

# **Contract No. 2016-34**

## **LED Street Light Conversion Program**



The Town of Miami Lakes Council:

Mayor Michael A. Pizzi, Jr.  
Vice Mayor Timothy Daubert  
Councilmember Manny Cid  
Councilmember Tony Lama  
Councilmember Ceasar Mestre  
Councilmember Frank Mingo  
Councilmember Nelson Rodriguez

Alex Rey, Town Manager  
The Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

## **1. DEFINITION OF TERMS**

**Change Order** means a written document ordering a change in the Contract price or Contract time or a material change in the Work. A Change Order must comply with the Contract Documents.

**Completed Project** means that the applicable regulatory authority has issued a Certificate of Completion.

**Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the Contract price or time.

**Construction Schedule** means a schedule, as defined and required by the Contract Documents.

**Contract** means the RFP and the RFP documents that have been submitted by the Contractor and the Contract Documents.

**Contract Documents** means the Contract as may be amended from time to time, any and all plans, specification, bonds, addendum, clarifications, directives, change orders, payments and other such documents issued under or relating to the Contract.

**Contractor** means the person, firm, or corporation with whom the Town has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to the Work under the Contract.

**Cure** means the action taken by the Contractor promptly, after receipt of written notice from the Town of a breach of the Contract Documents, which must be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach.

**Cure Period** means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Contract Documents after receipt of a written Notice to Cure from the Town identifying the deficiencies and the time to Cure.

**Days** mean calendar days unless otherwise specifically stated in the Contract Documents.

**Field Directive** means a written direction from the Consultant or Project Manager directing the Contractor to proceed with Work requested by the Town, which is minor in nature and typically should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work under a Work Order and submitted all documentation required by the Contract Documents.

**Inspector** means an authorized representative of the Town assigned to make necessary inspections of materials and the Work performed by the Contractor. The Town, at its sole discretion may hire a professional consultant to perform the inspections.

**Materials** mean goods or equipment incorporated in a Project, or used or consumed in the performance of the Work.

**Notice of Award** means the written letter to the Contractor notifying the Contractor that it has been awarded the Contract.

**Notice to Proceed** means a written letter or directive issued by the Town Manager or designee acknowledging that all conditions precedent to award have been met and directing that the Contractor may begin Work.

**Project or Work** as used herein refers to all reasonably necessary and inferable construction and services required by the Contract whether completed or partially completed, and includes all other

labor, materials, equipment and services provided or to be provided by the Contractor to fulfill its obligations, including completion of the construction in accordance with the Specifications.

**Project Manager** means the individual assigned by the Town Manager to manage the Project.

**Request For Information (RFI)** means a request from the Contractor seeking an interpretation or clarification relative to the Contract Documents. The RFI, which must be clearly marked RFI, must clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is required. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

**Subcontractor** means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes materials not so worked.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Contract Documents, and is fit for use in its intended purpose. Substantial Compliance will not be deemed to have occurred until any and all governmental entities, with regulatory authority or which have jurisdiction over the Work, have conducted all final inspections, and approved the Work. Beneficial use or occupancy will not be the sole factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of completion has been issued.

**Town** means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.

**Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or his designee.

## **2. EXAMINATION OF CONTRACT DOCUMENTS AND THE SITES**

By executing this Contract the Contractor certifies that it has:

- Carefully review the requirements of the Contract and notified the Town of any conflicts, errors or discrepancies.
- Visited the site to become familiar with conditions that may affect costs, progress, or performance of the Work.
- Taken into account federal, state and local, including, without limitation, the Town's Code, and Miami-Dade County and the State of Florida's statutes laws, rules, regulations, and ordinances that may affect a Bidder's ability to perform the Work.
- Studied and carefully correlated Contractor's observations with the requirements of the Contract.

The signing of the Contract by the Contractor will constitute an incontrovertible representation by Contractor that it will comply with the requirements of the Contract and that without exception, the Contractor is fully capable performing and furnishing the Work required under the Contract and that the Contract are sufficient in detail to indicate and convey understanding of all terms and conditions for performance of the Work.

## **3. INTENTION OF THE TOWN**

Any work, labor, materials or equipment that may reasonably be inferred from the Contract as being required to produce the intended results must be supplied by Contractor whether or not specifically called for in the Contract. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words will be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any

technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, will mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor must comply therewith. The Town will have no duties other than those duties and obligations expressly set forth within the Contract.

#### **4. TIME IS OF THE ESSENCE**

Contractor will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract.

The date and period of time set forth in the Notice to Proceed for the commencement, and completion of the Work was included because of its importance to the Town.

#### **5. NOTICES**

Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice will remain until it has been changed by written notice in compliance with the provisions of this Article. Notice will be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice will be deemed given on the date sent via e-mail or facsimile. Notice will be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Alex Rey  
Town Manager  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

Ms. Christina Semeraro  
Procurement Manager  
Town of Miami Lakes  
6601 Main Street  
Miami Lakes, Florida 33014

For Contractor:

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During the Work the Contractor must maintain continuing communications with designated Town representative(s). The Contractor must keep the Town fully informed as to the progress of the Work under the Contract.

#### **6. PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into the Contract by reference and a term, statement, requirement, the specifications or any plans, or provision of the Contract the following order of precedence will apply:

In the event of conflicts in the Contract the priorities stated below will govern;

- Revisions and Change Orders to the Contract will govern over the Contract
- The Contract will govern over the Contract Documents
- The Special Conditions will govern over the General Conditions of the Contract

- Addendum to an RFP will govern over the RFP.

In the event that specifications are provided with a Work Order the priorities stated below will govern:

- Scope of Work and Specifications will govern over Plans and Drawings
- Schedules, when identified as such will govern over all other portions of the Plans
- Specific notes will govern over all other notes, and all other portions of the Plans, unless specifically stated otherwise
- Larger scale drawings will govern over smaller scale drawings
- Figured or numerical dimensions will govern over dimensions obtained by scaling
- Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality will govern.

Where the plans and specification do not meet the minimum requirements of the Florida Building Code then the Florida Building Code will prevail. Where the plans and specifications exceed the Florida Building Code then the plans and specifications will prevail.

## **7. REFERENCE STANDARDS**

Reference to the standards of any technical society, organization or body will be construed to mean the latest standard adopted and published at the date of the award of the Contract, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract the same as if herein repeated in full and in the event of any conflict between any of these standards and those specified, the most stringent will govern unless otherwise stated.

## **8. TIME FOR PERFORMANCE OF THE WORK**

Contractor must complete the Work and obtain all permit approvals, and Substantial Completion by the Town within **Number of Days (XXX)** days from the date of issuance of the Notice To Proceed. Contractor must achieve Final Completion within thirty (30) days of the date of Substantial Completion.

## **9. CONTRACT TERM**

This Agreement will be effective upon execution by both parties and will continue until expiration of the warranty period.

## **10. COMPENSATION**

The Contractor will be compensated in the amount of **\$XXX,XXX.XX**. Any reduction or increase in the Contract value will be done in accordance with Article 62, Change Orders. Contractor will be paid for actual work performed and accepted by the Town.

## **11. HOURS FOR PERFORMING WORK**

All Work must be performed in accordance with the hours set forth in the Town's noise Ordinance No. 04-50.

Any Work to be performed outside these hours will require the prior written approval of the Town Manager. A Work Order may establish different working hours than those stated herein.

## **12. PROGRESS PAYMENTS**

Contractor may make application for payment for Work completed during the Project at intervals of not more than one invoice per month or upon completion and Final Acceptance of the Work.

Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed. Supporting evidence to be included with any application for payment must include, but is not limited to, an updated Project schedule as required by Article 16 and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the Project Manager or the Contract Documents.

Ten percent (10%) of all monies earned by Contractor will be retained by Town until Final Acceptance by the Town. Any interest earned on retainage will accrue to the benefit of Town. All requests for retainage reduction must be in writing in a separate stand-alone invoice.

The Town will not pay more than five (5%) of the Total Contract price as retainage should a schedule of values be required of the contractor

Town may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:

- Defective Work not remedied.
- Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or Town because of Contractor's performance.
- Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- Damage to another contractor not remedied.
- Liquidated damages and costs incurred by Town or Consultant for extended construction administration.
- Failure of Contractor to provide any and all documents required by the Contract Documents.

