

**CITY OF NORTH MIAMI
CONSTRUCTION MANAGEMENT AT-RISK
SERVICES AGREEMENT**

(RFQ No. 32-18-19; Construction Management at-Risk Services for Development of the Cagni Park North Site)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this day of 6/11/2020, 2020 by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL (“City”) and **Thornton Construction Company, Inc.**, a Florida Profit Corporation organized and existing under the laws of the State of Florida, having its principal business office at 13290 NW 42nd Ave, Opa-Locka, FL 33054 (“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 desirous of developing a new park and recreational complex which includes, but is not limited to, a new multi-purpose field, Olympic size pool and ancillary improvements at the Cagni Park North site (“Project”), for the use and enjoyment of the City’s residents and visitors alike; and

WHEREAS, on May 6, 2019, the City advertised Request for Qualifications No. 32-18-19 – Construction Management at-Risk Services for Development of the Cagni Park North Site (“RFQ”), soliciting proposals from experienced and qualified firms to provide Construction Management at-Risk Services, in accordance with the terms, conditions and specifications contained in the RFQ (“Project”); and

WHEREAS, in response to the RFQ, Contractor timely submitted its Proposal and was evaluated by City administration as the highest ranked responsive-responsible Respondent whose proposal, 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, on September 10, 2019, the Mayor and City Council passed Resolution Number 2019-R-95, approving the selection of Contractor and authorized the City Manager and City Attorney to negotiate and execute an agreement to accomplish the Project.

WHEREAS, on February 11, 2020, the Mayor and City Council passed resolution 2020-R-25, which authorized the City Manager to enter into an agreement with Contractor for the provision of Construction Management at-Risk services for the Cagni Park Project.

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 correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - SCOPE OF WORK

2.1 The Contractor has overall responsibility for, and shall provide, complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner’s requirements and the terms of the Contract Documents..

ARTICLE 3 – CONTRACT DOCUMENTS

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

3.1.1 The City’s *Request for Qualifications No. 32-18-19, Construction Management At-Risk Services for Development of the Cagni Park North Site* attached hereto by reference;

3.1.2 Contractor’s response to the RFQ (“Qualifications”), attached hereto by reference;

3.1.3 Resolution No. R-2020-R-25, passed and adopted by the Mayor and City Council on February 11, 2020, approving the selection of Contractor authorizing the execution of this Agreement for the provision of Services attached hereto as Exhibit “A”;

3.1.4 Contractor’s final negotiated and accepted proposal attached hereto as Exhibit “B”;

3.1.5 Preliminary Schedule of design and construction milestones attached hereto as Exhibit “C”;

3.1.6 The City’s General Conditions of the Construction Contract attached hereto by reference. Notwithstanding anything to the contrary in this Section or the Agreement, the General Conditions of the Construction Contract referenced in different sections of the Agreement are only for general reference, will be revised, and will only become a part of the Contract Documents at the time the Parties execute a GMP Amendment;

3.1.7 The drawings, specifications, details and other documents developed by the Project Architect to describe the Project and accepted by the City;

3.1.8 The Guaranteed Maximum Price Proposal for this Project when accepted by the City and executed by the parties in a form to be prepared by the Contractor and approved by the City;

3.1.9 The Minority/Woman-Owned Business Enterprise (MWBE) and Disadvantaged Business Enterprise (DBE) sub-contracting plan submitted by the Contractor and approved by the City for this Project;

3.1.10 Any additional documents, which are required to be submitted by Consultant under this Agreement.

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

- 3.2.1 Specific written direction from the City Manager or City Manager's designee made in accordance with the City Manager's authority;
- 3.2.2 This Agreement;
- 3.2.3 GMP Amendment;
- 3.2.4 Change Orders;
- 3.2.5 Specifications;
- 3.2.6 Plans;
- 3.2.7 The RFQ;
- 3.2.8 The Proposal

3.3 The Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or error found in the RFQ prior to the Contractor submitting its Proposal or the right to clarify same, as stipulated in the RFQ, is waived.

ARTICLE 4 - DEFINITIONS

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:

4.1 *Architect/Engineer or A/E*: The "Architect/Engineer" or "A/E" shall mean that person or firm designated as the architect/engineer for the Project, or any portion thereof. Also referred to as the Consultant, this entity has entered into a separate agreement with the City for design services for the Project. For purposes of this Agreement, the Architect/Engineer of record for the Project is Bermello Ajamil & Partners, Inc.

4.2 *Budget*: The amount established by the City to build this Project (i.e. "Construction Budget"). The Contractor herein acknowledges that it has reviewed and accepted the Construction Budget established by the City for this Project as being Eleven Million Three Hundred and Twenty Four Thousand Dollars (**\$11,324,000**) prior to execution of this Agreement;

4.3 *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.

4.4 *City or Owner*: The "City" or "Owner" shall mean the City of North Miami, a Florida municipal corporation, having its principal offices at 776 NE 125th Street, North Miami, FL 33161, and may also be referred to as the "Owner" in this Agreement. The City, as a governmental entity, is subject to the availability of funds and annual appropriation of funds by its legislative body and other governmental authorities or sources of revenue, in an amount to allow continuation of its performance under this Agreement. In the event of lack of funding for this Agreement, or the Project subject to this Agreement, this Agreement may be terminated by the City pursuant to the procedures set forth in this Agreement.

4.6.5 The City Manager may approve contract amendments which shall not exceed the sum of Twenty-Five Thousand Dollars (\$25,000), or such other amount as may be specified by the City of North Miami Code of Ordinances, in its Procurement Ordinance, as same may be amended from time to time.

4.7 *Contractor Principal*: The "Contractor Principal" shall be the person designated by the Construction Manager as its senior representative to the City. The Contractor Principal shall perform those duties required in this Agreement and shall have the authority to commit and obligate the Contractor, and to fully act for the Contractor in all matters.

4.8 *Claim*: A "Claim" is a demand, assertion, dispute or other such claim by one of the parties hereto arising out of or based upon the terms and conditions of the Contract Documents.

4.9 *Contract Amendment*: A "Contract Amendment" shall mean a written order to the Construction Manager approved by the City, as specified in this Agreement, and signed by the City's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees or completion dates, as applicable, and executed by the City, Contractor and the A/E. Any Contract Amendments and/or Change Orders affecting changes to the Work shall be countersigned by the Contractor and the A/E.

4.10 *Construction Change Directive*: The term "Construction Change Directive" shall mean a written directive to effect changes to the Work, prepared by the A/E and executed by the City.

4.11 *Construction Estimate*: The term "Construction Estimate" shall mean a cost estimate for the completion of the entire Scope of Work for the Project, which estimate shall include all components of the Cost of the Work, as well as the Construction Manager's Fee for the Project.

4.12 *Construction Manager (Contractor)*: The firm of Thornton Construction Company, Inc., as selected by the City pursuant to Resolution No. 2020-R-25, to provide services of Construction Management At-Risk for this Project. Acceptance of the GMP by the City shall result in the Contractor functioning from that point forward as a General Contractor under the terms and conditions of the Contract Documents, as same may be amended, which will go into effect at the time of GMP acceptance.

4.12.1 The Construction Manager shall be liable for its services, responsibilities and liabilities under this Agreement, as well as the services, responsibilities and liabilities of any Subcontractor, and any other person or entity acting under the direction or control of the Construction Manager. When the term "Construction Manager" or "Contractor" is used in this Agreement, it shall be deemed to include any Subcontractor and any other person or entity acting under the direction or control of Contractor. Any Subcontractor retained by Construction Manager pursuant to this Agreement and the Project, must receive the prior written approval of the City.

4.13 *Construction Manager's Pre-Construction Services Fee*: The Construction Manager's Fee for pre-construction services, including the cost of time and materials expended in completion of its pre-construction services for this Project, shall not exceed Sixty-Nine Thousand Five Hundred and Ninety-Three Dollars (**\$69,593.00**) as contemplated herein. Notwithstanding anything to the

contrary, if the GMP Proposal is not accepted by the City and this Agreement is terminated, the Construction Manager shall be entitled to receive only that portion of the Fee referenced herein, representing all Work performed to date of termination relating to the Project.

4.14 *Construction Phase Services*: The term "Construction Phase Services" shall mean and anticipates, in a subsequent amendment to this Agreement, and further, in the event the City Council approves the GMP, the services to be performed by or through the Construction Manager during the Construction Phase of the Project, including, without limitation, the Work for the Project, and such other services as called for by this Agreement and any amendments hereto, or reasonably inferred there from.

