materially different to justify a change in the terms of the Agreement, City Engineer shall so notify Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

16.2 No request for an equitable adjustment or change to the Fee or Term for differing site conditions shall be allowed if made after the date of Substantial Completion.

17. Resolution of Disputes.

17.1 To prevent all disputes and litigation, it is agreed by the parties hereto that the City Engineer shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents and City Engineer's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Section 17.2. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of NMCRA and Contractor shall be submitted to City Engineer in writing within twenty-one (21) calendar days. Unless a different period of time is set forth herein, City Engineer shall notify Contractor in writing of City Engineer's decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless City Engineer requires additional time to gather information or allow the parties to provide additional information. All non-technical administrative disputes shall be determined by the City Engineer and the NMCRA pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Contractor and NMCRA shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

17.2 In the event the determination of a dispute under this Section 17 is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within ten (10) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Fee adjustment or Term adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after a disputed invoice or during Final Completion of the work, the parties shall participate in settlement discussions to address all objections to any determinations hereunder and to attempt to prevent litigation. Should any objection not be resolved, the parties retain all their legal rights and remedies provided under applicable law. This Section 17 is not intended to, nor shall it, limit the NMCRA's rights under the City's False Claims Ordinance.

18. Nondiscrimination, Equal Opportunity and Americans with Disabilities Act.

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

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

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

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

Contractor shall not engage in or commit any discriminatory practice in violation of the Miami-Dade County Code of Ordinances in performing any services pursuant to this Agreement.

18.2 Domestic Partner Benefits Requirement. Contractor certifies, and has provided the Domestic Partnership Certification Form, that it would provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses.

Contractor shall comply with the applicable provisions of this Section 18.2.

- (i) The Contractor certifies and represents that it will comply with this Section 18.2 during the entire Term.
- (ii) The failure of the Contractor to comply with this Section 18.2 shall be deemed to be a material breach of the Agreement, entitling the NMCRA to

pursue any remedy stated below or any remedy provided under applicable law.

- (iii) The NMCRA may terminate the Agreement if the Contractor fails to comply with this Section 18.2.
- (iv) The NMCRA may retain all monies due or to become due until the Contractor complies with this Section 18.2.

19. Audit Right and Retention of Records.

19.1 NMCRA shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to the Scope of Work. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Scope of Work. All books, records, and accounts of Contractor and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or its subcontractor, as applicable, shall make same available at no cost to NMCRA in written form.

19.2 Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by NMCRA, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of six (6) years after expiration or termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or six (6) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by NMCRA to be applicable to Contractor's and its Subcontractors' records, Contractor and its Subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor or its Subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for NMCRA's disallowance and recovery of any payment upon such entry.

19.3 Contractor shall, by written contract, require its Subcontractors to agree to the requirements and obligations of this Section 19.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE NMCRA SECRETARY AT (305) 895-9817, BY EMAIL AT VAJOSEPH@NORTHMIAMIFL.GOV, OR AT 735 NE 125 STREET, SUITE 100, NORTH MIAMI, FL 33009, ATTN: NMCRA SECRETARY.

20. Miscellaneous.

20.1 Ownership of Documents. All plans, specifications, shop drawings, as well as any and all documents prepared by the Contractor pursuant to or in connection with this

Agreement are and shall remain the exclusive property of the NMCRA. Upon request of the NMCRA and/or upon the termination or completion of this Agreement, Contractor shall promptly deliver to the NMCRA all or any portion of the above referenced documents including all electronic files, tapes and discs relating thereto. Contractor further acknowledges that NMCRA may post any of such documents on the NMCRA's website. Such documents may be posted by NMCRA without the prior authorization of Contractor. No additional fee or compensation will be paid to Contractor by NMCRA for such posting.

20.2 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Contractor is an independent contractor under this Agreement and not the NMCRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution act, the Social Security Act, the Federal Unemployment Tax Act, the provision of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder. Contractor agrees that it is a separate and independent enterprise from the NMCRA, that it has full opportunity to find other business, that it has to make its own investment in its business, and that it will utilize a high level of skill necessary to perform the services. This Agreement shall not be construed as creating any joint employment relationship between Contractor and the NMCRA and the NMCRA will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

20.3 Assignments; Amendments.

20.3.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Contractor without the prior written consent of NMCRA, which consent may be withheld by the NMCRA in its sole and absolute discretion. This Agreement shall run to the NMCRA and its successors and assigns.