Contractor may be paid for materials or equipment purchased and stored at the Project(s) Site(s) or another location, subject to the sole discretion and approval of the Project Manager. Where a payment request is made for materials or equipment not incorporated in the Project, but delivered and suitably stored at the site or at some other location agreed upon in writing, the written documentation must be submitted at the time of request for payment. Payment are conditioned upon submission by the Contractor of paid invoices and an executed Material Purchased/Stored On-Premises form to establish the Town's title to such materials or equipment, or otherwise protect the Town's interest, including applicable insurance in the name of Town and transportation to the Project site.

Contractor retains sole liability to replace such stored materials or equipment as a result of damage or loss for any reason.

### **13. INVOICES**

Contractor may submit to the Town one invoice per month for progress payments in accordance with Article 12 above. Multiple invoices will not be accepted and the Town will not make payment based on statements of accounts. All applications must be submitted in duplicate and the Contractor must use the Town's Contractor Payment Application Form or an invoice format approved by the Town. The form is available on the Town's website identified in Article 16.

Failure to fully complete the payment application form will delay the processing of payment. Any request for payment of retainage must be submitted as a separate payment application. Payments will not be made based on statements of accounts.

The Town will take action to pay, reject or make partial payment on an invoice in accordance with the Florida Local Government Prompt Payment Act. No payments will be due or payable for Work not performed or materials not furnished or where the Work has not been accepted by the Town. If there is a dispute with regard to an invoice, the Town will pay the amount not in dispute and reject the remainder that is in dispute. Contractor is responsible for paying its Subcontractors and suppliers in accordance with the Florida Local Government Prompt Payment Act.

The Contractor will be compensated at the prices specified in the Bid Form of the Contract.

#### **14. LIQUIDATED DAMAGES**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract or any approved extension of time the Contractor may be granted by the Town. In the event of a delay in completion beyond the timeframe set forth in the Contract for Substantial Completion, the Contractor must pay to the Town one thousand dollars (\$500.00) for each and every calendar day of Unexcused Delay, which is hereby agreed upon not as a penalty but as liquidated damages. In the event of a delay in completion beyond the timeframe set forth in the Contract for Final Completion the Contractor must pay to the Town for each and every calendar day of unexcused delay, the sum of **Value** dollars (\$**XXX.XX**) per calendar day, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified in writing of any approved exceptions or extensions. The total amount of liquidated damages will not exceed the value of the Project.

The Town will have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder, is less than the amount of liquidated damages due the Town, the Contractor must pay the difference upon demand by the Town. Should the Contractor fail to compensate the Town for any liquidated damages, the Town will consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

The Town will notify the Contractor in writing that it is incurring liquidated damages.

#### **15. PROJECT SCHEDULE**

Contractor must submit a proposed Project schedule as follows:

- Schedule identifying the schedule for each location. The proposed Project schedule must be submitted within ten (10) calendar days of the Notice of Award and such submittal will be subject to the Project Manager's review. Subsequent to such review of said schedule the Contractor will establish said schedule as the baseline schedule.
- All updates of schedules must be tracked against the baseline schedule and must be at a minimum submitted with each pay application. An updated schedule against the baseline must also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules will result in the rejection of any submitted payment application.
- All Project Schedules must be prepared in Microsoft Project 2007 or earlier unless otherwise approved by the Project Manager. At the time of submission of schedules, Contractor must submit a hard copy as well as an electronic version. Electronic versions must not be submitted in a .pdf format.

Subsequent to review of the initial schedule submission the Contractor must establish the reviewed schedule as the “baseline schedule”. Contractor must then prepare and submit all updates to the schedules utilizing the tracking mode within Microsoft Project.

In addition to the Project Schedule the Contractor must provide a two (2) week look-ahead schedule that reflects the Work to be performed during the two (2) week period. The look-ahead schedule must be provided to the Project Manager and Consultant every other Thursday prior to the start of the two-week period. This schedule will, at a minimum, include the area(s) where Work is to be performed and the Work to be performed in the area(s).

#### **16. RELEASE OF LIENS/SUBCONTRACTOR’S STATEMENT OF SATISFACTION**

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Town upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor must, starting with the second (2<sup>nd</sup>) invoice, provide the Project Manager Partial or Final Releases of Lien/Subcontractor's Statement of Satisfaction for the Project. As an option the Contractor may also submit a Consent of Surety authorizing the release of payment Failure to submit such documentation will result in rejection of the application for payment.

The Town may, in its sole discretion withhold any payments for any Work performed by the Contractor where a requested Final Release of Lien has not been submitted. A conditional Release of Lien will not be accepted by the Town.

Contractor must utilize the Town’s standard forms, which are available on the Town’s website at [http://www.miamilakes-fl.gov/index.php?option=com\\_content&view=article&id=149&Itemid=358](http://www.miamilakes-fl.gov/index.php?option=com_content&view=article&id=149&Itemid=358), unless otherwise approved by the Town’s Procurement Manager.

#### **17. PURCHASE AND DELIVERY, STORAGE AND INSTALLATION**

All materials must be F.O.B. delivered. The Contractor is solely responsible for the purchase, delivery, and installation of all equipment and material(s) not provided by the Town. Contractor must make all arrangement for delivery. Contractor will be solely liable receiving, inspecting, accepting, and for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, FDOT, Miami-Dade County, and Town rules and regulations.

Contractor is responsible for the protection of all equipment and material(s) from adverse weather conditions, damage, deterioration, and theft until the Work has been accepted by the Town.

No materials will be stored on site without the prior written approval, using the appropriate Town form, by the Project Manager. The Town’s Forms are available at the website address identified in Article 16.

Should the Contractor wish to be paid for materials stored off-site such materials must be insured and store in a bonded warehouse. Prior written approval is required utilizing the form available at the website address identified in Article 16.



## **18. WORK STAGING AND PHASING**

The Work to be performed must be done in such a manner so as not to interfere with the normal Town operations of the Project site or facility. The manner in which the Work is performed will be subject to the approval of the Project Manager, whom if necessary, will have the authority to require changes in the manner in which the Work is performed. There must be no obstruction of Town services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager 24 hours in advance of the interruption of Town operations.

The Contractor must familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

A staging plan may be submitted to and approved by the Project Manager prior to the start of construction and issuance of the Notice to Proceed. Such staging plan must be revised and resubmitted as necessary during construction.

## **19. SUBSTITUTIONS**

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by Project Manager if sufficient information is submitted by Contractor to allow Project Manager to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by Project Manager from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor must make application to the Project Manager for acceptance thereof, certifying that the proposed substitute must perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application must state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified must be identified in the application and available maintenance, repair and replacement service must be indicated. The application also must contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other contractors affected by the resulting change, all of which will be considered by the Project Manager in evaluating the proposed substitute. The Project Manager may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Project Manager, if the Contractor submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract. The procedures for submission

to and review by the Project Manager will be the same as those provided herein for substitute materials and equipment.

The Project Manager will be allowed a reasonable time within which to evaluate each proposed substitute. Project Manager and the Town will be the sole judges of the acceptability of any substitute. No substitute are to be ordered, installed or utilized without the Town's and the Project Manager's prior written acceptance which must be evidenced by either a Change Order or an approved submittal. The Town and the Project Manager may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Town and the Project Manager rejects the proposed substitute, at their discretion, the Town may require the Contractor to reimburse the Town for the charges of the Consultant for evaluating the proposed substitute.

## **20. REQUEST FOR INFORMATION**

The Contractor must submit a Request for Information (RFI) where the Contractor believes that the Contract Document's details or specifications are unclear or conflict. All requests must be submitted in a manner that clearly identifies the specification section or drawing detail, if furnished, where clarification or interpretation is being requested. As part of the RFI, Contractor must include its recommendation for resolution. The Town will respond in writing.

The RFI process is not intended to be used to correct defective Work performed by the Contractor. Solutions to correct defective Work, including means and methods are the sole responsibility of the Contractor. Should the RFI process be utilized to correct the Contractor's defective Work, the Contractor may be required to reimburse the Town for any costs incurred by the Town in responding to the RFI. Such reimbursements will be taken as a deduction against any payments due the Contractor.

## **21. WARRANTY**

Contractor warrants to the Town that all materials and equipment furnished under the Contract Documents will be new unless otherwise specified and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager or Consultant, Contractor must furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by any other provisions within the Contract.