4.15 *Construction Schedule*: The term "Construction Schedule shall mean a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

4.16 *Contingency*: The term "Contingency" (i.e. "Project Contingency") shall mean a line item budget amount agreed to by the parties and included in the GMP Proposal intended to cover costs that may result from incomplete design, Owner requested changes, unforeseen and unpredictable conditions, or uncertainties encountered during execution of the Project. The actual amount of the Contingency will depend on the status of design, complexity and uncertainties of the component parts of the Project. The Contingency funds shall be used at the discretion of the City and must first be approved by the City prior to the Contractor using it. Any unused portion of the Contingency that remains unallocated upon Final Completion and after issuance of final payment for the Project, shall accrue to the benefit of the City.

4.17 *Contract*: The term "Contract" means the contract formed by all of the Contract Documents, including this Agreement and any amendments hereto.

4.18 *Contract Documents*: The "Contract Documents" include Resolution No. 2020-R-25, this Agreement, and all attachments, exhibits, and amendments thereto; and such other documentation as may be listed as an attachment and/or an exhibit to this Agreement. Upon execution of the GMP Amendment, the Contract Documents shall be expanded to include, in addition to those items listed above, those documents identified by the GMP Amendment and the attachments and exhibits thereto.

4.19 *Contract Time*: The time period agreed to by the parties and approved by the City for the Construction Manager to successfully complete its services for this Project.

4.20 *Day*: Shall mean a consecutive "calendar day," unless specifically designated otherwise

4.21 *Drawings*: The "Drawings" shall refer to the graphic and pictorial provisions of the Work identified as the Drawings in the GMP Amendment; Change Order, or Construction Change Directive issued and executed in accordance with the Agreement, including without limitation, all notes schedule and legends on such Drawings.

4.22 *General Contractor*: The term "General Contractor" shall refer to the Contractor after acceptance by the City of the GMP Amendment. The Contractor shall be duly licensed as a General Contractor pursuant to Chapter 489, Florida Statutes.

4.23 *Guaranteed Maximum Price:* The term "Guaranteed Maximum Price" or "GMP" shall mean the sum certain set forth in the GMP Amendment as the Project price that the Construction Manager guarantees not to exceed for the Project for all services within the Agreement, as same shall be amended upon acceptance of the GMP by the City not to include the Preconstruction Services Fee.

4.24 *GMP Amendment:* The term "GMP Amendment" shall mean the GMP Proposal for the Project, if any, accepted by the City, in its sole discretion, which Amendment shall automatically become a part hereof upon the City's and Construction Manager's execution of the same and shall establish, among other things, the GMP, the names of the Construction Manager's on site-management and supervisory personnel for the Project; and the Contract Time for the Project.

4.25 *GMP Proposal:* The term "GMP Proposal" shall mean a proposal for completing the Project, which proposal shall include the proposed Guaranteed Maximum Price for the construction of the Project, as provided by the Construction Manager and accepted by the City based upon the Drawings and Specifications; the Contract Documents; and the Memorandum of Changes. The City has no obligation to accept the GMP Proposal regardless of the amount or its relationship to estimates provided.

4.26 *Laws:* The term "Laws" shall include all Federal, State, County and local laws, statutes, regulations, ordinances, rules and building codes applicable to the Project, including, without limitation, orders of any public authority having jurisdiction over the Project, building, labor, safety, licensing or environmental laws and local building codes, building standards and trade practices affecting the Project, as same may be amended from time to time.

4.27 *Memorandum of Changes:* The term "Memorandum of Changes" shall mean a written summary of the Construction Manager's recommended modifications to the Drawings and Specifications relating to the Project based on an evaluation of the Project requirements; on and off-site development; constructability requirements; and Project budget requirements; and a review of the design documents; and the Drawings and Specifications; and the Contract Documents.

4.28 *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.

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

4.30 *Pre-construction Phase Services:* The term "Pre-construction Phase Services" shall mean the services which the Construction Manager shall perform during the design phase of the Project including, but not limited to, constructability analysis, value engineering recommendations, cost estimates, due diligence, pre-qualification of Subcontractor and suppliers, conducting bid openings, preparation and submittal of GMP proposal to the City.

4.31 *Project Team*: The term "Project Team" shall mean the Owner, Construction Manager, Project Architect and its sub-consultants, plus other participants as authorized by the City and other consultants, if any, hired by the City to assist in completion of the Project.

4.32 *Schedule of Values*: The term "Schedule of Values" shall mean the schedule of values, setting forth the detailed cost breakdown, including labor, materials and taxes, of the GMP set forth in the applicable GMP Proposal, the sum of which shall not exceed the GMP.

4.33 *Scope of the Work*: The term "Scope of the Work" shall mean all services, labor, materials equipment, operations and construction management services that are indicated in, or reasonably inferable from the Contract Documents.

4.34 *Specifications*: The "Specifications" consist of any and all written requirements for materials, equipment, construction systems, standards and workmanship for the Work which are identified as the Specifications in the GMP Amendment, Contract Amendment(s), or Construction Change Directive(s) issued and executed in accordance with the Agreement.

4.35 *Subcontractor*:

4.35.1 A "Subcontractor" is a person or entity which has a direct contract with the Construction Manager to perform or supply a portion of the Work and the term includes such Subcontractor's authorized representatives. The Construction Manager shall obtain prior written approval of the City prior to changing or modifying the Subcontractor and other professional consultants. Any such services performed by any Subcontractor shall be passed through to City without additional charge by the Contractor. All such work shall be itemized on invoices from such Subcontractor, showing work performed and charges incurred. Notwithstanding anything in this Section or the Agreement to the contrary, for all additional costs incurred by subcontractors, and duly authorized by the City in writing, the Contractor shall be entitled to include a fee at the same percentage negotiated in the GMP Amendment, its bond costs, and its insurance costs and shall provide supporting documentation of increased bonding and insurance coverage to the City.

4.35.2 The Construction Manager represents that it has made and will make reasonable investigation of all Subcontractor to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Construction Manager of its prime and sole responsibility for the performance of the Work under this Agreement.

4.35.3 All rates, multipliers and any other fees charged by any Subcontractor shall be not more than those rates, multipliers and other fees in any contracts that any such Subcontractor may have either with the City directly or as a Subcontractor under some other City agreement or more than what is typically charged in the industry.

4.35.4 Construction Manager shall bind each and every approved Subcontractor to the terms stated in this Section and shall require the proper licensing of such Subcontractor.

4.35.5 If any of the services outlined in this Agreement are furnished by Construction Manager by obtaining the services of Subcontractor, Construction Manager shall provide City with proposals and contracts between the Subcontractor and Construction Manager outlining the services to be performed and the charges for same, together with any other documentation required by City.

4.36 *Substantial Completion*: The term "Substantial Completion" is as defined in the Contract Documents, as same may be amended. It 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.

4.37 *Substantial Completion Date*: The "Substantial Completion Date" shall mean the date which the A/E certifies to the City by means of a certificate of Substantial Completion as the date when the Construction Manager has achieved substantial completion of the Project or any phase thereof in accordance with the City's General Conditions of the Contract Documents and applicable laws and the City of North Miami's Building Department issues a Temporary Certificate of Occupancy (TCO). Notwithstanding the preceding, if a situation arises beyond the control of the Contractor, and the issuance of a Certificate of Temporary Occupancy (TCO) is granted by the Building Department, then the City may deem at its sole and reasonable discretion that the Project or any phase thereof has been Substantially Completed.

4.38 *Substitutions*: a City-approved deviation from the brand or type of materials products or equipment is specified in the Construction Documents, as accomplished herein.

4.39 *Taxes*: The term "Taxes" shall mean all taxes related to the performance of the Work or any portion thereof, including but not limited to, all sales, consumer, use, occupational, excise, social security, unemployment compensation and similar taxes.

4.40 *Work*: The term "Work" means all supervision, labor materials and equipment required by the Contract Documents to be provided by or through the Construction Manager for the entire Project and all other services necessary to fulfill the Construction Manager's obligations hereunder to perform the Scope of the Work, including, as the context may require, any portion of the Work with respect to the Project. The uncapitalized term work is used in its ordinary sense.

4.41 *Worksite*: The precise Project locations as designated by the City, where Work is to be done by Contractor or its Subcontractor under this Agreement, in accordance with the terms, conditions and specifications contained in the Contract Documents.

