

BID NO. 08-09-001

Landscape and Irrigation Construction for Brickell Avenue

Issue Date: April 3, 2009

Due Date: April 30, 2009

Due Time: 4:00 P.M.



Alyce M. Robertson, Executive Director

Issued By:  
Miami Downtown Development Authority  
200 S. Biscayne Blvd., Suite 2929  
Miami, FL 33131

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INVITATION TO BID NO. 08-09-001  
NOTICE TO CONTRACTORS

Sealed bids will be received by the Miami Downtown Development Authority, Suite 2929, 200 S. Biscayne Blvd., Miami, Florida 33131 until 4:00 P.M. on April 30, 2009 for:

Landscape and Irrigation CONSTRUCTION for Brickell Avenue

Bids Due: Thursday, April 30, 2009, at 4:00 P.M

**Scope of Work:** The Work consists of furnishing all materials, labor, and equipment necessary to construct the Project(s) as described below for a complete and functional Project. Work specified in this bid consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, and services necessary for the construction and installation of landscape materials and irrigation systems including but not limited to; landscaping and irrigation within the center median of Brickell Avenue from SE 5<sup>th</sup> Street to SE 15<sup>th</sup> Road, including the removal of an existing non-functioning irrigation system as presented in the Landscape and Irrigation Plans included with this ITB.

Miami DDA has scheduled a non-mandatory pre-bid conference, which will be held at the following location, date and time:

Location: Miami Downtown Development Authority  
200 S. Biscayne Blvd, Suite 2929  
Miami, FL 33131  
Date & Time: Wednesday, April 15, 2009 at 10:00 AM

**Minimum Requirements:** Prospective Bidder shall hold a current certified license as a Landscape Contractor by the Florida Nursery, Growers and Landscape Association, registered with the Florida Department of Agriculture and Consumer Services Division of Plant Industry and must have a minimum of five (5) years experience in the items being bid on by the Bidder. The Miami DDA may consider other Certifications or Licenses from the State of Florida or Miami-Dade County at its sole discretion. The Bidder must self-perform all single trade work and sixty percent (60%) of multiple trade work.

Bid packages may be obtained on or after, **April 3, 2009**, from the Miami Downtown Development Authority, 200 S. Biscayne Blvd., Suite 2929, Miami FL 33131, (305-579-6675) for a non-refundable cost of \$25.00. The bid package can also be downloaded at no cost by visiting:

<http://www.miamidda.com>

It is the sole responsibility of all firms to ensure the receipt of any addendum and it is recommended that firms register to ensure addenda sent.

All bids shall be submitted in accordance with the Instructions to Bidders. At the time, date, and place above, bids will be publicly opened. **Any bids or proposals received after time and date specified will not be considered.** The responsibility for submitting a bid/proposal before the stated time and date is solely and strictly the responsibility of the bidder. The Miami DDA is not responsible for delays caused by courier service, including U.S. Mail, or any other occurrence.

YOU ARE HEREBY ADVISED THAT THIS INVITATION TO BID IS SUBJECT TO THE "CONE OF SILENCE," IN ACCORDANCE WITH ORDINANCE NO. 12271.

**Bid No. 08-09-001**

**Landscape and Irrigation Construction for Brickell Avenue**

NOTICE TO PROSPECTIVE BIDDERS
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**NO BID FORM**

If not submitting a bid at this time, please complete this sheet and return this sheet from the Bid documents, complete the information requested, and return to:

Miami Downtown Development Authority  
200 S. Biscayne Blvd., Suite 2929  
Miami, FL 33131  
Facsimile No. (305) 371-2423

**NO BID SUBMITTED FOR REASON(S) CHECKED AND/OR INDICATED:**

- Our company does not handle this type of product/service.
- We cannot meet the specifications nor provide an alternate equal product.
- Our company is simply not interested in bidding at this time.
- Due to prior commitments, I was unable to attend pre-proposal meeting.
- Insurance requirements are too excessive.
- Other. (Please specify) \_\_\_\_\_

## **Section 1 – Instructions for Submission**

### **1. Intention of Miami DDA**

It is the intention of Miami DDA to describe in this Invitation to Bid (“ITB”) the Project to be completed in accordance with all codes and regulations governing all the work to be performed under this Project. Any work, materials or equipment that may reasonably be inferred from the Contract Documents, as the term is defined below, as being required to produce the intended result shall be supplied by Contractor whether or not specifically called for. Where words have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall 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, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of bids and Contractor shall comply therewith. Miami DDA shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

### **2. Scope of Work**

The Work consists of furnishing all materials, labor, and equipment necessary to construct the Project(s) as described below for a complete and functional Project. Work specified in this bid consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, and services necessary for the construction and installation of landscape materials and irrigation systems including but not limited to; landscaping and irrigation within the center median of Brickell Avenue from SE 5<sup>th</sup> Street to SE 15<sup>th</sup> Road, including the removal of an existing non-functioning irrigation system as presented in the Landscape and Irrigation Plans included with this ITB.