All Work must have a one (1) year warranty on labor from the date of Final Acceptance of the Project and the Contractor must provide such written warranty prior to the Town issuing final payment. Contractor must provide a minimum written warranty of one (1) year, commencing upon Final Acceptance of the Project on all equipment, parts, or material unless the Contract Specifications require or the manufacturer provides a longer warranty except for all equipment, materials or parts provided by the Town. Where the Contract specifications require or the manufacturer of the equipment, parts, or material provides a warranty greater than one (1) year or the time frame stipulated in a Contract, then the manufacturer's warranty term will take precedence. Contractor will be required to provide the Project Manager a copy of the manufacturer's warranty prior to the Town issuing final payment. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

All warranties, expressed or implied, must be provided to the Town for material and equipment covered by the Contract. All material and equipment furnished must be fully guaranteed by the

Contractor against factory defects and workmanship. At no expense to the Town, the Contractor must correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Contract may supersede the manufacturer's standard warranty. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

Should the Contractor fail to perform any required warranty work the Town, at its sole discretion, may have the work performed by others, and deduct such costs from any monies due the Contractor from the Town. Where such funds are not available, the Town will bill the Contractor and Contractor must reimburse the Town within thirty (30) calendar days. The Town may take any necessary and appropriate action provided under this Contract or with law to collect such payment due the Town.

## **22. ACCESS TO WATER AND UTILITIES**

The Contractor is responsible for providing all water and power that may be required for the performance of the Work, including the use of a generator. The use of a generator may be subject to the prior approval of the Town's representative should the Work be in a primarily residential neighborhood.

The Town may at its sole discretion provide access to Town utilities or water should such be available at the Work site. However, the Contractor is responsible to ascertain the location and accessibility of utilities and potable water sources required for the Work.

## **23. PROGRESS MEETINGS**

The Town will conduct a pre-construction conference prior to the commencement of the Work. Contractor must hold progress and coordination meetings as required by the Project Manager or Consultant, to provide for the timely completion of the Work.

## **24. STAGING SITE**

The Contractor is solely responsible for making all arrangements for any staging site(s) that may be necessary for the performance of the Work and the Contractor will be responsible for all site(s) security and any loss, damage or theft to its equipment and materials. The Contractor must install fencing, gates and take all other measures, as necessary, to make said site secure. The Project Manager at its sole discretion may make a staging site(s) available for use by the Contractor. Contractor must not utilize the Staging Site for worker's parking or the parking of other vehicles, except for delivery and pickup purposes, without the prior written approval of the Project Manager. If such site is made available by the Town, the Town assumes no responsibility or liability, and the Contractor will be responsible for any loss, damage or theft to its equipment and materials. The Contractor will also be responsible for restoring the site(s) to its pre-existing condition prior to the Contractor's use of the site(s).

## **25. PROJECT SITE FACILITIES**

The Contractor must arrange for all Project site facilities as may be necessary to perform the Work.

Contractor's, Subcontractor's, supplier's, materialmen's personnel must not use the Town office or public restrooms that may be available at the Project(s) site without the prior consent of the manager of the facility or the Project Manager where there is no manager of a facility. The Contractor must provide and maintain at its own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Contractor, his

employees or his Subcontractors must commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

The Contractor must furnish an adequate supply of drinking water for its and its Subcontractors' employees.

There must be adequate provisions made by the Contractor to ensure all disposable materials are properly disposed of and do not create a nuisance to the Town or the public. The location of the temporary facilities will be subject to the approval of the Project Manager.

Contractor is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager.

The Contractor is required to obtain all necessary permits required for any Project site facilities. Contractor is also be responsible to maintain such facilities in a safe and working condition.

All such facilities remain the property of the Contractor and the Contractor will be responsible for removal and disposal of such facilities prior to Final Acceptance.

## **26. SUBSTANTIAL COMPLETION, PUNCH LIST, & FINAL COMPLETION**

The Work will be substantially complete when the Project Manager, in the reasonable exercise of his/her discretion determines that the Work is complete and there are no material or substantial variations from the Contract and the Work is fit for its intended purpose. Upon Substantial Completion, the Project Manager and the Contractor will sign the Substantial Completion Inspection Form. The signing of this form does not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor must request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. Where the Work requires the Contractor to obtain a Certificate of Completion no request for Substantial Completion inspection is to be submitted until the Contractor has obtained the Certificate(s) of Completion. The Project Manager or Consultant will schedule the date and time for any inspection and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work must be identified on this form and it will be known as Punch List Work. The Punch List must be signed by the Project Manager and the Contractor confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List will not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Town.

The Project Manager or Consultant, and the Contractor will agree on the time reasonably required to complete all remaining Work included in the Punch List.

Upon Substantial Completion and the receipt and acceptance of any required documentation, including warranty documents, the Project Manager will determine that a Project has achieved Final Completion and authorize final payment.

The acceptance of final payment will constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

## **27. ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager will, within ten (10) calendar days, make an inspection thereof. If Project Manager find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment will be issued by Project Manager, stating that the requirements of the Contract have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor must deliver to the Project Manager a final release of all liens arising out of the Contract, receipts in full in lieu thereof; an affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, and the final bill of materials, if required, and payment application. Contractor must deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the final invoice. Contractor must also provide any requires owner's manual(s), operation manual(s), and parts manual(s) required by the Scope of Work.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and Project Manager so certifies, Town will, upon such certification of Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment will be made under the terms and conditions governing final payment, except that it will not constitute a waiver of claims.

The acceptance of final payment will constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the Contract and identified by Contractor as unsettled at the time of the application for final payment.

## **28. OWNERSHIP OF THE WORK**

The Contractor is solely responsible for all Work materials, supplies, and equipment, prior to final written acceptance. Contractor will be liable for all damage, theft, safety, transport and maintenance, until the Town issues final acceptance. The Contractor is responsible for the protection, and maintenance of all of its own tools, equipment, and vehicles.

## **29. RECORD SET**

During the work, Contractor must maintain records of all deviations from the existing data base of street lights as approved by the Towns PW Director or Project Manager. An electronic copy of as-built drawings showing accurately all changes and deviations made during construction shall be provided to reflect the work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Town and to certify in writing that the As-Built Record Drawings are correct and accurate. The record document shall be in GIS data base to include fields with information on all fixture specifications: Zone, Pole Label ID No., address/location of pole, street name, luminaire, latitude and longitude coordinates, pole type, pole height and maintaining agency. As-built documents must be updated monthly as the work is being conducted as a condition precedent to payment. A final as-built drawing must be provided to the Town at no additional cost, including digital PDF versions.

Copies of all applicable warranties, operations manuals, and similar information should be submitted once project is completed and accepted.

**30. NPDES REQUIREMENTS**

Contractor must comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP must be included in the Bid price. For further information on compliance requirements for NPDES and SWPPP visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for obtaining, completing and paying for any required NPDES application or permits that may be required.

**31. PROJECT SIGNAGE**

Contractor must furnish and install two (2) Project signs at the Project Site in accordance with the requirements provided by the Project Manager.

**32. INDEMNIFICATION**

The Contractor must indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Contract, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor will in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The Contractor agrees and recognizes that the Town will not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under this Agreement. The Contractor must defend the Town or provide for such defense at its own expense, at the Town's option.

This indemnification obligation will survive the expiration or termination of this Contract.

The Town has provided specific consideration for the indemnification of \$10.00 from the sums due to the Contractor under this Contract.

**33. INSURANCE**

If the Contractor is required to go on to Town property to perform work or services as a result of contract award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required herein.

The Contractor shall provide original certificates of coverage to the Procurement Division prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the Town Manager. The certificates must list the Town as ADDITIONAL INSURED and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the Town Manager if

circumstances change or adequate protection of the Town is not presented. Bidder, by submitting its bid, agrees to abide by such modifications.