4.42 *Force Majeure*: "Force Majeure" shall mean any delay occasioned by superior or irresistible force(s) occasioned by violence in nature without the interference of human agency such as hurricanes, tornados, flood and loss caused by fire and other similar unavoidable casualties; changes in federal law, state or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties control; or by any other such causes which the City and the Construction Manager decide in writing justify the delay. Provided, however, that market conditions, labor conditions, construction industry price trends, and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.

4.43 *Value Engineering*: Value Engineering is a project evaluation technique used during the design process that seeks to reduce costs and/or increase value by analyzing the functional requirements of a project's materials, methods, components and subsystems consistent with specified performance, reliability, maintainability, aesthetic, safety, and security criteria to ensure that it provides the best use of available project funds.

4.44 *Final Completion*: Final Completion refers to that stage in the Project when all Work has been completed, the Owner has taken beneficial occupancy, all punch lists have been completed, all as-built drawings, operations and maintenance manuals, warranties and other Project records have been delivered, all waivers and releases have been negotiated and executed, all consents of surety to final payment have been delivered, and all other requirements of this Agreement relating to Final Completion have been met, in accordance with the Contract Documents as certified by the Project Architect and the Owner, so that Final Payment to the CM can be issued by the Owner.

ARTICLE 5 – RELATIONSHIP OF CITY AND CONSTRUCTION MANAGER

5.1. The Construction Manager accepts the relationship of trust and confidence established between it and the City by this Agreement. The Construction Manager represents that it will furnish its best skill and judgment in performing the Contractor's services and the Work, and shall always act to further the interest of the City in the expeditious completion of the Project, at the lowest responsible cost to the City, and in strict accordance with the Contract Documents and prudent and customary construction practices.

5.2. By signing this Agreement, the Construction Manager accepts a fiduciary duty with the City and warrants and represents to the City that the Construction Manager:

5.2.1. Has all licenses and certifications required by applicable law to perform the Contractor's services and the Work;

5.2.2. is experienced in all aspects of preconstruction and construction planning for projects similar to the Project;

5.2.3. will act in the City's highest and best interest in performing the Contractor's services and the Work; and

5.2.4. that no employee or affiliate of the Construction Manager, including all Subcontractor, suppliers, at any tier, has been convicted of a public entity crime, fraud, theft, and/or property damage crime within the preceding thirty-six (36) months from the date of execution of this Agreement, pursuant to Section 287.133, Florida Statutes.

The Construction Manager acknowledges and agrees that the City is relying on these representations and covenants as a material inducement to enter into this Agreement

ARTICLE 6 – DUTIES AND RESPONSIBILITIES

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 Subcontractor 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 professional skill and judgment based on industry standards in furthering the interests of the City. Contractor agrees to furnish efficient business administration and superintendence based upon industry standards to complete the Project in the most expeditious and economical manner consistent with the interests of the City.

6.3 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 Project Team such comments as may be appropriate concerning construction feasibility and practicality.

6.4 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.

6.5 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.

6.6 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.

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

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

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

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

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

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

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

6.11.3 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.

6.11.4 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.

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

6.13 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.

6.14 Contractor shall develop and maintain a program to ensure quality control of the Work. Contractor shall supervise the Work of all Subcontractor 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.

6.15 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.

6.16 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.

6.17 Contractor warrants and accepts that any and all repair work required at any phase of the Project, when caused by Contractor or Contractor's subcontractors, shall be deemed the responsibility of the Contractor at no additional cost to the City.

6.17.1 The Contractor shall develop for City approval a Project specific procedures manual detailing the entire Project process, including at minimum the following:

- a) The RFQ and all corresponding forms and attachments;
- b) This Agreement;

- c) The GMP Amendment and all corresponding forms and attachment;
- d) All Contract Documents, which include, Project Specifications, Construction Managers Proposal, Qualifications, and Assumptions, Construction Managers Salary and Wake Schedule, Project Schedule; Onsite Management and Supervisory Schedule; and Schedule of Values;
- e) Construction coordination, scheduling, communication and documentation procedures among the Contractor, the Architect/Engineer, Subcontractor(s), sub consultant(s), and other departments or organizations who require coordination with and/or input into the Work;
- f) Project reports (bi-weekly and final report);
- g) Requests for Information;
- h) Contract Amendment(s) process;
- i) Shop Drawing submittal/product data and samples; and
- j) Project closeout/commissioning.

Said procedures manual to be presented no later than with first application for payment.

6.18 If the Owner elects to “fast-track” or develop the Project in multiple phases, the Construction Manager shall organize and perform its services as appropriate for each phase. Each phase of the Project may have a unique schedule for completion and a specific GMP Proposal, at the Owner’s discretion.

6.19 The Contractor shall cooperate with the Project Architect and endeavor to further the interests of the Owner and the Project. Construction Manager shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of the Owner and in accordance with the Project Schedule.

ARTICLE 7 – PRE-CONSTRUCTION SERVICES PHASE FEE

7.1 The Pre-Construction Phase Fee is the total compensation payable to the Construction Manager for the performance of Pre-Construction Phase Services for this Project. The Pre-Construction Phase Fee shall be an amount not-to-exceed Sixty-Nine Thousand Five Hundred and Ninety-Three Dollars (**\$69,593.00**).

7.2 Consistent with the breakdown of fees provided in the Construction Manager’s Proposal attached hereto as Exhibit “B”, the Construction Manager shall submit invoices based on the percentage of completion of the services, payable proportionally on a monthly basis based on the agreed to schedule approved by the City. The City shall make payment of undisputed amounts within thirty (30) days after receipt of an acceptable invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed.

7.3 The Construction Manager understands and acknowledges that as a result of the Interlocal Agreement entered into by the City, the School Board of Miami-Dade County and Miami-Dade County, the Construction Manager’s requests for payment related to the performance of their duties under the Pre-Construction and Construction Phases of this Project may be subject to review

and approval by parties to the Interlocal Agreement before actual payment can be issued. In the event that such a review is necessary, the City shall make every effort to collaborate with the reviewing party to expedite the approval and issuance of payment to the Construction Manager.

7.4 Except as otherwise authorized pursuant to Paragraph 7.5 below, the Construction Manager shall not be entitled to an increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from their performance of Pre-Construction Phase Services.

7.5 Contractor agrees and understands that: (i) any and all Subcontractor used by the Contractor shall be paid by the Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractor for any of the work related to this agreement shall be borne solely by Contractor. Any work performed for the Contractor by a Subcontractor will be pursuant to an appropriate agreement between the Contractor and Subcontractor which specifically binds the Subcontractor to all applicable terms and conditions of the contract documents.

7.6 In the event that additional Pre-Construction Phase Services are required and approved by the City in writing, the Construction Manager shall be entitled to additional compensation determined by one of the following:

7.6.1 A pre-determined lump sum amount; or

7.6.2 The hourly cost of the Construction Manager's employee or consultant who actually performs the Additional Services, based on the employee's Worker Wage Rate or prorated Monthly Salary Rate plus the actual cost of allowable expenses incurred in the performance of the Additional Services, plus an overhead and profit markup of ten percent (10%) of the total cost; or

7.6.3 As otherwise agreed to by the Construction Manager and the City prior to the performance of the requested Additional Services.

ARTICLE 8 – PRE-CONSTRUCTION PHASE SERVICES

The Construction Manager's Pre-Construction Phase services shall commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. The Construction Manager shall perform the following Pre-Construction Phase Services.

8.1 General Coordination

8.1.1 The Construction Manager's Pre-Construction Phase Services team shall attend Project Team meetings with the Owner, the Owner's representatives, and the Project Architect at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent

Project Team meetings are anticipated prior to the Owner's acceptance of the GMP and during completion of the Construction Documents.

8.1.2 Provide a preliminary evaluation of the Project's proposed Scope of Work cost components and the City's adopted Construction Budget related thereto.

8.1.3 Review and understand the standards and requirements in Owner's General Conditions of the Construction Contract and perform all services in accordance with those standards and requirements.

8.1.4 Visit the site and inspect the existing on-site and off-site conditions, as well as perform preliminary due diligence investigation with regards to existing utilities available for the Project.

8.1.5 Participate as a member of the Project Team in the development of the Project facilities program, if such program has not been developed prior to the effective date of this Agreement.

8.1.6 Provide recommendations and information to the Project Team on: site usage and site improvements; building systems, equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of the Construction Manager and Owner's separate Contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Project Schedule approved by the City and the adopted Construction Budget.

8.1.7 Assist the Owner, if needed, in selecting and directing the services of surveyors, soils engineers, existing facility surveys, testing and balancing, commissioning, environmental surveys or other special consultants to develop additional information for the design or construction of the Project.