### **3. Location of the Work**

US-1 aka SR-7 aka Brickell Avenue from SE 5<sup>th</sup> Street to SE 15<sup>th</sup> Road.

### **4. Performance of the Work**

Bidder must be capable of self-performing all of the single trade work and sixty (60%) percent of the multi-trade work. By submitting a Bid the Bidder certifies that it will meet these requirements. As part of the Bid the Bidder must include the form entitled “Questionnaire”. Failure to complete and submit this form or to meet this requirement shall result in the Bid being deemed non-responsive. Where the Contractor is deemed to not meeting this requirement during the performance of the work the Contractor shall be in default of the Contract Documents.

### **5. Examination of Contract Documents and Site**

It is the responsibility of each Bidder before submitting a response to this Invitation to Bid (ITB) to:

Carefully review the ITB, including any Addendum and notify the Miami DDA of all conflicts, errors or discrepancies.

Take into account federal, state and local (City of Miami and Miami-Dade County including, without limitation the City of Miami Purchasing Ordinance and Florida Building Code) laws, regulations, ordinances that may affect a Bidder's ability to perform the work.

The submission of a Bid in response to this solicitation shall constitute an incontrovertible representation by Bidder that it will comply with the requirements of the Contract Documents and that without exception, the response is premised upon performing and furnishing work required under the Contract Documents and that the Contract Documents are sufficient in detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.

## **6. Addendum**

Only questions answered by written Addendum will be binding. Oral and other interpretations or clarifications will be without legal binding effect. All questions about the meaning or intent of the Contract Documents are to be directed to the Miami DDA's Capital Improvements Department (CIP) in writing. Interpretations or clarifications considered necessary by CIP in response to such questions will be issued by Miami DDA by means of Addenda delivered electronically to all parties recorded by the CIP as having received the solicitation documents. All Addenda will be posted on the DDA webpage. **Written questions should be received no less than ten (10) calendar days prior to the date for the receipt of responses** and there shall be no obligation on the part of DDA to respond to questions received less than ten (10) calendar days prior to bid opening.

The Miami DDA shall make reasonable efforts to issue addenda within five (5) calendar days prior to the due date.

## **7. Bid Submission**

Bidders must submit prices for the entire Project (landscape and irrigation) included in this ITB. Failure to submit prices for both Projects will result in the Bid being rejected as non-responsive.

All Bids must be received **in duplicate** by the Miami DDA, located at 200 S. Biscayne Blvd., Suite 2929, Miami FL 33131 before the time and date specified for bid opening, enclosed in a sealed envelope, legibly marked on the outside:

BID NO.: 08-09-001

BIDS FOR: Landscape and Irrigation Construction for Brickell Avenue

Failure to submit a duplicate copy may result in the rejection of the Bid as non-responsive.

## **8. Bid Guaranty**

All Bids shall be accompanied by either an original bid bond executed by a Surety meeting the requirements of the Miami DDA, or by cash, money order, certified check, cashier's check, Unconditional/Irrevocable Letter of Credit, Bid Bond Voucher (for projects less than \$200,000) issued to Miami DDA, treasurer's check or bank draft of any national or state

bank (United States), in the amount of 5% of the total Bid amount, payable to Miami DDA, Florida, and conditioned upon the successful Bidder executing the Contract and providing the required Performance Bond and Payment Bond and evidence of required insurance within fifteen (15) calendar days after notification of award of the Contract. The time for execution of the Contract and provision of the Performance Bond, Payment Bond and Certificate(s) of Insurance may be extended by the Miami DDA at its sole discretion. Bid Securities of the unsuccessful Bidders will be returned after award of Contract. A PERSONAL CHECK OR A COMPANY CHECK OF A BIDDER SHALL NOT BE DEEMED A VALID BID SECURITY. Security of the successful Bidder shall be forfeited to the Miami DDA as liquidated damages, not as a penalty, for the cost and expense incurred should said Bidder fail to execute the Contract, and provide the required Performance Bond.

### **9. Preparation of Bid**

All Bids must be made upon the blank Miami DDA forms provided herein. The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the Miami DDA's forms, or fully complete said forms may result in a determination that the submittal is non-responsive.

Bidders may bid on all the Categories of work identified in Article 14 of this Bid. The Bidder may be considered non-responsive if bids are conditioned to modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid is to include the furnishing of all labor, materials, overhead expense and profit, equipment including, but not limited to, tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the Contract Documents.

### **10. Pre-Bid Conference**

A non-mandatory conference will be held on **April 15th, 2009** starting at **10:00 AM** at Miami DDA, 200 S. Biscayne Blvd, Suite 2929, Miami, Florida 33131 to discuss this solicitation. Since space is limited, it is recommended that one representative of each firm attend in order to become familiar with the Solicitation and conditions of usage. Attendees are requested to bring this Solicitation Package to the conference, as copies will be unavailable that day.