Without limiting any of the other obligations or liabilities of Contractor, the Contractor must secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance must be qualified to do business in the State of Florida, be rated "B" as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, The insurance carrier must have agents upon whom service of process may be made in the State of Florida. The insurance coverage will be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town will be in excess of the Contractor's insurance and will not contribute to the Contractor's insurance. The insurance coverages must include a minimum of:

- a. Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000 each accident and a waiver of subrogation. The policies must include:

  - Waiver of subrogation
  - Statutory State of Florida
  - Limit of Liability
- b. Employer's Liability:** Limit for each bodily injury by an accident must be \$1,000,000 policy limit for each accident, per employee, including bodily injury caused by disease.
- c. Comprehensive Business Automobile and Vehicle Liability Insurance:** This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims for injuries to members of the public and damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and must cover operation with respect to onsite and offsite operations and insurance coverage must extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.
- d. Commercial General Liability ("CGL").** This insurance must be written in comprehensive form and must protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability must not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and Operations; (2) Independent contractors and Products and completed Operations; (3) Broad Form Property Damage,

Personal Injury and a Contractual Liability Endorsement, including any hold harmless and indemnification agreement.

- Products and Completed Operations for contracts, with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor must maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
- Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- CGL Required Endorsements
  - Employees included as insured
  - Contingent Liability/Independent Contractors Coverage
  - Contractual Liability
  - Waiver of Subrogation
  - Premises and Operations
  - Explosion, Collapse and Underground Hazards (if not specifically covered under the policy)
  - Loading and Unloading
  - Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

Town is to be expressly included as an **Additional Insured** pursuant to endorsement number CG 2010 11/85 or its equivalence.

- e. Umbrella Policy:** Contractor must provide a \$1,000,000, per occurrence, coverage with a \$1,000,000 aggregate limit. The policy must provide excess coverage on CGL, Business Automobile, and Employer's liability.
- f. Certificate of Insurance:** Contractor must provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance must not only name the types of policy(ies) provided, but also must specifically cite this Contract and must state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate must be endorsed with a provision that not less than thirty (30) calendar days' written notice must be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.
- g. Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town must be named as additional insured under the CGL, business automobile insurance and umbrella policies. Town must be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, must apply on a primary basis and any other insurance maintained by the Town will be in excess of and will not contribute to Contractor's insurance. Contractor's insurance must contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance must apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.



All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor will be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**34. PERFORMANCE AND PAYMENT BOND**

Contractor must within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment containing all the provisions of the attached Performance/Payment forms.

Each Bond must be in the amount of one hundred percent (100%) of the Contract value guaranteeing to Town the completion and performance of the Work covered in the Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project(s). Each Bond must be with a Surety, which is qualified pursuant to Article 35, Qualifications of Surety.

Each Bond must continue in effect for one year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the Contract value, or an additional bond must be conditioned that Contractor will, upon notification by Town, correct any defective or faulty work or materials which appear within one year after Final Completion of the Project.

The Town must be listed as an Obligee.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, Contractor must ensure that the bond(s) referenced above must be recorded in the public records and provide Town with evidence of such recording.

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, which may be in the form of cash, money order, certified check, cashier's check or an unconditional letter of credit. Such alternate forms of security will be subject to the prior approval of Town and for same purpose and will be subject to the same conditions as those applicable above and will be held by Town for one year after completion and acceptance of the Work.

**35. QUALIFICATIONS OF SURETY**

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

The Surety must hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety must not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety must provide Town with evidence satisfactory to Town, that such excess risk has been protected in an acceptable manner.

The Town will accept a surety bond from a company with a rating of "B+" or better and a Financial Size Category of "Class II", provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the Town will review and either accept or reject the surety company based on the financial information available to the Town. A surety company that is rejected by the Town may be substituted by the Bidder with a surety company acceptable to the Town, only if the Bid amount does not increase.

### **36. GENERAL REQUIREMENTS**

The employee(s) of the Contractor will be considered to be at all times its employee(s), and not employee(s) or agent(s) of the Town or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of the Contract a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Project Manager or designee, should the Project Manager or designee make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses necessary to perform the Work, in a competent and professional manner.

The Contractor must at all times cooperate with the Town, or the Consultant and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Consultant and other agencies authorized by the Town, must have full access to the Project site at all times.

The apparent silence of the Contract as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, will be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

### **37. RULES AND REGULATIONS**

The Contractor must comply with the Florida Building Code and all laws and regulations applicable to provision of the Work specified in the Contract. The Contractor must be familiar with all federal, state and local laws, rules, regulations, codes, and ordinances that affect the Work.

### **38. SITE INVESTIGATION AND REPRESENTATION**

The Contractor acknowledges that by executing the Contract it has satisfied itself as to the nature and location(s) of the Work under the Contract including the general and local conditions, particularly those bearing upon availability of installation, transportation, disposal, handling and storage of materials, and all other matters which can in any way affect the Work or the cost thereof under the Contract.

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the Town for their accuracy or completeness. No request for additional compensation or Contract time resulting from encountering utilities not shown will be considered.

It will be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., by hand excavation or other appropriate measures before performing any Work. The

Contractor must call Sunshine State One Call of Florida, Inc. and other appropriate agencies, as applicable, at least forty-eight (48) hours prior to the commencement of any excavation or digging to determine the locations of existing utilities prior to the commencement of any Work. The Contractor is responsible for any and all claims resulting from the damage caused to any utilities, identified or not.

Should the Contractor identify any utilities, structures, etc., which will or may be encountered during the performance of the Work, the Town must be consulted immediately in order for a decision to be made on the potential relocation or other action(s) to be taken as it relates to the Work.

Should the Town direct the Contractor to relocate any utilities that would be impacted by any Work then the Town will compensate the Contractor for such relocation in accordance with the Change Order provisions of the Contract.

The Contractor must not purposefully disrupt or disconnect any type of utility whatsoever without first obtaining the prior written approval of the Town or applicable utility owner. Requests for any disconnection, including those required of other utilities must be in writing and received by the Town at least seventy-two (72) hours prior to the time of the requested interruption. The Town may require that the Contractor notify, in writing, any property owners to be impacted by service interruptions to their utilities.

Any failure by the Contractor to familiarize itself with any utilities that may impact the performance of the Work will not relieve Contractor from responsibility for properly estimating the difficulty or cost of performing the Work and will not entitle the Contractor to any additional compensation.

### **39. METHOD OF PERFORMING THE WORK**

The apparent silence of the Contract as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, will be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract will be made upon that basis.

The Contractor must comply with the manufacturer's requirements for the handling, delivery and storage of all equipment and materials. Contractor must inspect all equipment and materials immediately prior to installation and must not install any damaged or defective items.

Contractor must comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract.

The Contractor must familiarize itself with normal Town operations where the Work is to be performed so that it can conduct the Work in the best possible manner to the complete satisfaction of the Project Manager.

The Work to be performed must be done in such a manner so as not to interfere with the normal Town operations. The manner in which the Work is performed will be subject to the approval of the Project Manager, whom if necessary, has the authority to require changes in the manner in which the Work is performed. There must be no obstruction of Town services without the prior written approval of the Project Manager. All requests for such interruption or obstruction must be given in writing to the Project Manager twenty-four (24) hours in advance of the interruption of Town operations.

If the Project Manager reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager, the Project Manager has the right to order the Contractor to do either or both of the following: (1) improve its work force; and (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor must immediately comply with such orders at no additional cost to the Town. (3) The Town at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Contractor.

Where materials are transported in the performance of the Work, vehicles must not be loaded beyond the capacity recommended by the vehicle manufacturer or permitted by Federal, State or local law(s). When it is necessary to cross curbing or sidewalks, protection against damage must be provided by the Contractor and any damaged curbing, drainage, grass areas, sidewalks or other areas must be repaired at the expense of the Contractor to the satisfaction of the Project Manager.

Depending on the nature of the Work the Project Manager may require a staging plan be submitted to and approved by the Project Manager prior to the start of the Work issuance of the Notice to Proceed. Such staging plan must be revised and resubmitted as necessary during construction.

**40. CONTRACTOR TO CHECK PLANS, SPECIFICATIONS AND DATA**

Contractor must verify all dimensions, quantities and details shown on any plans, specifications or other data received from Project Manager and must notify the Project Manager of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy. Contractor will not be liable for damages resulting from errors, omissions or discrepancies in the Contract unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager.

**41. NOT USED**

**42. not used**

**43. PRODUCT DATA AND SAMPLES**

Contractor must submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor must supplement manufacturer's standard data to provide information unique to the Work.