8.1.8 At Owner's request, attend public meetings and hearings concerning the development and progress of the Project.

8.2 Constructability Program

8.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities, in accordance with accepted industry practices.

8.2.2 Prepare a "Constructability Report" that identifies items that in the Construction Manager's opinion may impact either the construction cost or schedule of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies and lack of clarity that may generate

cost overruns or delays for the Project. The Constructability Report shall be updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

8.2.3 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by the Owner and updated by the Construction Manager at least monthly, or sooner if necessary, during the Pre-Construction Phase.

8.3 Scheduling

8.3.1 Develop a critical path method schedule (CPM Schedule) for Project Team review and the Owner's approval, that coordinates and integrates activities on the Project, including the Construction Manager's services, the Project Architect's design services, commissioning, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other Contractors. The CPM Schedule must identify all major milestones through Project Final Completion.

8.3.2 The Construction Manager shall update the CPM Schedule, as needed, throughout the Pre-Construction and Construction Phases of the Project.

8.3.3 The CPM Schedule shall include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, project security, property protection, life-safety systems, information and computer technology systems.

8.4 Budget and Cost Reconciliation

8.4.1 The Construction Manager is responsible for preparing and updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project.

8.4.2 Provide estimated construction cost reports at the required stages of completion of the schematic design, design development, and construction documents phases of the Project. The Construction Manager's reports for the design development and construction documents phases shall be detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized in current Construction Specifications Institute Division format for each portion of the Work.

8.4.3 Provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact. Advise the Project Team immediately if the Construction Manager has reason to believe that their most current estimate either exceeds the adopted Construction Budget or is not in line with the preliminary CPM Schedule requirements. If so, the Construction Manager shall prepare and submit to the Project Team reasonable strategies (solutions) for bringing the Project in line with the adopted Budget and proposed CPM Schedule.

8.5 Coordination of Design and Construction Contract Documents

8.5.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project.

8.5.2 Coordinate with the Project Team regarding the selection of materials, equipment, component systems, and types of construction to be used for the Project. Provide input and recommendations to the Project Team regarding proposed site layout, construction feasibility, availability of labor and materials, procurement time requirements, and construction sequencing.

8.5.3 Advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents.

8.5.4 Advise Owner regarding recommended adjustments to the Project scope, systems or other options for keeping the Project cost within the adopted Budget.

8.5.5 Review the Construction Documents for compliance with all applicable laws, rules and regulations and with Owner requirements.

8.6 Construction Planning and Procurement Package Strategy

8.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. Advise Owner and Project Architect on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

8.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the soliciting of offers and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner. These recommendations may include, but are not limited to, phased or staged construction or multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, MWBE and/or DBE Contractor participation, and other factors.

8.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractor or Owner's separate Contractors.

8.6.4 Develop a procurement package strategy in coordination with the Project Team that addresses the entire scope of Work for each phase and stage of the Project. In developing the procurement package strategy, the Construction Manager shall clearly identify all procurement packages that the Construction Manager intends to self-perform for review and approval by the Owner. The Construction Manager's procurement package strategy shall be reviewed with the Project Team on a regular basis and revised throughout the buyout of the Project in order to promote the best interests of the Project and the Owner.

8.6.5 Refine, update and implement proposed MWBE and/or DBE subcontracting plans to promote diversity in the procurement of goods and services for the Project.

8.6.6 Advise Owner of any tests to be performed and assist Owner in selecting testing laboratories and consultants, if needed, without assuming direct responsibility for the work of such laboratories and consultants.

8.6.7 Construction Manager shall review the Construction Documents to ensure that they contain adequate provision for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

8.6.8 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases. Make recommendations that minimize adverse effects of labor shortages.

8.6.9 Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Owner as may be required to meet the Schedule.

8.7 Bidding Phase

8.7.1 Prequalification Plan - The Contractor shall prepare and submit a Subcontractor's prequalification plan for review and approval by the Project Team. The Contractor shall submit their list of pre-approved Subcontractor for each element of the Work for review and approval by the Project Team. The City reserves the right to reject any Subcontractor proposed by the Contractor for this Project.

8.7.2 The Contractor's prequalification plan shall take into consideration and incorporate elements of the City's Community Benefits Plan to provide bidding opportunities for local Subcontractor, vendors and suppliers located within the City of North Miami in accordance with Section 7-151 of the City's Code of Ordinances.

8.7.3 Any claims, objections or disputes arising out of the prequalification plan or list are the sole responsibility of the Contractor. The Contractor shall hold harmless, indemnify, and defend the City, its employees, agents, and representatives in any matter arising out of the prequalification plan and/or the Subcontractor list, except where the sole cause of the matter is a City directed decision.

8.7.4 Scope of Work - The Contractor shall receive subcontract proposals which, when combined with the work the Contractor intends to do with its own forces, shall represent the entirety of the Scope of Work required of this Agreement.

8.7.5 Pre-Bid Conferences - The Contractor shall schedule and conduct pre-bid conferences for Subcontractor, vendors and suppliers interested in participating in this Project. The Contractor shall coordinate the scheduling of such pre-bid conferences with the Project Team members.

8.7.6 Subcontractor Bidding - The Contractor shall properly advertise and schedule in coordination with the Project Team the opening, review and award of sealed bids to qualified responsive and responsible Subcontractor. Said bids from Subcontractor shall be in writing and shall be opened and reviewed in conjunction with the City's representative and the Project Architect.

ARTICLE 9 – GUARANTTED MAXIMUM PRICE PROPOSAL

9.1 When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, Construction Manager shall prepare and submit a Guaranteed Maximum Price (GMP) Proposal to the Owner. The GMP Proposal must remain valid must for a period not-to-exceed ninety (90) days from submittal to the Owner.

9.2 In developing the GMP Proposal, the Construction Manager shall coordinate efforts with the Project Architect to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The Construction Manager shall review development of the GMP Proposal with the Owner on an ongoing basis to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

9.3 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in developing the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's proposed General Conditions and Cost of the Work organized by trade, contingency amounts, Construction Manager's Fee, as well as the proposed construction schedule (calendar days duration), including milestones for Substantial Completion and Final Completion.

9.4 In the event that the Construction Documents are not complete, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion, except for material changes in scope.

9.5 Included with its GMP Proposal, Construction Manager shall provide two complete, bound sets of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The bound supporting documents shall be referenced in and incorporated into the GMP Proposal.

9.6 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and workmanship shall prevail over all other interpretations.

9.7 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Owner. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the Construction Documents or the supporting documents used to establish the GMP.

9.8 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of the Agreement and its attachments shall control.

9.9 Owner may accept or reject the GMP Proposal or attempt to negotiate its terms with the Construction Manager. In the event that the GMP Proposal is not accepted by the City, then the City may pursue other options including, but not limited to, the following:

- a) Reject the GMP Proposal and request that the Construction Manager and Project Architect work together to develop solutions, including value engineering recommendations and other cost saving measures, to reconcile the proposed cost of the Project with the adopted Budget and to submit for review and approval by the City, along with a revised GMP Proposal; or,
- b) Reject the GMP Proposal, terminate this Agreement with the Contractor and take possession of the plans, specifications and other documents related to this Project. Moreover, the City reserves the right to proceed with whichever course of action it considers to be in its best interest including, but not limited to, having the Project bid (priced) out and awarded to another firm. If so, the Contractor shall be compensated only for that percentage of their Pre-Construction Services Fee fully performed through the date of termination.

9.10 Upon acceptance by the Owner of the GMP Proposal in writing, both parties shall execute the GMP Proposal and the terms of the GMP Proposal, including the Guaranteed Maximum Price

and the supporting documents, shall become part of the Contract between the Owner and the Construction Manager.

9.11 Following acceptance of the GMP Proposal by the Owner, the Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager and the Project Architect shall jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The monthly status report shall also include an updated start-to-finish project schedule that encompasses the Project Architect's activities, the Contractor's activities, and the Owner's commissioning and occupancy activities, short-term schedules, and production rates for key elements of the Project as determined by the Owner.

9.12 The Parties may agree to convert the GMP to a lump sum contract amount at any time after the Construction Manager has received bids or proposals from trade Contractors or Subcontractor for the performance of all major elements of the Work. In preparing a lump sum conversion proposal, the General Contractor must provide the following information:

- a) The stage of completion of the Project;
- b) The trade packages that have been completely bought out;
- c) The trade packages remaining that have not been bought out;
- d) A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
- e) An accounting of all savings amounts that are to be returned to the Owner as part of the lump sum calculation; and
- f) Any other Project information requested by the Owner.