### **11. Postponement of Bid Opening Date**

The Miami DDA reserves the right to postpone the date for receipt and opening of submissions and will make a reasonable effort to give at least five (5) calendar days notice of any such postponement to prospective Bidders.

### **12. Acceptances or Rejection of Bids**

The Miami DDA reserves the right to reject any or all Bids prior to award. The Miami DDA reserves the right to reject a Bid where the Miami DDA determines that the Bidder has submitted an unbalanced Bid.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after bid opening date. A Bidder may not withdraw its Bid unilaterally nor change the Contract Price before the expiration of one hundred twenty (120) calendar days from the date of Bid opening. A Bidder may withdraw its Bid after the expiration of one hundred twenty (120) calendar days from the date of bid opening by delivering written notice of withdrawal to the Miami DDA Executive Director prior to award of the Contract by the Miami DDA Board of Directors.

### **13. Environmental Regulations**

The Miami DDA reserves the right to consider a Bidder's history of citations and/or violations of environmental regulations in investigating a Bidder's responsibility, and further reserves the right to declare a Bidder not responsible if the history of violations warrant such determination in the opinion of the Miami DDA. Bidder shall submit with its Bid, a complete history of all citations and/or violations, notices and dispositions thereof. The non-submission of any such documentation shall be deemed to be an affirmation by the Bidder that there are no citations or violations. Bidders shall notify the Miami DDA immediately of notice of any citation or violation, which Bidder may receive after the Submittal opening date and during performance of the Work under this Contract.

### **14. Bid Award**

The Miami DDA intends to issue one award for this project. The Miami DDA may require demonstration of competency, and at its sole discretion conduct site visits, require the Bidder to furnish documentation and/or require the contractor to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The Miami DDA shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, knowledge of the trade work to be performed and the quantity of work being performed by the Contractor.

The Bidder must be able to demonstrate a good record of performance and have sufficient financial resources to ensure that it can satisfactorily provide the goods and/or services required herein.

Any Bidder who, at the time of submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency, may be declared non-responsive. Any Bidder in monetary arrears to the Miami DDA shall not be considered for award. The Miami DDA reserves the right to reject any Bid where the line item pricing is determined to be unbalanced. Such determination will be made at the sole discretion of the Miami DDA.

### **15. Bid Protest**

Any actual or prospective contractual party may protest the award(s) in writing to the Executive Director. Protest procedures are contained in Section 18-103 of the City of Miami Code. Protests failing to meet the requirements for filing shall **NOT** be accepted. Failure of a party to timely file shall constitute a forfeiture of such party's right to file a protest. **NO EXCEPTIONS.**

**16. Local, Small, and Disadvantaged Firm Participation**

The Miami DDA strongly encourages Contractors to secure the participation of small businesses, Community Small Business Enterprises (CSBE), and/or Disadvantaged Business Enterprises (DBE) that are currently registered with and/or certified by other governmental agencies within Florida, such as under programs in effect for the Florida Department of Transportation, Miami-Dade or Broward Counties, and the Miami Dade County Public Schools. Similarly, the Miami DDA also strongly encourages Contractors to secure the participation of firms located within the Miami DDA's jurisdictional limits. Forms are provided for this purpose.

**17. Sub-section 17 of Section 1 has been deleted.**

**18. Sub-section 18 of Section 1 has been deleted.**

**19. Sub-section 19 of Section 1 has been deleted.**

**20. Cone of Silence**

Pursuant to Section 18-74 of the City of Miami Procurement Code and City of Miami Ordinance No. 12271, a "Cone of Silence" is imposed upon this ITB after advertisement and terminates at the time the Miami DDA Executive Director issues a written recommendation to the Miami DDA Board of Directors. The Cone of Silence prohibits any verbal communications regarding this ITB.

Any communication concerning this ITB must be submitted in writing to the Miami DDA and Bidders must file a copy of such written communications with the Miami DDA Board Secretary. Written communications may be in the form of e-mail, with a copy to the Office of the Miami DDA Board Secretary at [hernandez@miamidda.com](mailto:hernandez@miamidda.com).

This language is only an overview of the requirements of the Cone of Silence. Please review Section 18-74 of the City of Miami Procurement Code or City of Miami Ordinance No. 12271 for a complete and thorough description of the Cone of Silence. You may also contact the City of Miami Clerk at (305)-250-5360, to obtain a copy.

**21. Public Entity Crime**

A person or affiliate who has been placed on the convicted Bidder list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a Response on a contract with a public entity for the construction or repair of a public building or public work's project, may not submit a response on a lease of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of Florida Statutes for Category Two for a period of 36 months from the date of being placed on the convicted Bidder / Bidder list.