Contractor must only submit pages that are pertinent. Submittals must be marked to identify pertinent products, with references to the specifications and the Contract. Identify reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions and required clearances.

Contractor must submit a draft of all product data, warranty information and operating and maintenance manuals at 50% completion of construction.

Contractor must submit samples to illustrate the functional characteristics of the product(s). Submittals must be coordinated for different categories of interfacing Work. Contractor must include identification on each sample and provide full information.

#### **44. DIFFERING SITE CONDITIONS**

In the event that during the course of the Work on a Project the Contractor encounters subsurface or concealed conditions at the Project site which differ materially from those shown in the Contract, and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract, Contractor, without disturbing the conditions and before performing any Work affected by such conditions, must, within twenty-four (24) hours of its discovery, notify the Project Manager and Consultant in writing of the existence of the aforesaid conditions. Project Manager or the Consultant must, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of Project Manager or the Consultant, the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Project Manager or Consultant must recommend an equitable adjustment to cost of the Work or the time to complete the Work, or both. If the Project Manager and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment will be referred to the Town's Procurement Manager for determination. Should the Town's Procurement Manager determine that the conditions of the Project site are not so materially different to justify a change in the terms of the Contract, the Director will so notify the Project Manager, Consultant, and Contractor in writing, stating the reasons, and such determination will be final and binding upon the parties hereto.

No request by Contractor for an equitable adjustment to the Contract under this provision will be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions will be allowed if made after the date certified by Consultant or Project Manager as the date of substantial completion.

#### **45. PROTECTION OF PROPERTY, UTILITIES, AND THE PUBLIC**

The Contractor must continuously maintain adequate protection of all its Work from all losses or damage and must protect public and private property, and utilities from injury or loss arising in connection with the Work, and take all necessary precautions to prevent accidents, injuries, or damage to persons or property on or near the Work.

Contractor must remove and preserve any street signs, benches, traffic control signs, landscaping, and other similar items identified by the Project Manager and reinstall or deliver the items to the Town as directed by the Project Manager.

Contractor will be responsible to restore all areas impacted by the Work, including by not limited to swale areas, existing structures, driveways and approaches, landscaping, drainage, lighting, and other utilities to pre-existing conditions to the satisfaction of the Project Manager.

#### **46. COORDINATION OF THE WORK**

Operations and events/programs will be ongoing at the site where the Work will be performed. Prior to the commencement of the Work, the Project Manager will make every effort, based on available information, to notify the Contractor of any ongoing operations or events/programs scheduled at the Project site that may require coordination. The Contractor will be solely responsible for coordinating the Work to minimize any potential adverse impacts. Contractor will not be entitled to any days of delay for failure to properly coordinate the Work. The Contractor must notify the n writing Project Manager of any Work that will impact ongoing operations or

scheduled events/programs. Such notification must be provided to the Project Manager at least 72 hours in advance of the Contractor performing any such Work.

Contractor is responsible for coordination of all Subcontractors and suppliers who will perform under the Contract.

#### **47. ACCESS TO THE PROJECT SITE**

Town will provide, as may be indicated in the Contract the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands as are designated by Town for the use of Contractor.

Contractor must provide, at Contractor's own expense and without liability to Town, any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials. Contractor must furnish to the Town copies of written permission obtained by Contractor from the owners of such facilities.

#### **48. SAFETY PRECAUTIONS**

Contractor will be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor must take all necessary precautions for the safety of, and must provide the necessary protection to prevent damage, injury or loss to:

- All employees on the Project site and other persons who may be affected thereby;
- All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and
- Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor must take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and must comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, and the Manual of Uniform Traffic Control Devices (MUTCD) to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor must notify owners of adjacent property and utilities when prosecution of the Work may affect them.

The Contractor must comply with the OSHA "Federal Right to Know" Regulation regarding informing employees of toxic substances in the workplace, providing training, and emergency procedures.

Contractor must adhere to applicable environmental protection guidelines for the duration of the Work. The Contractor must comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Town, Miami-Dade County, State of Florida), which bear on the performance of the Work

All open trenches or holes must be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager.

The Contractor must provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration.

Contractor must immediately report to the Project Manager every accident to persons and must furnish in writing full information, including witness statements, regarding any and all accidents.

Contractor's duties and responsibilities for the safety and protection of the Work must continue until such time as all the Work is completed and Project Manager has issued the Contractor a notice of Final Acceptance.

**49. TRENCH SAFETY ACT**

Pursuant to Chapter 90-96 (CS/SB 2626), Laws of Florida, "Trench Safety Act", any person submitting a Bid is required to comply with the requirements of the **FLORIDA TRENCH SAFETY ACT (90-96, LAWS OF FLORIDA)**. The Contractor must complete the Trench Safety Act Form ("Form") and return the Form with its Proposal. Failure to submit said Form will result in the Contractor being deemed non-responsive. The Town in its sole discretion may allow the Form to be submitted during the evaluation process.

Any costs identified on the Form are not a pay item. The purpose of this form is to gather information on the costs associated with trench safety measures and to insure that the Bidder has considered these costs and included them in its Bid prices. Failure to complete this form may result in the Bid being declared non-responsive.

**50. LABOR AND MATERIALS**

Unless otherwise provided herein, Contractor must provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work. All materials must be new unless otherwise specified in a Work.

**51. VEHICLES AND EQUIPMENT**

Contractor must have on hand at all times clean and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. The Town may require the repair or replacement of equipment as reasonably necessary.

**52. PROJECT MANAGEMENT**

Contractor is responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract. Project Management includes, but is not limited to: obtaining bids from subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that subcontractors comply with the requirements of the Contract; performing the Work in accordance with the Contract to the satisfaction of the Project Manager; paying all subcontractors; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion, as applicable.

Contractor must have a competent English speaking Superintendent full time on the Project site, who will represent Contractor and all directions given to the Superintendent will be as binding as if given to Contractor. The Superintendent must not be changed except with the prior written consent of Project Manager. Contractor must provide properly licensed personnel where such personnel are required by any rule, regulations, or law. Contractor must give efficient supervision to the Work, using its best skill and attention.

The Project Manager and the Contractor will meet at least bi-weekly or as determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and

outstanding issues. The Contractor must publish, keep, and distribute minutes and any comments thereto of each such meeting.

**53. SUBCONTRACTORS**

Contractor is solely responsible for all acts and omissions of its Subcontractors. Nothing in the Contract will create any contractual relationship between any Subcontractor and the Town. Contractor is responsible for the timely payment of its Subcontractors and suppliers as required by Florida Statute Chapter 218.735. Failure to comply with these payment requirements will place the Contractor in default of the Contract.

Contractor must not employ any subcontractor against whom Town may have a reasonable objection.

Contractor must utilize the Subcontractors identified in its response to the RFP. The replacement, addition, or deletion of any Subcontractor(s) will be subject to the prior written approval of the Project Manager or designee.

**54. AUTHORITY OF THE PROJECT MANAGER**

The Town Manager hereby authorizes the Project Manager to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to or on account of the Work, and questions as to the interpretation of the Work to be performed under the Contract.

The Contractor will be bound by all determinations or orders of the Project Manager and must promptly respond to requests of the Project Manager, including the withdrawal or modification of any previous order, and regardless of whether the Contractor agrees with the Project Manager's determination or requests. Where requests are made orally, the Project Manager will follow up in writing, as soon thereafter as is practicable.

The Project Manager has authority to act on behalf of the Town to the extent provided by the Contract, unless otherwise modified in writing by the Town. All instructions to the Contractor will be issued in writing. All instructions to the Contractor will be issued through the Town Manager, Project Manager.

The Project Manager will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract.

All interpretations and recommendations of the Project Manager will be consistent with the intent of the Contract.

The Project Manager will have authority to reject Work that does not conform to the Contract. Whenever, in their opinion, it is considered necessary or advisable to ensure the proper completion of the Work the Project Manager has authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed or completed.

The Project Manager's authority to act under this paragraph, nor any decision made in good faith either to exercise or not to exercise such authority, will give rise to any duty or responsibility of the Project Manager to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.