9.13 The Construction Manager shall document the actual Cost of the Work at buyout as compared to the Guaranteed Maximum Price Proposal and shall report this information to the Owner monthly throughout the Construction Phase.

ARTICLE 10 – CONSTRUCTION PHASE SERVICES

The Construction Phase shall be deemed to commence upon the date specified in a signed Notice-to-Proceed issued by the Owner after approval of the GMP Proposal and shall continue until Final Completion of all Work. The Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager shall not incur any Subcontractor costs for construction of the Work prior to issuance by Owner of written authorization to commence such Work. The Construction Manager shall perform the following Construction Phase Services.

10.1. Construction Obligations Generally

10.1.1. Contractor shall designate and maintain at all times during the course of the Work a Project superintendent. Upon execution of this Agreement, Contractor shall notify the A/E in writing of the superintendent's name, address, and telephone number. Contractor's

superintendent will be in charge of the operations of Contractor in the performance of the Work, but only Contractor's Vice Presidents and/or President are authorized to bind Contractor and to accept any notice.

10.1.2. Contractor shall provide administrative, management and related services to coordinate, schedule, supervise, and inspect the activities and responsibilities of the Subcontractor with each other and with those of Contractor, Owner and the A/E. 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 Contractor. The Contractor shall transmit to the A/E requests for interpretations of the meaning and intent of the Contract Documents, and assist in the resolution of questions that may arise consistent with the Contract Documents and utilizing information from the Subcontractor, Contractor shall coordinate the sequence of construction and assignment of space in areas where the Subcontractor are performing Work.

10.1.3. Contractor shall schedule and conduct a preconstruction meeting and weekly meetings at the Project Site to discuss such matters as procedures, progress, and scheduling. Unless otherwise directed by Owner, Contractor shall prepare and promptly distribute minutes to Owner, the A/E and, as necessary, Subcontractor.

10.1.4. *Scheduling; Records*

10.1.4.1. Utilizing the Project Schedule, Contractor shall periodically (but no less than monthly) update the Project Schedule, incorporating the activities of the Subcontractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project Schedule shall show portions of the Project having completion priority. Contractor shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule or significant milestones thereon may not be met, Contractor shall recommend corrective action to Owner and the A/E. If such delay is the result of the fault or neglect of Contractor or any Subcontractor or supplier, Contractor shall implement such corrective action without additional cost to Owner.

10.1.4.2. Contractor shall record the progress of the Project. The Contractor shall submit written progress reports to Owner and A/E including information of each Subcontractor and each Subcontractor's Work, as well as the entire Project, showing percentages of completion. Contractor shall keep a daily log containing a record of weather, each Subcontractor's work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as Owner may reasonably require.

10.1.5. Contractor shall construct the Project and perform all Work in a good and workmanlike manner and in strict accordance with the Contract Documents, using only new materials and skilled workmen. All material must be of the specified quality, and equal to the approved samples, if samples have been submitted. Contractor shall supervise and

direct the Work, using Contractor's best skill; attention and judgment without limitation, the failure to comply with the requirements of this subparagraph shall be a material breach of the Contract.

10.1.6. It shall be the duty of Contractor to call the A/E's attention to ambiguities, conflicts, errors or omissions in the Contract Documents of which Contractor knew or a similarly situated Contractor reasonably should have known and request instructions before proceeding with the Work. If Contractor fails to request such clarification and proceeds with construction where such an ambiguity, conflict, error or omission is present, Contractor shall do so at its own risk and shall receive no extra compensation if such construction does not comply with the intent of the A/E and must, therefore, be removed and replaced at the sole cost of Contractor, in other words, the Contractor's cost to remove and replace the noncompliance Work shall not be a reimbursable Cost of the Work.

10.1.7. Any Work not strictly conforming to the requirements of the Contract Documents shall be considered defective. All defective Work or material shall be removed from the premises by Contractor, whether in place or not, and shall be replaced with new and satisfactory Work or material, in such manner as Owner may direct, at the sole cost and expense of Contractor, in other words, the Contractor's cost to remove and replace the defective Work shall not be a reimbursable Cost of the Work. All material and workmanship of whatever description shall be subject to the inspection of, and rejection by Owner, if not in strict conformance with the Contract Documents or any portion thereof.

10.1.8. The use of the words "or equal" in the Specifications following the name of any manufacturer, vendor or proprietary product will mean that, in the opinion of the Owner, articles or materials which are offered as a substitute are equal in quality and performance to the articles or materials specified. Contractor must submit requests for substitution to Owner, and will not proceed with the installation or use any proposed substitution without written permission from the A/E.

10.1.9. On all questions concerning the acceptability of material, machinery and classifications of material, execution of the Work, conflicts of interest of Contractor performing of related Work, and the determination of costs, the decision of the A/E shall be final and binding upon all parties, if consistent with the Contract Documents.

10.1.10. Contractor shall immediately correct any defective or imperfect Work, which may be discovered by any Person before final payment under this Agreement. Such correction and/or replacement shall be performed without extra charge or time extension of the Project Schedule, notwithstanding that it may have been overlooked in previous inspections. The Owner's inspection or failure to inspect the Work or any part thereof shall not relieve Contractor from any obligation to perform the Work as specified in the Contract Documents.

10.1.11. At least forty-eight (48) hours in advance of the start of construction, Contractor shall advise all residents and businesses in the immediate vicinity of the Project and/or that are potentially affected by the contemplated activity of the type of Work that is

to be undertaken and its approximate duration. Contractor shall take all necessary steps to minimize the duration of any adverse effect.

10.1.12. In the event that the Work is likely to cause interruption of service to the surrounding residents, the Contractor shall request written approval from the City's representative and shall notify the affected residents in writing of the pending interruption at least forty-eight (48) hours prior to the scheduled interruption. Contractor shall take all necessary steps to minimize the duration of any such interruption.

10.1.13. Access to adjacent properties, cross streets or use of streets scheduled for improvement must be reasonably maintained and fully re-established at the end of each workday.

10.1.14. Contractor shall maintain dust abatement activities for the duration of the Project, including weekends and holidays, including, without limitation, through implementation of the following measures:

10.1.14.1. Contractor shall maintain adequate moisture levels in the surface materials to eliminate blowing dust from these materials.

10.1.14.2. All haul trucks, whether involved in delivery or removal activities, shall be covered and/or tarped in order to avoid the loss of material from trucks while being transported due to winds or the movement of the truck..

10.1.15. Protection of Work and Cleaning Up. Contractor shall be responsible for the care of all Work until its completion and final acceptance, and Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work, or the same may be done by Owner at Contractor's expense, and Contractor and its sureties shall be liable therefore. Contractor shall remove from the vicinity of the completed Work all plant equipment and materials belonging to Contractor or used under Contractor's direction during construction. Contractor shall clean up all waste or excess materials within the established work limits within the Project so as to make a neat and workmanlike finish to the entire Project, and in the event of Contractor's failure to remove said materials, the same may be removed by Owner at the expense of Contractor, and Contractor and its sureties shall be liable therefore. All new concrete construction that becomes broken or shows evidence of cracks shall be completely replaced at Contractor's expense subject to the standards set forth in the Contract Documents. Under no circumstances will patch Work be performed to repair new concrete Work.

10.2. Protection of Persons and Property Other Than the Work. Contractor shall protect against injury to any public or private property encountered in the Work. All obstructions to traffic shall be guarded by barriers and illuminated at night. Contractor shall not trespass upon private property. Access to private property shall be by written permission of the property Owner as obtained by Contractor. Under all circumstances Contractor must comply with the laws and regulations relative to the safety of Persons and property and the interruption of traffic, as well as the convenience of the public. Contractor will be held responsible for and required to make good at its own expense,

all damage to Persons and property caused by carelessness or neglect on the part of Contractor or Subcontractor, or the agent or employees of either, during the progress of the Work and until its final acceptance. Prior to the commencement of construction, Contractor shall contact adjacent property Owners to the property on which Work will be located and which have structures such as fences, buildings, etc., adjacent to the proposed construction, and note with Owner, any existing damage. Further damage caused by Contractor or a Subcontractor, or employee or agent of either, shall be repaired to the satisfaction of Owner at the sole cost of Contractor, in other words, the Contractor's cost to repair damage shall not be a reimbursable Cost of the Work. Notwithstanding anything in this Section or the Agreement to the contrary, Owner shall be responsible for providing access to adjacent properties, and Contractor agrees to assist Owner with coordination with adjacent property owners.