**22. Fraud and Misrepresentation**

Any individual, corporation or other entity that attempts to meet its contractual obligations with the Miami DDA through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The Miami DDA as a further sanction may terminate or cancel any other contracts with such individual, corporation or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation.

**23. Collusion**

Where two (2) or more related parties, as defined herein, each submit a response to an ITB, such submissions shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submission under such ITB. Related parties shall mean employees or the principals thereof which have a direct or indirect ownership interest in another firm or in which a parent company or the principals thereof of one Contractor have a direct or indirect ownership interest in another Contractor for the same project. ITB responses found to be collusive shall be rejected.

**24. Contractor in Arrears of Default**

The Contractor represents and warrants that the Contractor is not in arrears to the Miami DDA and is not a defaulter as a surety or otherwise upon any obligation to the Miami DDA. In addition the contractor warrants that the Contractor has not been declared “not responsible” or “disqualified” by or debarred from doing business with any state or local government entity in the State of Florida, the Federal Government or any other State/local governmental entity in the United States of America, nor is there any proceeding pending pertaining to the Contractor’s responsibility or qualification to receive public agreements. The Contractor considers this warrant as stated in this Article to be a continual obligation and shall inform the Miami DDA of any change during the term of the Contract.

**25. Cancellation of Solicitation**

The Miami DDA reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the Miami DDA.

## Section 2 – General Terms and Conditions

### 1. Definitions

**Bid** means the response submitted by a Bidder to this solicitation, which includes the price, authorized signature and all other information or documentation required at by the Contract Documents at the time of submittal.

**Bidder** means any individual, firm, incorporated or unincorporated business entity, or corporation tendering a Submittal, acting directly or through a duly authorized representative.

**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.

**Miami DDA** means the Miami Downtown Development Authority of the City of Miami, a Florida municipal government. For the purposes of this Contract, “Miami DDA” without modification shall mean the Miami DDA Executive Director or Board of Directors as applicable.

**Miami DDA Executive Director** means the duly appointed chief administrative officer of the Miami DDA

**Miami DDA Board of Directors** means the legislative body of the Miami DDA Executive Director or Board of Director.

**Consultant** means a firm that has entered into a separate agreement with the Miami DDA for the provision of design/engineering services for a Project.

**Contract** means the Invitation to Bid (ITB) solicitation and the Bid documents that have been executed by the Bidder and the Miami DDA subsequent to approval of award by the Miami DDA Board of Directors

**Contractor** means the person, firm, or corporation with whom the Miami DDA has contracted and who will be responsible for the acceptable performance of any Work and for the payment of all legal debts pertaining to any Work issued under this contract through the award of an ITB.

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

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

**Construction Schedule** means a critical path schedule or other construction schedule, as defined and required by the Contract Documents.

**Consultant** means the Engineer of Record contracted by the Miami DDA to prepare the plans and specifications for the Projects. Consultant may also be referred to as Engineer of Record.

**Cure** means the action taken by the Contractor promptly after receipt of written notice from the Miami DDA of a breach of the Contract Documents which shall be performed at no cost to the Miami DDA, 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, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such cure.

**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 written Notice to Cure from the Miami DDA identifying the deficiencies and the time to Cure.

**Design Documents** means the construction plans and specifications included as part of a Bid/Proposal Solicitation prepared by the consultant for this Project under a separate Agreement with the Miami DDA.

**Director** means the Executive Director or designee, who has the authority and responsibility for managing the Project under this Agreement.

**Drawings** means the graphic and pictorial portions of the Work, which serve to show the design, location and dimensions of the Work to be performed, including, without limitation, all notes, schedules and legends on such Drawings.

**Field Directive** means a written approval for the Contractor to proceed with Work requested by the Miami DDA or the consultant, which is minor in nature and should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all the Work in accordance with the Agreement as certified by the architect or engineer of record or the Miami DDA and submitted all documentation required by the Contract Documents.

**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 notify the Contractor that they have been awarded the Contract.

**Notice To Proceed** means a written letter or directive issued by the Director or designee acknowledging that all conditions precedent have been met and directing that the Contractor may begin Work on the Project.

**Plans and/or Drawings** means the official graphic representations of a Project.

**Project Or Work** as used herein refers to all reasonably necessary and inferable construction and services required by the Contract Documents whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the its obligations, including completion of the construction in accordance with the Drawings and Specifications. The Work may constitute the whole or a part of the Project.

**Project Manager** means the individual assigned 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 shall be clearly marked RFI, shall clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why the response is needed. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

**Risk Administrator** means the individual named by the Miami DDA Manager to administer matters relating to insurance and risk of loss for the Miami DDA.

**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.

**Submittal** means documents prepared and submitted by the Bidder to pre-qualify under this solicitation.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Agreement such that the Miami DDA can use, occupy and/or operate the facility in all respects to its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, which

regulate or have jurisdiction over the Work, have inspected, and approved the Work. Beneficial use or occupancy shall not be the sole determining factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of occupancy has been issued.