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

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

20.5 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, Contractor and the NMCRA designate the following as the respective places for giving such notice:

NMCRA: Anna-Bo Emmanuel, Esq., Executive Director
North Miami Community Redevelopment Agency
735 NE 125 Street, Suite 100
North Miami, Florida 33161
Telephone No. (305) 895-9839
Facsimile No. (305) 895-9822
Email: aemmanuel@northmiamifl.gov

Copy to: Steven W. Zelkowitz, Esq., NMCRA Attorney
Taylor English Duma LLP
2 S. Biscayne Boulevard, Suite 2500
Miami, Florida 33131
Telephone No. (786) 840-1447
Facsimile No. (786) 845-6517
szelkowitz@taylorenghish.com

Contractor: Frank Orphe
Tru-Green Construction, Inc.
4952 N.W. 7th Avenue
Miami, Florida 33127
Telephone No. (305) 757-3335
Facsimile No. (305) 757-1179
Email: _____

20.6 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

20.7 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

20.8 Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement, and is incorporated herein by reference.

20.9 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and provided that the Agreement's fundamental terms and conditions remain legal and enforceable, the remainder of the Agreement shall continue in full force and effect, remain operative and binding, and shall and be enforced to the fullest extent permitted by law.

20.10 Governing Law; Venue. This Agreement will be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of the terms of this Agreement shall be brought in Miami-Dade County.

20.11 Extent of Agreement. This Agreement represents the entire and integrated agreement between the NMCRA and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

20.12 No Third Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either the NMCRA or Contractor.

20.13 Ethics Requirements. Contractor is responsible for educating itself on, and complying with, the various ethics and conflict of interest provisions of Florida law, Miami-Dade County Ordinance and City Code.

20.14 No Liens. Contractor shall take all action necessary to prevent any liens from being recorded against the property upon which the Scope of Work is being performed; provided; however, in the event any person including but not limited to, a subcontractor records a lien against such property arising from the Contractor's performance or non-performance, payments due the Contractor shall be withheld in such amounts as the NMCRA, in its sole discretion, deems sufficient to completely protect and indemnify the NMCRA from any loss, damage or claim (including attorneys' fees and costs) until the conditions requiring such measures have been completely remedied by the Contractor to the satisfaction of the NMCRA. The Contractor shall, within twenty (20) days of notice of the filing of any such lien, satisfy such lien or shall provide proper bonds to remove the lien from the property pursuant to Florida Law. If the lien or other condition is not remedied by the Contractor within this period of time, the NMCRA may, at his option, proceed to satisfy the lien from the funds held by the NMCRA and then deduct such amounts from any payments due or becoming due to Contractor. Alternatively, the Contractor shall reimburse the CRA for all sums so expended to remove the lien to the extent the expenditure exceeds the amount held by the CRA.

20.15 Prevailing Party's Attorney's Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

20.16 Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Agreement, only one of which need to be produced as evidence of the terms hereof. A copy of this Agreement and any signature thereon shall constitute an original for all purposes.

20.17 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

20.18 Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

20.19 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20.20 Extension of Time as Sole Remedy. Except as may be expressly set forth in this Agreement, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE NMCRA BY REASON OF ANY DELAYS. The Contractor shall not be entitled to an increase in the Fee or payment or compensation of any kind from the NMCRA for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the NMCRA or its agents. Otherwise, the Contractor shall be entitled only to extensions of the Term as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

20.21 Conflicts. In the event of any conflicts between obligations and/or terms of the Contractor set forth in this Agreement, the more stringent terms shall apply.

21. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

22. FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND. PAYMENT MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNER'S CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE

**FOLLOWING TELEPHONE NUMBER AND ADDRESS: CONSTRUCTION INDUSTRY
LICENSING BOARD, 1940 NORTH MONROE STREET, TALLAHASSEE, FL 32399,
PHONE: (850) 487-1395.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

CONTRACTOR:

TRU-GREEN CONSTRUCTION, INC.,
a Florida corporation

By: _____

Frank Orphe
President

NMCRA:

NORTH MIAMI COMMUNITY
REDEVELOPMENT AGENCY,
a public body corporate and politic

By: _____

Anna-Bo Emmanuel, Esq.
Executive Director

Attest:

By: _____

Vanessa Joseph, Esq.
NMCRA Secretary

Approved as to form and legal sufficiency:

By: _____

Taylor English Duma LLP
NMCRA Attorney