10.3. Subcontractors

10.3.1. Those portions of the Work that Contractor does not customarily perform with Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with Contractor. At the request of Owner, Contractor shall deliver copies of all executed subcontracts to Owner. Owner's review of any and all subcontracts is for the sole benefit of Owner. Owner's failure to object to any provision in any subcontract shall not be construed as Owner's acceptance of such provision.

10.3.2. All subcontracts must be in writing and will provide that all Work to be performed hereunder will be performed in strict accordance with the terms of the Contract.

10.3.3. 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.

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

10.3.5. Subcontractor' 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.

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

10.3.7. The subcontracting of any or all of the Work for this Project will not relieve the Contractor of any part of its responsibility under the Contract. In case the terms of the subcontract are unsatisfactory, in the reasonable opinion of Owner, or in case the Work being done under any subcontract is not conducted in strict accordance with the Contract Documents, Contractor shall, upon written notice to this effect, cause such Work to be

corrected. Any loss or damage that may be suffered on account of such action shall be borne solely by Contractor, in other words, the Contractor's loss or damage shall not be a reimbursable Cost of the Work.

10.4. Construction Supervision and Administration

10.4.1. Site Logistics

The CM will develop a plan for site logistics, including plans for ingress and egress, street right-of-way encroachments (including lane and sidewalk closures), signage, storage of materials and equipment, site offices, temporary utilities, staging, hoists and cranes, waste disposal, security, and any other logistical issues that could affect performance of the Work to be provided by the CM.

10.4.2. Contractor shall schedule and conduct meetings at regular intervals, but no less frequently than once per week (or such other period as the Parties may agree), during which the Owner, Project Architect, Contractor and appropriate Subcontractor can discuss the status of the Work. Contractor shall prepare and promptly distribute meeting minutes, which shall be subject to the review and approval of Owner.

10.4.3. Contractor shall provide monthly written reports to Owner and the A/E on the progress of the entire Work. Contractor shall maintain a daily log containing a record of weather, Subcontractor working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as Owner may reasonably require. The log shall be available to Owner and the A/E upon request.

10.4.4. Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Contractor shall identify variances between actual and estimated costs and report the variances to Owner and A/E at regular intervals, but not less than on a monthly basis, which report shall be submitted with each Application for Payment.

10.5. Safety

10.5.1. Without limitation, the Occupational Safety and Health Act (OSHA) Standard for Construction (Title 29, Code of Federal Regulations, Part 1926 as amended) and the Owner's Safety Regulations contained in the General Conditions of the Construction Contract are both applicable and enforceable under this Agreement.

10.5.2. In accordance with applicable federal, state, and local law, the entry of confined spaces shall not be allowed until the air quality of these spaces has been tested and found to be of sufficient quality to support human life. Testing of these spaces will be undertaken by an employee or consultant of the Contractor, trained in the use of air quality testing equipment.

10.5.3. Prior to the commencement of construction activities on this Project, the Contractor shall submit an Accident Prevention Plan to the Project Team for review and approval. This Plan shall address all phases of construction to be undertaken for this Project, as agreed to by the parties. The Plan shall also address measures to control hazards associated with materials (MSDS), equipment, and safety inspections.

10.5.4. In the event the Contractor encounters an unforeseen hazardous material or condition, or any substance reasonably believed to be a hazardous material at the Project site, the Contractor shall immediately notify the Owner and A/E in writing. The Work in the affected area will not resume except by written approval and agreement of the Owner and Contractor, once the condition has been adequately assessed and properly mitigated. As a result of any delay caused by such an unforeseen condition, the Contractor shall be entitled to make a claim for a time extension in the Project schedule, provided it has otherwise fulfilled its obligations under this Agreement.

10.5.5. Contractor will provide the name of a designated safety staff member for coordination during the life of the Project.

10.6. Roads

10.6.1. Contractor may not close all or any part of a street or road without the prior written approval of the Owner. Streets and roads subject to interference during the execution of the Work shall be kept open by the Contractor until the Work is completed, unless otherwise approved in writing by Owner. The Contractor shall submit their proposed Maintenance of Traffic (MOT) plan for review and approval to the A/E and Owner's representative.

10.7. Utilities

10.7.1. Contractor is solely responsible for investigating and notifying all utility companies, all pipe line operators or other utility parties affected by the Work on this Project, and shall make all reasonable efforts to have all necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction made as soon as practicable. Contractor shall be solely responsible for the notification of and coordination of Work with the applicable utility company to avoid any delays with the Project Schedule. If any portion of the Work is to be performed adjacent to or across utility lines, Contractor must verify the locations in the field and take the necessary precautions before proceeding to work close to or across any existing underground utility line.

10.7.2. It shall be the Contractor's sole responsibility to notify the applicable utility companies at least seventy-two (72) hours prior to the start of construction and to coordinate its work with the utility company. Any damage caused by Contractor or their sub-contractors to existing utilities shall be repaired at Contractor's expense and the Owner will not be responsible for any direct or indirect damage to utilities.

10.7.3. In the event that the Contractor has fulfilled its obligations under this Agreement, any delays to the Project caused by utility companies may entitle the Contractor to make a request for time extension.

10.8. Relation to Other Work

10.8.1. The Owner reserves the right to award separate contracts in connection with any other work or operations on the Project site. If the Contractor believes that delays or additional costs to the Project result from the Owner's actions, then the Contractor may make such claim as provided in this Agreement.

10.8.2. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate contractor hired by the Owner, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner and Project Architect as to the apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and timely completion.

10.9. Environmental Mitigation Measures The project may include environmental mitigation measures. The Contractor shall be responsible for ensuring strict and complete compliance by its subcontractors, material men and employees with the applicable plan requirements and conditions established by the appropriate regulatory agencies.

10.10. Professional Services Contractor is generally not required to provide professional services which constitute the practice of architecture or engineering for design of the Project, unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor has specifically agreed to provide such services. If so, the Contractor shall ensure that such services are performed by appropriately licensed professionals.

10.11. Changes in the Work

10.11.1. Generally.

10.11.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this paragraph and elsewhere in the Contract Documents.

10.11.1.2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

10.11.2. Change Orders.

10.11.2.1. A Change Order is a written instrument prepared by Owner and signed by Owner and Contractor, stating their agreement upon all of the following:

- (i) the change(s) in the Work;
- (ii) the amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- (iii) the extent of the adjustment, if any, in the Date of Substantial Completion.

10.11.3. Construction Change Directives.

10.11.3.1. A Construction Change Directive is a written order prepared by Owner directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Date of Substantial Completion, or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and Date of Substantial Completion being adjusted accordingly.

10.11.3.2. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

10.11.3.3. If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or
- (ii) unit prices reflected in the Guaranteed Maximum Price package or subsequently agreed upon.

10.11.3.4. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise the A/E and Owner of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Date of Substantial Completion.

10.11.3.5. A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in the Guaranteed Maximum Price and Date of Substantial Completion or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

10.11.3.6. If Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the method and the adjustment shall be determined by the A/E on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase or decrease in the Guaranteed Maximum Price, a reasonable allowance for overhead and profit, not to exceed the percentage equal to the original

Contractor's Fee. In such case, Contractor shall keep and present, in such form as Owner may reasonably prescribe, an itemized accounting together with appropriate supporting data.

10.11.3.7. The amount of credit to be allowed by Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as agreed to by Owner and Contractor, or in the absence of such agreement as confirmed by the A/E in the same manner as set forth herein. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

10.11.3.8. Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an Extra Work Order indicating the Parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the A/E will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Guaranteed Maximum Price on the same basis as an Extra Work Order, subject to the right of either party to disagree and assert a claim therefore; provided that no such disagreement or claim shall delay the progress of the Work.

10.11.3.9. When Owner and Contractor agree with the determination made by the A/E concerning the adjustments in the Guaranteed Maximum Price and Date of Substantial Completion, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

10.11.4. *Minor Changes in the Work* The Owner has the authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Date of Substantial Completion and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and the Contractor. Contractor shall carry out such written orders promptly.

10.12. As-Builts In consultation with the A/E, the Contractor shall be responsible for the preparation and furnishing of As-Built Drawings. Contractor shall obtain one set of Plans from the A/E and shall periodically, but no less than once per month, record, in red colored pencil, all cases where actual field construction differs from Work shown on Plans. Utilizing the set of Plans that have been marked-up by Contractor to represent field conditions, prepare a set of reproducible record drawings showing those changes made during the construction progress. Record drawing information will be based on marked-up prints, Plans, and other data furnished.