**Work Order** means a document internal to the Miami DDA authorizing the award of a specific Project to a Contractor.

**Work Order Proposal** means a document prepared by the Contractor, at the request of the Miami DDA for Work to be performed on a Project.

## **2. 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 Documents. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract Documents.

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 Miami DDA. Contractor acknowledges and recognizes that the Miami DDA is entitled to full and beneficial occupancy and use of the completed Work following expiration of the time established for the completion of the Project.

In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Article 70, Excusable Delays, the Contractor understands that, except and only to the extent provided otherwise in the Contract Documents, the occurrence of events of delay within the Contractor's control, the Work shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Documents Time, and shall not entitle the Contractor to an adjustment. All parties under the control or contract with the Contractor shall include but are not limited to material men and laborers.

The Contractor acknowledges that the Miami DDA is purchasing the right to have the Contractor continuously working at the Project site for the full duration of the Project to ensure the timely completion of the Work.

## **3. Contract Term**

The Contract shall commence upon issuance of the Notice of Award to the Contract, which shall be issued upon execution of the Contract by the Miami DDA. The Contract shall terminate upon notice by the Miami DDA that the contract has been closed-up after final completion.

## **4. Notices**

Whenever either party desires to give Written Notice unto the other relating to this Contract, such must be addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. Notice shall be deemed given on

the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice shall be deemed given on the date sent via e-mail or facsimile. Notice shall 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:

Copy to:

Ms. Alyce M. Robertson  
Executive Director  
Miami Downtown Development Authority  
200 S Biscayne Blvd, Ste 2929  
Miami, Florida 33131

For Miami DDA:

Mr. Mark Spanioli, P.E.  
Senior Manager of Planning, Design, Transportation and Services  
Miami Downtown Development Authority  
200 S Biscayne Blvd, Ste 2929  
Miami, Florida 33131

For Contractor:

During the Work the Contractor shall maintain continuing communications with Consultant and the Project Manager. The Contractor shall keep the Miami DDA fully informed as to the progress of the Project at all times through ongoing communications with the Project Manager.

## **5. 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 Documents by reference and a term, statement, requirement, the specifications and plans prepared by the Consultant, or provision of the Contract Documents the following order of precedence shall apply:

In the event of conflicts in the Contract Documents the priorities stated below shall govern;  
Revisions to the Contract shall govern over the Contract  
The Contract Documents shall govern over the Contract  
Addendum to an ITB shall govern over a ITB

In the event of conflicts within the Contract Documents the priorities stated below shall govern:

Scope of Work and Specifications shall govern over plans and drawings.

Schedules, when identified as such shall govern over all other portions of the plans. Specific notes shall govern over all other notes, and all other portions of the plans, unless specifically stated otherwise.

Larger scale drawings shall govern over smaller scale drawings. Figured or numerical dimensions shall 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 shall govern.

## **6. Indemnification**

Contractor shall indemnify and hold harmless Miami DDA, the City of Miami, Miami-Dade County and the Florida Department of Transportation, its officers, agents, directors, and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. These indemnifications shall survive the term of this Contract. In the event that any action or proceeding is brought against Miami DDA by reason of any such claim or demand, Contractor shall, upon written notice from Miami DDA, resist and defend such action or proceeding by counsel satisfactory to Miami DDA. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Miami DDA or its officers, employees, agents and instrumentalities as herein provided.

The indemnification provided above shall obligate Contractor to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at Miami DDA's option, any and all claims of liability and all suits and actions of every name and description which may be brought against Miami DDA whether performed by Contractor, or persons employed or utilized by Contractor.

This indemnity will survive the cancellation or expiration of this Contract. This indemnity will be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of §725.06 and/or §725.08, Fla. Statue. Contractor shall require all Sub-Contractor agreements to include a provision that they will indemnify the Miami DDA.

The Contractor agrees and recognizes that the Miami DDA shall not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Miami DDA 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 Miami DDA in no way assumes or shares any responsibility or liability of the Contractor or Sub-Contractor, under the contract.

## **7. Insurance**

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall provide, pay for, and maintain in force until all of its Work to be performed under this Contract has been completed and accepted by Miami DDA (or for such duration as is otherwise specified hereinafter), the insurance coverage's set forth herein.

7.1. Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

7.1.1. Employers' Liability with a limit of **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by an accident, each accident. **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by disease, each employee. **One Million Dollars (\$1,000,000.00)** Dollars each bodily injury caused by disease, policy limit.

7.1.2. Waiver of subrogation.

7.2. Comprehensive General Liability with minimum limits of **One Million Dollars (\$1,000,000.00)** per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. General Aggregate Limit of **Two Million Dollars (\$2,000,000.00)**. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

7. 2.1. Premises and/or Operations.