The Project Manager will not be responsible for the acts or omissions of the Contractor, any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

#### **55. INSPECTION OF THE WORK**

The Project Manager, Inspectors, other Town representatives, and inspectors representing the Town and other public entities having jurisdiction over the Work must at all times have access to the Work

Should the Contract, or any laws, ordinances, or any public authority require any of the Work to be tested, Contractor must provide timely notice of readiness of the Work for testing and timely notice must be given of the date fixed for such testing so that the appropriate representatives of the Town, DERM, or other entities can be present for such testing. Contractor is responsible for making arrangements for all tests and for all associated costs for all required testing. The original copies of all testing reports must be sent directly to the Project Manager by the testing firm, with a copy to the Contractor.

The Town, at its sole discretion may conduct testing in addition to the required testing. In such instances the Town will pay all testing costs unless the tests determine that the material, Work, or equipment is not compliant with the requirements of the Contract. In such instances the Contractor must reimburse the Town for all incurred testing cost and the Contractor will be responsible for any costs associated with re-testing to ensure compliance.

Inspectors have no authority to permit deviations from, or to relax any of the provisions of the Contract or to delay the Work by failure to inspect the materials and Work with reasonable promptness without the written permission or instruction of Project Manager or Consultant.

#### **56. TOWN LICENSES, PERMITS AND FEES**

In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee the Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Contract are as follows:

- 1) Contractor must have and maintain during the term of this Contract all appropriate Town licenses. Fees for which must be paid in full in accordance with the Town's Fee structure for such licenses. THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.
- 2) During the performance of this Contract there may be times when the Contractor will be required to obtain a Town permit for such Work. It is the responsibility of the Contractor to insure that the appropriate Town permits to perform such work as may become necessary during the performance of the Work have been obtained. Any fees related to Town required permits in connection with this Contract will be the responsibility of the Contractor and will be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

No Work is to be performed until required permits are provided to the Project Manager.

**57. TAXES**

Contractor must pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

**58. REMOVAL OF UNSATISFACTORY PERSONNEL**

Contractor must at all times enforce strict discipline and good order among its employees and subcontractors at the Project(s) site(s) and must not employ on the Project any unfit person or anyone not skilled in the Work to which they are assigned.

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract. The Contractor must respond to the Town within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town will make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

**59. UNCOVERING FINISHED WORK**

The Project Manager's right to make inspections includes the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager will notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as additional Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration will be at the expense of the Contractor. Such expenses will also include repayment to the Town for any and all expenses or costs incurred by it, including employee salaries or related cost, in connection with such uncovering, taking down, replacing and restoration at the Project site.

**60. DEFECTIVE OR NON-COMPLIANT WORK**

The Town Manager, Project Manager, or Consultant have the authority to reject or disapprove Work that is found to be defective or not in compliance with the requirements of the Contract. If required, Contractor must promptly either correct all defective or non-compliant Work or remove such defective Work and replace it with non-defective/non-compliant Work. Contractor will bear all direct, indirect and consequential costs of such removal or corrections.

Re-examination of any of the Work may be ordered by the Project Manager or Consultant, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract, the Town will pay the cost of reexamination and replacement by means of a Change Order. If such Work is not in accordance with the Contract, Contractor must pay such cost.

Should Contractor fail or refuse to remove or correct any defective or non-compliant Work or to make any necessary repairs in accordance with the requirements of the Contract within the time indicated in writing by the Town Manager or designee, the Town Manager or designee will have the authority to cause the defective/non-compliant Work to be removed or corrected, or make such repairs or corrections as may be necessary at Contractor's expense. Any expense incurred by the Town in making such removals, corrections or repairs, will be paid for out of any monies due or

which may become due to Contractor, or may be charged against the Performance Bond, if required by the Contract. In the event of failure of Contractor to make all necessary repairs promptly and fully, the Town Manager or designee may declare the Contractor in default.

If, within the warranty period required by the Contract, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, must promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Should the Contractor fail to take such action the Town may take any necessary and appropriate action and hold the Contractor liable and responsible for all costs. The Town may take any action allowed under this Contract or in law to recover all such costs. Nothing contained herein will be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract including but not limited to any claim regarding latent defects.

Failure to reject any defective Work or material will not in any way prevent later rejection when such defect is discovered, or obligate Town to accept.

#### **61. FIELD DIRECTIVE**

The Project Manager or Consultant may at times issue Field Directives to the Contractor based on visits to the Project Site. Such Field Directive(s) will be issued in writing and the Contractor is required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor must, within 48 hours, notify the Project Manager that the work covered by the Field Directive is outside the scope of the Work. At that time the Field Directive may be rescinded or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor must notify the Project Manager that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive, in accordance with the requirements of Article 66. At no time shall the Contractor refuse to comply with the Field Directive. Failure to comply with the Field Directive may result in a determination that the Contractor is in default of the Contract.

#### **62. CHANGE ORDERS**

Without invalidating the Contract and without notice to any Surety (if any), the Town reserves and has the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work under the Contract as may be considered necessary or desirable to complete the Work in a manner satisfactory to the Town. The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract and all such changes will be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

The Contractor is required to provide the Project Manager with a detailed Change Proposal Request ("CPR") or Request For Change Order ("RCO"), utilizing the Town's standard form, which must include requested revisions to the Contract or Work Order, including but not limited to adjustments in this Contract Price and Contract Time. The Contractor is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the Town may require that the Contractor submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Contractor's CPR/RCO. The Contractor's CPR/RCO must include any schedule revisions and an explanation of the cost and schedule impact of the proposed change on the Project. If the

Contractor fails to notify the Project Manager of any schedule changes associated with the proposed change, it will be deemed to be an acknowledgment by Contractor that the proposed work will not have any scheduling consequences.

Any changes to the Contract must be contained in a written document, executed by the both parties. However, under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

In the event a satisfactory adjustment cannot be reached and a Change Order has not been issued, or time is of the essence the Town reserves the right, at its sole option to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work.

For all Change Orders the Contractor will be entitled to a combined profit and overhead rate for Change Orders that will not be in excess of ten (10%) percent inclusive of all direct/indirect costs including labor, material, and equipment costs, unless the Procurement Manager determines that the complexity and risk of the Change Order work is such that an additional factor is appropriate..

The final amount to be paid to the Contract for Change Order Work will be subject to negotiation between the Town and the Contractor.

Failure by the Contractor to proceed with Change Order Work when so directed by the Town Manager or designee may result in the Contractor being found in default of the Contract.

Contractor must utilize the Town's standard requests for change orders and change order forms unless otherwise specifically approved by the Town's Procurement Manager. The Town's Forms are available at the website address identified in Article 16.

### **63. FORCE MAJEURE**

Should any failure to perform on the part of Contractor be due to a condition of Force Majeure then, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform.

If the Contractor is delayed in performing any obligation under the Contract due to a Force Majeure condition, the Contractor must request a time extension from the Town within five (5) working days of said Force Majeure occurrence. Any time extension will be subject to mutual agreement and will not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law and do not include the acts or omissions of Subcontractors or suppliers.

### **64. EXTENSION OF TIME**

Any reference in this section to the Contractor will be deemed to include suppliers, and permitted Subcontractors, whether or not in privity of contract with the Contractor for the purpose of this Article.

If the Contractor is delayed at any time during the progress of the Work beyond the Contract Time or Notice to Proceed (NTP) by the neglect or failure of the Town or by a Force Majeure, then the Contract Time set forth in the Contract will be extended by the Town subject to the following conditions:

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;

- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

A delay meeting all the conditions of the above, will be deemed an Excusable Delay.

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the Contractor in support of a request for an extension of time was erroneous; provided however, that such information or facts, if known, would have resulted in a denial of the request for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.

The request for an Excusable Delay must be made within five (5) calendar days after the time when the Contractor knows or should have known of any cause for which it may claim an extension of time and must provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Contractor to furnish such additional information or documentation, as the Project Manager will reasonably deem necessary or helpful in considering the requested extension.

The Contractor will not be entitled to an extension of time unless the Contractor affirmatively demonstrates that it is entitled to such extension.

The Project Manager will endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor will be obligated to continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike or interference of public origin which may delay the Project, the Contractor must promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same will have been granted. The Town must be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction must be obtained and move to dissolve the same or otherwise, as the Town may deem proper.

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Article 65, Excusable Delay, Non-Compensable, the Contractor will not be entitled to a separate extension for each one of the causes, only one period of extension will be granted for the delay.

Any extension of time granted by the Town will be processed through the Change Order provisions of the Contract.