10.13. Liquidated Damages

10.13.1. If Contractor neglects, fails or refuse to complete the Work on or before the date of Substantial Completion, or any proper time extension thereof granted by the Owner,

then the Contractor as part of consideration for the Owner's award of this Contract, agrees to pay the Owner an amount of Five Hundred Dollars (**\$500**) per day, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day beyond the stipulated date of Substantial Completion that the Project is not Substantially Complete. The aforementioned daily amount of liquidated damages is fixed and agreed upon by and between the Contractor and the Owner due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would sustain due to such a delay, and therefore said amount is agreed to be the amount of damages which City would sustain and shall be deducted by the City from any remaining funds due to the Contractor.

10.13.2. It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time is fixed for the performance of any act whatsoever. Further, where Contractor is allowed an additional time for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract.

10.13.3. Contractor shall not be charged with liquidated damages when the delay in Substantial Completion of the Work is due to the following causes ("Excusable Delays"), if such causes were unforeseen and beyond the control and without the fault or negligence of Contractor, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whom they are liable: acts of God or of the public enemy, acts of another Contractor in the performance of a contract with City (provided Contractor has fulfilled its obligations), fires, floods, epidemics, quarantine restrictions, strikes, and freight embargos. Without limitation as to the causes of delay excluded from Excusable Delays, such an unforeseeable cause shall not include shortage of labor (other than due to strikes), delays in delivery of materials, equipment, or specially fabricated items. To be entitled to the relief from Excusable Delays, Contractor shall, within ten (10) days from the beginning of such delay, notify City, in writing, of the cause of such delay. The Project Manager shall ascertain the facts and extent of the delay and shall notify Contractor within a reasonable time as to his or her determination of the cause of the delay, whether it is excusable under this clause, and the extension in the time for performance of the Work, if any, that will be granted. Such determination made in good faith shall be binding on the Parties. Except as specifically provided in this Agreement, in the case of an Excusable Delay, Contractor shall not be entitled to additional compensation, but shall, as its sole remedy, be entitled to an extension of the time in which to perform the Work. Failure of Contractor to provide the notice specified herein shall constitute a waiver of and bar to any claim for delay, except as specified in this Agreement.

ARTICLE 11 – INSPECTION

11.1. NOTIFICATION: IT IS THE RESPONSIBILITY OF Contractor TO CONSTRUCT THE WORK IN STRICT ACCORDANCE WITH THE CONTRACT DOCUMENTS, APPLICABLE BUILDING CODES, ORDINANCES, REGULATIONS, STATUTES AND OTHER LAWS. IT SHALL BE THE RESPONSIBILITY OF Contractor TO NOTIFY Owner AT LEAST FORTY-EIGHT (48) HOURS BEFORE COVERING WORK WHICH Owner IS ENTITLED TO INSPECT PURSUANT TO THIS ARTICLE. IN NO EVENT SHALL ANY INSPECTION OR FAILURE TO INSPECT BY Owner RELIEVE THE Contractor OF THIS RESPONSIBILITY

TO CONSTRUCT THE WORK IN SUCH ACCORDANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

Generally 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, Contractor shall coordinate such tests, inspections and approvals with an independent testing laboratory, or with the appropriate public authority contracted by Owner, and Owner shall bear all related costs of tests, inspections and approvals. Contractor shall give the A/E timely notice of when and where tests and inspections are to be made so that the A/E may be present for such procedures

11.2. Additional Testing If the A/E, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 11.2, the A/E will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity reasonably acceptable to Owner, and the Contractor shall give timely notice to the A/E of when and where tests and inspections are to be made so that the A/E may be present for such procedures. Such costs, except as provided in Paragraph 11.4, shall be at Owner expense.

11.3. Costs of Retesting If such procedures for testing, inspection or approval under Paragraphs 11.2 and 11.3 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the A/E's services and expenses shall be at the Contractor's expense, in other words, the Contractor's expense shall not be a reimbursable Cost of the Work.

11.4. Certificates 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 A/E and the A/E.

11.5. No Delay of Project Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

11.6. Quality Assurance Contractor shall implement and observe a program of quality assurance as set forth in the Contract Documents or as otherwise reasonably directed by the A/E.

11.7. Information and Services

11.7.1. Upon Contractor's request, Owner will provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

11.7.2. Owner will establish and update an overall budget for the Project, based on consultation with Contractor and A/E, which will include contingencies for changes in the Work and other costs, which are the responsibility of the Owner.

11.8. Owner's Representative The designated Owner's Representative will be considered the administrator of this Contract on behalf of the Owner, and will be the evaluator of the Contractor's performance of their services under this Agreement. All references to the A/E in these documents shall include the A/E and the Owner's representative. The A/E, or properly authorized agents, will:

11.8.1. Manage the Project on behalf of Owner;

11.8.2. Calculate and determine the quantity of the Work performed;

11.8.3. Inspect all Work for acceptance or rejection. The A/E has full authority to reject or condemn any Work, which does not conform to the terms and conditions of the Contract Documents.

ARTICLE 12 – INTENT OF AGREEMENT

12.1 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.

12.2 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.

12.3 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.

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

12.5 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.

ARTICLE 13 – TERM OF AGREEMENT

13.1 Subject to authorized adjustments, the Term of Agreement shall be for the agreed upon time by the parties 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 Notwithstanding the provisions of this Article 4, this Agreement may be terminated by the City at any time, with or without cause.

ARTICLE 14 – CONTRACTOR RESPONSIBILITIES

14.1 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.

14.2 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 Project Amount.

ARTICLE 15 – CITY’S RESPONSIBILITY

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

15.2 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.

15.3 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.

15.4 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.

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

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

15.7 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, Subcontractor, or any other person or entity.

ARTICLE 16 – INDEPENDENT CONTRACTOR

16.1 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 17 – CHANGES IN THE WORK

17.1 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 Project Amount 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.

17.2 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 18 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

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

18.2 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 Subcontractor for compliance in the performance of Work in accordance with the best acceptable safety practice.

18.3 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.

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

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

18.4.2 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 Subcontractor;

18.4.3 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;

18.4.4 All alcoholic beverages, smoking and drugs shall be prohibited from the Project Worksite.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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. Notwithstanding anything in this Section or the Agreement to the contrary, Contractor's obligations under this Section shall not apply to damage and loss to property caused by Owner or Owner's separate contractor.

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

18.11 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 deteriorate safety conditions.

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

ARTICLE 19 – TESTS AND INSPECTIONS

19.1 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.

19.2 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.

19.3 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.

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

19.5 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 20 – CORRECTION OF WORK

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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 PROJECT AMOUNT will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 21 - CONFLICTS OF INTEREST

21.1 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.

21.2 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 22 - TERMINATION OF AGREEMENT

22.1 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 23 - NOTICES

23.1 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: Thornton Construction Company, Inc.
Attn: Thomas Thornton
13290 NW 42nd Ave
Opa-Locka, FL 33054

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

23.2 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.

23.3 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 24 - INDEMNIFICATION

24.1 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, Subcontractor, employees and managers in the performance of Work under this Agreement.

24.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, Subcontractor, suppliers, or other persons directly or indirectly employed by its Subcontractor 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.

24.3 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.

24.4 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.

24.5 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.

24.6 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 25 - WARRANTY

25.1 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.

25.2 If, within one (1) year after the date of substantial 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.

25.3 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.

25.4 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:

25.4.1 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;

25.4.2 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

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

25.5 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.

25.6 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 26 - INSURANCE

26.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing all required insurance coverage, as more particularly described in the IFB, with the following minimum coverage:

26.1.1 Commercial General Liability - Minimum limit of \$1 Million per occurrence for bodily injury and property damage; this coverage shall also include personal, advertising injury and medical expense.

26.1.2 Professional Liability (Errors and Omissions) – With minimum limit of One Million Dollars (\$1,000,000.00) covering any errors or omissions of the Contractor in the performance of professional Services; the Self Insured Retention shall not exceed \$25,000. If the self-insured retention (SIR) or deductible exceeds \$25,000, the City reserves the right, but not the obligation, to review and request a copy of Contractor’s most recent annual report or audited financial statement. Policies written on a “Claims-Made” basis shall include a Retroactive Date equal to or preceding the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, the Contractor shall purchase a SERP with a minimum reporting period of not less than three (3) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an “occurrence” or “claims - made” form. If coverage is provided on a “claims - made” form the Certificate of Insurance must also clearly indicate the “retroactive date” of coverage.