7. 2.2. Independent Contractors.

7. 2.3. Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1, 000,000.00)** per project. Contractor shall 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.

7. 2.4. Explosion, Collapse and Underground Coverage's.

7. 2.5. Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

7. 2.6. Miami DDA is to be expressly included as an Additional Insured with respect to liability arising out of operations performed for Miami DDA by or on behalf of Contractor or acts or omissions of Contractor in connection with general supervision of such operation.

7. 2.7. Contractual Liability.

7. 2.8. Waver of Subrogation.

7. 2.9. Personal and Advertising Injury.

7. 2.10. Loading and Unloading.

7. 2.11. Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

7.3. Business Automobile Liability with minimum limits of **One Million Dollars (\$1,000,000.00)** 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 endorsements, as filed by the Insurance Services Office, and must include:

7.3.1 Owned Vehicles.

7.3.2 Hired and Non-Owned Vehicles.

7.3.3. Employers' Non-Ownership.

7.3.4 Employees included as insured.

7.3.5 Miami DDA of Miami as Additional Insured.

7. 4. Umbrella Policy.

7. 4.1. Bodily injury and property damage liability with limits of **Two Million Dollars (\$2,000,000)** each occurrence and an aggregate limit of **Two Million Dollars (\$2,000,000)**.

7. 4.2. Products/Completed operations aggregate limit of **Two Million Dollars (\$2,000,000)**.

Excess coverage over the policies as follows:

Commercial General Liability  
Business Automobile Liability

7. 5. Installation Floater for the installation of machinery and/or equipment into an existing structure is required. The coverage shall be "All Risk" coverage (Miami DDA wide) including installation and transit for 100 percent of the "installed replacement cost value," covering Miami DDA and the City of Miami as named insured, with a deductible of not more than Ten Thousand Dollars (\$10,000.00) each claim 5% maximum on Wind.

7.5.1. Cessation of Insurance--Coverage is not to cease and is to remain in force (subject to cancellation notice) until final acceptance by Miami DDA.

7. 5.2. Flood Insurance--When the machinery or equipment is located within an identified special flood hazard area, flood insurance must be afforded for the lesser of the total insurable value of such buildings or structure, or, the maximum amount of flood insurance coverage available under the National Flood Program.

7.5.3. Miami DDA and the City of Miami of Miami as Additional Insured.

7.5.4. Limit/value per Location on per Site (TBA).

7.1.6. Owners Contractors Protective – Miami DDA – Limits of Liability for Bodily Injury & Property Damage Liability shall be in the amounts of \$1,000,000.00 for each occurrence and \$1,000,000.00 in the aggregate.

7.1.7 Employer's Liability – Limits of Liability

- \$1,000,000 for bodily injury caused by accident, each accident.
- \$1,000,000 for bodily injury caused by disease, each employee.
- \$1,000,000 for bodily injury caused by disease, policy limit.

If the initial insurance expires prior to the completion of the Work, renewal copies of policies shall be furnished at least thirty (30) days prior to the date of their expiration.

Notice of Cancellation and/or Restriction--The policy(ies) must be endorsed to provide Miami DDA with at least thirty (30) days notice of cancellation and/or restriction.

Contractor shall furnish to the Capital Improvement Department Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.

The official title of the Owner is the Miami Downtown Development Authority of the City of Miami. This official title shall be used in all insurance documentation.

## **8. Performance and Payment Bond**

Bidders must have available bonding capacity at the time of award of \$500,000.

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

Each Bond shall be in the amount of five hundred thousand dollars (\$500,000) guaranteeing to Miami DDA the completion and performance of the Work covered in the Contract Documents as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project. Each Bond shall be with a Surety, which is qualified pursuant to Article 14, Qualification of Surety. Contractors must provide additional bonding capacity as required to comply with Florida Statute.

Each Bond shall 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 to be awarded to the Contractor, or an additional bond shall be conditioned that Contractor will, upon notification by Miami DDA, correct any defective or faulty work or materials which appear within one year after Final Completion of the RPP.

Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, Contractor shall ensure that the bond(s) referenced above shall be recorded in the public records and provide Miami DDA 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 unconditional letter of credit in the form attached. Such alternate forms of security shall be subject to the prior approval of Miami DDA and for same purpose and shall be subject to the same conditions as those applicable above and shall be held by Miami DDA for one year after completion and acceptance of the Work.

### **9. Qualification of Surety**

Bid Bonds, Performance/ Payment Bonds over ("Surety") Hundred Thousand Dollars (\$500,000.00):

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 shall 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 shall 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 shall provide Miami DDA with evidence satisfactory to Miami DDA, that such excess risk has been protected in an acceptable manner.