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Contract (as such date may have been extended by a change order), the making of any payment to the Contractor, the issuance of any Change Order, does not waive the Town's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

**65. EXCUSABLE DELAY, NON-COMPENSABLE**

Excusable Delay is either (i) caused by circumstances that could not be foreseen and are beyond the control of Contractor, its subcontractors, or suppliers, or is (ii) caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the Town. Then Contractor will be entitled only to a time extension and no compensation for the delay.

Contractor is entitled only to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor must document its claim for any time extension as provided in Articles 63 and 64.

Failure of Contractor to comply with Articles 63 and 64, as to any particular event of delay will be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

**66. CLAIMS**

Contractor will only be entitled to submit a claim after submitting its request for additional compensation or time in accordance with Articles 63 and 64 of the Contract and the request(s) have been denied or the Contractor does not agree with the decision of the Town.

Any claim for a change in the Contract time for completion of any Work, the Contract Term, or Contract price must be made by written notice by Contractor to the Town representatives identified in Article 5 within the timeframe established in Article 64, effective with the commencement of the event giving rise to the claim stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation must be provided unless the Town Manager or designee allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes will be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract will be waived if not submitted in strict accordance with the requirements of this Article.

The Town may require the Contractor to submit its claim utilizing a specific format or forms to facilitate the Town's evaluation of the claim. The Town at its sole discretion may require that additional documentation or information be provided by the Contractor to assist in its review and evaluation of the claim.

The Contract time will be extended in an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made as provided in this Article. Such delays include, but are not be limited to, acts or neglect by any separate contractor employed by Town, fires, floods, labor disputes beyond the control of the Contractor, epidemics, abnormal weather conditions (if applicable), or acts of God.

The Contractor will not be entitled to an increase in the Contract price or payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be it reasonable or unreasonable, foreseeable or unforeseeable, avoidable or unavoidable. Contractor will be entitled only to extensions of the Contract time for completion of the Work, as the sole and exclusive remedy for such resulting excusable delay.

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract whether occasioned by any act or omission of the Town or any of its representatives and the Contractor agrees that any such claim will be compensated solely by an extension of time to complete performance of the Work due to an Excusable Delay as defined in Article 63 and 64. The Contractor alone specifically assumes the risk of such delays, including, without limitation: delays in processing or approving any submittals to the Town or by the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor will not receive monetary compensation for Town delay(s).

Failure of Contractor to comply with this Article as to any particular event of claim will be deemed conclusively to constitute a waiver of any and all claims resulting from that particular event.

## **67. DISPUTES AND MEDIATION**

Contractor understands and agrees that all disputes between it and the Town upon an alleged violation of the terms of this Contract by the Town must be submitted for resolution in the following manner.

Initial effort(s) should be made by the Contractor to resolve any issues with the Project Manager or other Town representative(s) it works within the coordination and performance of the Work.

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager of the claim or dispute

The Contractor must submit its dispute in writing, with all supporting documentation, to the Procurement Manager. Upon receipt of said notification the Procurement Manager will review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute the Contractor must submit their dispute in writing within five (5) calendar days of the written finding being issued by the Procurement Manager to the Town Manager. Failure to submit such appeal in the stated timeframe of the written finding will constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager will review the issues relative to the claim or dispute and issue a written finding.

Appeal to the Town Manager for resolution is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the Contractor be entitled to compensation hereunder, the Town Manager's decision may be subject to approval by the Town Council. Contractor will not be entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Council if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired in an instance where Town Manager's decision is subject to Town Council for approval; or
- (iii) Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract

time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Term, the parties will participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator will be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

**68. CONTINUING THE WORK**

Contractor must continue to perform all Work under the Contract during all disputes or disagreements with Town, including disputes or disagreements concerning a request for a Change Order and Work must not be delayed or postponed pending resolution of any disputes or disagreements without the prior written approval of the Project Manager.

**69. FRAUD AND MISREPRESENTATION**

The Town may terminate this Contract, or any other contract(s) with the Town, with any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the Town through fraud, misrepresentation or material misstatement. Such person, individual, corporation, entity, or affiliate will be responsible for all direct or indirect costs associated with termination or cancellation of the contract(s).

**70. STOP WORK ORDER**

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order will be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of ninety (90) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town will either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 77, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor must resume the Work without compensation to the Contractor for such suspension other than extending the time to complete any Work under the Contract or extending the Contract Term to the extent that, in the opinion of the Town Manager or designee, the Contractor may have been delayed by such suspension. In the event the Town Manager or designee determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor, or any other reason caused by Contractor's fault or omission, the Contractor will not be entitled to an extension of time or Contract Term or (Time) as a result of the issuance of a Stop Work Order.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, Excusable Delay, and will not give rise to a claim for compensable delay.



**71. HURRICANE PREPAREDNESS**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, must immediately respond by taking all precautions necessary to secure any Work threatened by storm events, regardless of whether the Contractor has been given notice of same by Project Manager or other Town representative.

Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

Suspension of the Work caused by a threatened or actual storm event, regardless of whether the Town has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and will not give rise to a claim for compensable delay.

**72. CLEANING UP; TOWN'S RIGHT TO CLEAN UP**

Contractor must at all times keep the Work site(s) free from accumulation of excess materials, waste materials or rubbish caused by its operations. At the completion of Work at a work site(s), Contractor must remove all its excess materials, waste materials and rubbish from and about the Project(s) as well as any tools, equipment, machinery and surplus materials or supplies. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Town may do so and the cost incurred will be charged to Contractor. Any combustible waste materials must be removed from the work site(s) at the end of each day.

Should the Contractor leave any open trenches at any time that Work is not being performed, the Town may have the open trenches covered and deduct any cost incurred from any outstanding payments due or to become due to the Contractor. The Town may also invoice the Contractor for all costs incurred in mitigating any open trenches.

**73. MAINTENANCE OF TRAFFIC**

Maintenance of Traffic ("MOT") must be performed in accordance with the applicable FDOT Index Numbers (600 Series) and as further stated herein. The manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, FHWA), must be followed in the design, application, installation, maintenance and removal of all traffic control devices, warning devices and barriers necessary to protect the public and workmen from hazards with the Project limits. Pedestrian and vehicular traffic must be maintained and protected at all times.

Prior to commencement of the Work Contractor must provide the Project Manager the proposed MOT plan for review. The Project Manager may require revisions to the proposed MOT plan. The MOT plan must be updated by the Contractor every two weeks.

Failure by the Contractor to comply with the Maintenance of Traffic requirements will result in the Town issuing a stop work order until corrective action is taken. The Contractor will not be entitled to any additional time resulting in any delays due to issuance of a stop work order.

**74. SUBSTITUTIONS**

Substitution of any specified material or equipment requires the prior written acceptance of the Project Manager. It is the sole responsibility of the Contractor to provide sufficient information and documentation to the Project Manager to allow for a thorough review and determination on the acceptability of the substitution. Approval of a substitution does not waive or mitigate the Contractor's sole responsibility to meet the requirements of the Contract.

## **75. SET-OFFS, WITHHOLDING, AND DEDUCTIONS**

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Contract or by applicable law including, without limitation, the following:

- Any amount of any claim by a third party;
- Any Liquidated Damages, or;
- Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town will notify the Contractor in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, will be paid to the Contractor in accordance with the Local Government Prompt Payment Act

## **76. CONTRACTOR DEFAULT**

### **a. Event of Default**

An event of default will mean a breach of the Contract by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, includes but is not limited to, the following:

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services, materials, or supplies provided to Contractor ;
- The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
- The Contractor has failed to obtain the approval of the Town where required by the Contract;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work.

### **b. Notice of Default-Opportunity to Cure**

Where an Event of Default ("Default") occurs under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town; or, the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Town Manager or designee may also suspend any payment or part thereof or order a Work stoppage until such time as the issue(s) concerning compliance are resolved.

### **c. Termination for Default**

Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Contract. Contractor understands and agrees that termination of this Contract under this Article will not release Contractor from any obligation accruing prior to the effective date of termination.

In the event of termination by the Town Manager or designee, the Town Manager or designee may immediately take possession of all applicable documentation and data, material, equipment, and supplies to which it is entitled to under the Contract or by law.