26.1.3 Commercial Automobile Liability - Minimum limit of \$1 Million, covering any auto including owned, non-owned, hired or leased. In the event that the Contractor owns no automobiles, the Commercial Auto Liability requirement shall be amended allowing Contractor to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the contract, the Contractor agrees to purchase “Owned Auto” coverage as of the date of acquisition. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or a separate Commercial Auto coverage form.

26.1.4 Worker’s Compensation - As required by the State of Florida and in accordance to F.S.440, with statutory limits, and Employer’s Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

26.2 Contractor shall not commence Work under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

26.3 The City shall be named as an additional insured for claims caused in whole or in part by the Contractor, Subcontractor's, employees or assignee's negligent acts or omissions during the term of this Agreement. This provision shall not limit the City's recovery for coverage under the Contractor's insurance policy.

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

26.5 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 Services required by this Agreement unless all required insurance coverage remains in full force and effect.

26.6 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 27 - PERFORMANCE AND PAYMENT BONDS

27.1 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.

27.2 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 Subcontractor 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.

27.3 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.

27.4 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.

27.5 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.

27.6 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 28 - FORCE MAJEURE

28.1 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.

28.2 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 PROJECT AMOUNT 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 PROJECT AMOUNT 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 29 – NON-EXCLUSIVE AGREEMENT

29.1 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.

29.2 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 30 – EMERGENCIES

30.1 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 31 - OWNERSHIP OF DOCUMENTS

31.1 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, unless exempt, be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes..

31.2 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.

31.3 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.

31.4 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 32 - DEFAULT

32.1 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 33 - MISCELLANEOUS PROVISIONS

33.1 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.

33.2 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.

33.3 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.

33.4 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.

33.5 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.

33.6 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 (3) years after final payment is made under this Agreement.

33.7 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.

33.8 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.

33.9 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.

33.10 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.

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

33.12 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.

33.13 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.

33.14 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.

33.15 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.

33.16 Notwithstanding anything in this Agreement to the contrary, Contractor and Owner waive all claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this Section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

33.17 Nothing in this agreement shall be construed to mean that the CM is responsible for the design of the project or that the CM assumes any professional responsibility or liability, in whole or in part, for the design of the Project nor does the CM assume any of the contractual or customary duties of the Architect, its sub-consultants or any other parties not specified by this 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.

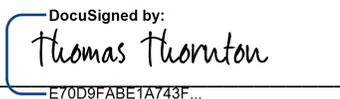
ATTEST:

Thornton Construction Company, Inc., a Florida Profit Corporation,

Corporate Secretary or Witness:

“Contractor”:

Witnessed By:  DocuSigned by: Doel Acosta
FE15A7738B40417...

Signed By:  DocuSigned by: Thomas Thornton
E70D9FABE1A743F...

Witness Name: Doel Acosta

Print Name: Thomas Thornton

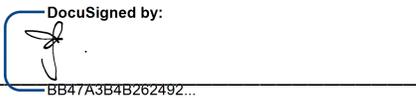
Witness Date: 6/8/2020

Signature Date: 6/5/2020

ATTEST:

City of North Miami, a Florida municipal Corporation:

“City”

By:  DocuSigned by: Vanessa Joseph
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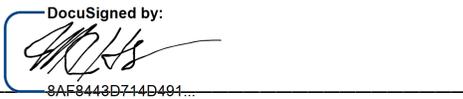
By:  DocuSigned by: Arthur H. Sorey, III
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Vanessa Joseph, Esq.
City Clerk

Arthur H. Sorey, III
Interim City Manager

APPROVED AS TO FORM AND

Legal sufficiency:

By:  DocuSigned by: Jeff P. H. Cazeau
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Jeff P. H. Cazeau, Esq.
City Attorney

RESOLUTION NO. 2020-R-25

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT WITH THORNTON CONSTRUCTION COMPANY, INC., TO PROVIDE PRE-CONSTRUCTION SERVICES FOR THE CAGNI PARK PROJECT IN AN AMOUNT NOT TO EXCEED SIXTY-NINE THOUSAND FIVE HUNDRED NINETY-THREE DOLLARS (\$69,593.00), IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS CONTAINED IN REQUEST FOR QUALIFICATIONS NO. 32-18-19; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on September 10, 2019, the City of North Miami (“City”) passed Resolution No. 2019-R-95 authorizing the competitive selection of Thornton Construction Company, Inc. (“Contractor”) to provide Construction Management At-Risk (CMR) services for the development of a new multi-purpose field, recreational facilities and ancillary improvements at the Cagni Park North site, located between N.E. 135th Street and 137th Street from 8th Avenue to 9th Avenue, in accordance with Florida Statutes s. 255.103 and s. 287.055, Consultants Competitive Negotiation Act (“CCNA”); and

WHEREAS, pursuant to Contractor’s proposal, the services to be provided shall include, but not be limited to, review of existing site conditions, preparation of construction schedule, review construction documents, prepare project cost estimates and bid packages, coordination and management of construction phase (“Services”) in an amount not to exceed Sixty-Nine Thousand Five Hundred Ninety-Three Dollars (\$69,593.00); and

WHEREAS, the Mayor and City Council have determined that it is in the City’s best interests to authorize the Interim City Manager to execute an agreement for the provision of Services to perform pre-construction services for the Cagni Park Project.

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

Section 1. Authority of Interim City Manager. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the Interim City Manager to execute an agreement

for the provision of Services with Thornton Construction Company, Inc., at a cost not to exceed Sixty-Nine Thousand Five Hundred Ninety-Three Dollars (\$69,593.00).

Section 3. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 11th day of February, 2020.


PHILIPPE BIEN-AIME
MAYOR

ATTEST:



VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Galvin

Seconded by: Estimé-Irvin

Vote:

Mayor Philippe Bien-Aime	<u>X</u>	(Yes)	_____	(No)
Vice Mayor Alix Desulme, Ed.D.	<u>X</u>	(Yes)	_____	(No)
Councilman Scott Galvin	<u>X</u>	(Yes)	_____	(No)
Councilwoman Carol Keys, Esq.	<u>X</u>	(Yes)	_____	(No)
Councilwoman Mary Estimé-Irvin	<u>X</u>	(Yes)	_____	(No)



January 10, 2020

Dr. Alberto Destrade, CPPO
Purchasing Director
Purchasing Department
776 NE 125 Street, Room 303
North Miami, Fl. 33161

Dear Mr. Destrade,

We want to thank you again for selecting Thornton Construction Company, Inc. as your Construction Manager at Risk for the Cagni Park project. We are extremely excited in working with you, the staff of the City of North Miami, the Local Work Force and Miami Dade County Public School to deliver such an important project.

Please note, that we are in full agreement to the fees negotiated on November 14, 2019 for the Preconstruction Services to be provided for the Cagni Park Project consisting of the scope of work described on the attached Preconstruction Fee Breakdown, which adds to sixty-nine thousand five hundred and ninety two dollars (\$69,592).

If you have any questions pertaining to this proposal, please do not hesitate to call me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dagoberto Diaz'.

Dagoberto Diaz, RA, CGC,
Executive Vice President

Enclosure,

CC: Felipe Laserna
Doel Acosta
Heylicken Espinoza
File

**Cagni Park North Site
Preliminary Design & Construction Schedule
Exhibit "C"**



Task Description		Task Duration	May 2020	Jun 2020	Jul 2020	Aug 2020	Sept 2020	Oct 2020	Nov 2020	Dec 2020	Jan 2021	Feb 2021	Mar 2021	Apr 2021	May 2021	Jun 2021	Aug 2022	Dec 2022	Jan 2023	Feb 2023
Task 1.0	Survey and Mapping	10 Weeks	█	█	█															
Task 2.0	Project Initiation	5 Weeks	█	█	█															
Task 3.0	Schematic Design	5 Weeks		█	█	█														
Task 4.0	Subsurface Exploration and Reporting	5 Weeks			█	█	█													
Task 5.0	Design Development	2 Months			█	█	█	█												
Task 6.0	Construction Documents	18 Weeks					█	█	█	█	█	█								
Task 7.0	Regulatory Permit Review	15 Weeks							█	█	█	█	█	█						
Task 8.0	CM @ Risk GMP Coordination & Final Contract Documents	5 Weeks										█	█	█						
Task 9.0	Construction Administration	80 Weeks											█	█	█	█	█	█	█	█
Task 10.0	Project Closeout	5 Weeks																█	█	█
Task 11.0	One Year Warranty Walkthrough	5 Weeks																	█	█
Task 12.0	Environmental	Ongoing		█	█	█	█	█	█	█	█	█	█	█	█	█				
Task 13.0	Community Outreach	Ongoing	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█			