The Miami DDA will accept a surety bond from a company with a rating of B+ or better for bonds up to \$2 million, 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 Miami DDA shall review and either accept or reject the surety company based on the financial information available to the Miami DDA. A surety company that is rejected by the Miami DDA may be substituted by the Bidder or proposer with a surety company acceptable to the Miami DDA, only if the bid amount does not increase. The following sets forth, in general, the acceptable parameters for bonds:

Amount of Bond	Policyholders Ratings	Financial Size Category
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

For projects of \$500,000.00 or less, Miami DDA may accept a Bid Bond, Performance Bond and Payment Bond from a Surety which has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued, if the Surety is otherwise in compliance with the provisions of the Florida Insurance Code, and if

the surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under Section 9304 to 9308 of Title 31 of the United States Code, as may be amended from time to time. A Certificate and Affidavit so certifying should be submitted with the Bid Bond and also with the Performance/Payment Bond.

More stringent requirements of any grantor agency are set forth within the RPP. If there are no more stringent requirements, the provisions of this section shall apply.

## **10. General Requirements**

The employee(s) of the Contractor shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the Miami DDA or any of its departments.

The Contractor agrees that the Contractor will at all times employ, maintain and assign to the performance of a Project, 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, should the Project Manager 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 as necessary to perform the Work, in a competent and professional manner.

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

The Miami DDA, the City of Miami, Miami-Dade County, Florida Department of Transportation, the Consultant and other agencies authorized by the Miami DDA, shall have full access to the Project site at all times.

The Contractor shall be responsible for the good condition of the Work or materials until formal release from his obligations under the terms of the Contract Documents. Contractor shall bear all losses resulting to it on account of the amount or character of the Work, or the character of the ground, being different from what he anticipated.

The Contractor shall at all times conduct the Work in such manner and in such sequence as will ensure the least practicable local interference. Contractor shall not open up Work to the prejudice of Work already started, and the Project Manager may require the Contractor to finish a section on which Work is in progress before Work is started on any additional section.

## **11. Method of Performing the Work**

If the Project Manager or Consultant 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 or Consultant, 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 or Consultant, the

Project Manager or the Consultant shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the Miami DDA. (3) The Miami DDA 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 shall 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 shall be provided by the Contractor and any damaged curbing, grass areas, sidewalks or other areas shall be repaired at the expense of the Contractor to the satisfaction of the Project Manager or Consultant.

The Contractor shall furnish to the Project Manager and the Consultant a complete listing of 24-hour telephone numbers at which responsible representatives of the Contractor and all of the Contractor's Subcontractor can be reached should the need arise at any time.

## **12. Work Staging and Phasing**

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

The Contractor shall familiarize itself with normal public governmental 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 and Consultant.

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

## **13. Site Investigation and Representation**

The Contractor acknowledges that it has satisfied itself as to the nature and location of the Work under the Contract Documents, the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, the conformation and conditions at the ground based on Miami DDA provided reports, the type of equipment and facilities needed preliminary to and during the prosecution of the Work and all other matters which can in any way affect the Work or the cost thereof under the Contract Documents.

The Contractor further acknowledges that it has satisfied itself, based on any geotechnical reports the Miami DDA may provide and inspection of the Project site, as to the character,

quality, and quantity of surface and subsurface materials to be encountered from inspecting the site and from evaluating information derived from exploratory work that may have been done by the Miami DDA or included in the Contract Documents.

Any failure by the Contractor to acquaint itself with all the provided information and information obtained by visiting the Project site will not relieve Contractor from responsibility for properly estimating the difficulty or cost thereof under the Contract Documents. In the event that the actual subsurface conditions vary from the actual Miami DDA provided reports the Contractor shall notify the Miami DDA and this Contract Documents amount may be adjusted up or down depending on the conditions.

**14. Contractor to Check Plans, Specifications and Data**

Contractor shall verify all dimensions, quantities and details shown on the Plans, specifications or other data received from Project Manager or Consultant, and shall notify the Project Manager and the Consultant 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, as full instructions will be furnished the Project Manager or by Consultant. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager or Consultant.

**15. Contractor's Responsibility for Damages and Accidents**

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by Miami DDA, and shall promptly repair or replace, at no additional cost to the Miami DDA any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

**16. Accidents**

The Contractor shall 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 duration. The Contractor shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50.

In addition, the Contractor must report immediately to the Project Manager and Consultant every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

**17. Safety Precautions**

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with a Project. Contractor shall take all necessary precautions for the safety of, and shall 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.

Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Project Manager.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Project Manager or Consultant has issued the Contractor a notice of Final Acceptance.

Contractor must adhere to the applicable environmental protection guidelines for the duration of a Project. If hazardous waste materials are used, detected or generated at any time, the Project Manager must be immediately notified of each and every occurrence. The Contractor shall comply with all codes, ordinances, rules, orders and other legal requirements of public authorities (including OSHA, EPA, DERM, the Miami DDA, Miami-Dade County, State of Florida, and Florida Building Code), which bear on the performance of the Work.