Where the Town erroneously terminates the Contract for default, the terminations will be converted to a Termination for Convenience, and the Contractor will have no further recourse of any nature for wrongful termination.

#### **77. TERMINATION FOR CONVENIENCE**

In addition to cancellation or termination as otherwise provided for in the Contract, the Town may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice will state the date upon which Contractor must cease all Work under the Contract, and if applicable vacate the Project(s) site(s).

Upon receipt of such notice, unless otherwise directed by the Town, the Contractor must, Stop all Work on the date specified in the notice ("the Effective Date") and;

- Take such action as may be necessary for the protection and preservation of the Town's materials and property;
- Cancel all cancelable orders for materials and equipment;
- Remove all materials, supplies or equipment that may be used by the Contractor on the Work;
- Assign to the Town and deliver to the Town, at a site(s) specified by the Town, any non-cancelable orders for materials and equipment that can not otherwise be used by the Contractor on other work;
- Take no action that will increase the amounts payable by the Town under the Contract; and take reasonable measures to mitigate the Town's liability under the Contract; and
- All documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract, the Town will pay the Contractor for the actual cost, or the fair and reasonable value, as substantiated by invoice documentation, of any non-cancelable material(s) and equipment that cannot be used elsewhere by the Contractor in the performance of its work.

In no event, will any payments under this Paragraph exceed the maximum cost set forth in the Contract and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the Contractor. Contractor will not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

**78. TOWN MAY AVAIL ITSELF OF ALL REMEDIES**

The Town may avail itself of each and every remedy stated in the Contract or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

**79. COMPLIANCE WITH APPLICABLE LAWS**

The Contractor must comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

**80. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT**

Contractor must not unlawfully discriminate against any person, must provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contract. Contractor must comply with all applicable Federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

**81. INDEPENDENT CONTRACTOR**

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

**82. THIRD PARTY BENEFICIARIES**

Neither Contractor nor Town intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party will be entitled to assert a claim against either of them based upon this Contract.

**83. ASSIGNMENT OR SALE OF CONTRACT**

The performance of this Contract must not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors will, in each instance, be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Contract.

Any transference without Town approval will be cause for the Town to terminate this Contract for default and the Contractor will have no recourse from such termination.

Nothing herein will either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

**84. MATERIALITY AND WAIVER OF BREACH**

Town and Contractor agree that each requirement, duty, and obligation set forth in the Contract is substantial and important to the formation of the Contract and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Contract will not be deemed a waiver of such provision or modification of the Contract. A waiver of any breach of a provision of the Contract will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of the Contract.

**85. DEFENSE OF CLAIMS**

Should any claim be made or any legal action brought in any way relating to the Work under the Contract, the Contractor must diligently render to the Town any and all assistance which the Town may require of the Contractor.

**86. FUNDS AVAILABILITY**

Funding for this Contract is contingent on the availability of Town funds and the Contract is subject to amendment or termination due to lack of funds, reduction of funds or change in regulations, upon thirty (30) days' notice.

**87. ACCESS, REVIEW AND RELEASE OF RECORDS**

Town has the right to inspect and copy, at Town's expense, the books, records, and accounts of Contractor which relate in any way to the Contract. The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

Upon termination by the Town or final completion of the Contract the Contractor must, in accordance with Section 119.0701 of the Florida Statutes, transfer to the Town, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All public record stored electronically must be provided in .pdf format or another format acceptable to the Town. Any payments due the Contractor will not be made until the Town receives the public records.

The Contractor must comply with the applicable provisions of Chapter 119, Florida Statutes and Town has the right to immediately terminate this Contract for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor must retain all other records associated with this Contract for a period of five (5) years from the date of termination.

**88. ROYALTIES AND PATENTS**

The Contractor, without exception, shall indemnify and save harmless the Town and its employees from liability of any kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by Town. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the Submittal prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

**89. TIME IN WHICH TO BRING ACTION AGAINST THE TOWN**

In the event the Contractor may be deemed to have a cause of action against the Town, no action will lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract by reason of any act or omission or requirement of the Town or its agents,

unless such action is commenced within six (6) months after the date of issuance of a final payment under the Contract, or if the Contract is terminated under the provisions of the Contract, unless such action is commenced within six (6) months after the date of such termination by the Town.

**90. APPLICABLE LAW AND VENUE OF LITIGATION**

This Contract will be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions the sole venue will be Miami-Dade County, Florida.

**91. NON-EXCLUSIVE CONTRACT**

It is the intent of the Town to enter into a Contract with all successful Bidder(s) that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services, or any portion thereof, as it sees fit, including but not limited to: award of other contracts, use of another contractor, or perform the Work with its own employees.

**92. SEVERABILITY**

In the event any provision of the Contract is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision will be excised from this Contract, and the remainder of the Contract will continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Contract in its entirety. An election to terminate the Contract based upon this provision will be made within seven (7) calendar days after the finding by the Court becomes final.

**93. CONTRACT CONTAINS ALL TERMS**

The Contract and all documents incorporated into the Contract by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Contract will be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**94. ENTIRE AGREEMENT**

The Contract, as they may be amended from time to time, represent the entire and integrated Contract between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Contract may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of the Contract will not be deemed to be a waiver of any other breach of any provision of the Contract.

**CONTRACT EXECUTION FORM**

This Contract **20XX-XX** made this \_\_\_\_\_ day of \_\_\_\_\_ in the year **20\_\_** in the amount of \$**XXX,XXX.XX** by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and **Name of Contractor**.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By: \_\_\_\_\_  
Gina Inguanzo, Town Clerk

By: \_\_\_\_\_  
Alex Rey, Town Manager

By: \_\_\_\_\_  
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

**Contractor's Name**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(\*) In the event that the Contractor is a corporation, there must be attached the original of the corporate resolution in the form contained in this Section, of the board of the corporation, authorizing the officer who signs the Contract to do so in its behalf.

**CORPORATE RESOLUTION**

WHEREAS, \_\_\_\_\_, Inc. desires to enter into a contract with the Town of Miami Lakes for the purpose of performing the work described in the contract to which this resolution is attached; and

WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the \_\_\_\_\_,  
(type title of officer)

\_\_\_\_\_, is hereby authorized  
(type name of officer)

and instructed to enter into a contract, in the name and on behalf of this corporation, with the Town of Miami Lakes upon the terms contained in the proposed contract to which this resolution is attached and to execute the corresponding performance bond.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)



**FORM OF PERFORMANCE BOND** (Page 1 of 2)

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

WHEREAS, Contractor has by written agreement entered into a Contract, No. **20XX-XX**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Town which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1. Performs the Contract between Contractor and Town for construction of **Contract Title**, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays Town all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Town sustains as a result of default by Contractor under the Contract; and
3. Performs the guarantee of all Work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.
4. Whenever Contractor is, and declared by Town to be, in default under the Contract, and the Town having performed Town obligations hereunder, the Surety must promptly remedy the default, or must promptly:
  - 4.1. Complete the Project in accordance with the terms and conditions of the Contract Documents;
  - or

**FORM OF PERFORMANCE BOND** (Page 2 of 2)

4.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract, and upon determination by Surety of the lowest responsible Bidder, or, if Town elects, upon determination by Town and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Town, and make available as Work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, means the total amount payable by Town to Contractor under the Contract and any amendments thereto, less the amount properly paid by Town to Contractor.

No right of action will accrue on this bond to or for the use of any person or corporation other than Town, as named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor

WITNESSES:

\_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_  
Secretary

By:

\_\_\_\_\_  
(Signature)

(CORPORATE SEAL)

\_\_\_\_\_  
(Print Name and Title)

IN THE PRESENCE OF:

INSURANCE COMPANY:

\_\_\_\_\_  
By:

\_\_\_\_\_  
Agent and Attorney-in-Fact

\_\_\_\_\_  
Address:

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

**FORM OF PAYMENT BOND** (Page 1 of 2)

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

WHEREAS, Contractor has by written agreement entered into a **Contract No. 20XX-XX**, for the **Contract Title**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Town which Contract are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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

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

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

**FORM OF PAYMENT BOND** (Page 2 of 2)

- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contractor

ATTEST:

\_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_  
(Secretary)

By:

\_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:

\_\_\_\_\_  
Agent and Attorney-in-Fact

Address: \_\_\_\_\_.

(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_