The Contractor shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets, fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and Miami DDA employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or secured to ensure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal state and local regulations.

If an emergency condition should develop during a Project, the Contractor must immediately notify the Project Manager and Consultant of each and every occurrence. The Contractor should also recommend any appropriate course(s) of action to the Project Manager and the Consultant.

## **18. Occupational Health and Safety**

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of a Project must be

accompanied by a Material Safety Data Sheet (MSDS), which may be obtained from the manufacturer. The MSDS must include the following information:

The chemical name and the common name of the substance.

The hazards or other risks in the use of the substance, including:

The potential for fire, explosion, corrosion, and reaction;

The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance; and

The primary routes of entry and symptoms of overexposure.

The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure.

The emergency procedure for spills, fire, disposal, and first aid.

A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information.

The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

## **19. Labor and Materials**

Unless otherwise provided herein, Contractor shall 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, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

## **20. Rules, Regulations, and Licenses**

The successful Contractor shall comply with all laws and regulations applicable to provision of services specified in the Contract Documents. The Contractor shall be familiar with all federal, state and local laws that may in affect the goods and/or services offered.

## **21. Consultant Services**

The Miami DDA, at its sole discretion, may hire a Consultant who shall serve as the Miami DDA's Representative for the Project to be performed under the Contract Documents. The Contract Documents will state that a Miami DDA's representative has been contracted with for the management of the Work under the Contract Documents and who will be the lead point of contact, the Consultant or the Project Manager. Where a Consultant has been identified, the Consultant and the Project Manager will have authority to act on behalf of the Miami DDA to the extent provided in the Contract Documents and as outlined in Article 22, Authority of the Project Manager, of the General Terms and Conditions.

On the basis of the on-site observations, the Consultant will keep the Project Manager informed of the progress of the Work. In its capacity of interpreter, the Consultant will exercise its best efforts to ensure faithful performance by both the Project Manager and the Contractor and will not show partiality to either.

The Project Manager will assist the Consultant in conducting inspections to determine the date or dates of Substantial Completion and Final Acceptance and will receive and review written warranties and related documents required by the Contract and the Contract Documents. The Consultant will be responsible for receiving all documentation for review and acceptance. Upon acceptance such documentation will be forwarded to the Project Manager. The Project Manager in conjunction with the Consultant will approve Schedules of Values, Project Schedules, subcontractors and invoices.

The Miami DDA may contract for additional consultant services, including but not limited to construction examination and observation services. Such services are intended to be additional services and are not intended to and shall not be construed to supplant or alter the role and responsibilities of the Consultant.

In case of the termination of employment of the Consultant, the Miami DDA may, at its sole discretion, appoint another Consultant, whose status under the Contract shall be as that of the former Consultant.

## **22. Project Management**

Where a Contractor is awarded Work, the Contractor shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, 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 all Miami DDA requirements; performing the Work in accordance with the Contract Documents 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.

## **23. Superintendence and Supervision**

The orders of Miami DDA are given through Consultant or Project Manager, which instructions are to be strictly and promptly followed in every case. Contractor shall keep on the Project during its progress, a full-time competent English speaking superintendent and any necessary assistants, all satisfactory to Project Manager or Consultant. The superintendent shall not be changed except with the written consent of Project Manager or Consultant, unless the superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The superintendent shall represent Contractor and all directions given to the superintendent shall be as binding as if given to Contractor and will be confirmed in writing by Project Manager or Consultant upon the written request of Contractor.

Contractor shall give efficient supervision to the Work, using its best skill and attention. The Project Manager and the Consultant shall be provided telephone number(s) for the superintendent where the superintendent can be contacted during normal working hours as well as after hours for emergencies.

On Projects in excess on thirty (30) calendar days the Contractor's superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and subcontractors at the Project site; visitors to the Project site, including representatives of the Miami DDA, Consultant, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in indelible ink. The daily log shall be kept on the Project site and shall be available at all times for inspection and copying by Project Manager and Consultant.

The Project Manager, Contractor and Consultant shall meet at least weekly or as otherwise determined by the Project Manager, during the course of the work to review and agree upon the work performed and any outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

If Contractor, in the course of prosecuting the work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Plans, it shall be Contractor's duty to immediately inform Project Manager and Consultant, in writing, and Project Manager or Consultant, will promptly review the same. Any work done after such discovery, until authorized, will be done at Contractor's sole risk.

Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents and Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

#### **24. Authority of the Project Manager**

The Director hereby authorizes the Project Manager or the Consultant designated in the Contract Documents 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 this Contract Documents.

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

The Project Manager and/or Consultant shall have authority to act on behalf of the Miami DDA to the extent provided by the Contract, unless otherwise modified in writing by the Miami DDA. All instructions to the Contractor shall be issued in writing. All instructions to the Contractor shall be issued through the Director, Project Manager or the Consultant.

The Project Manager and Consultant shall have access to the Project Site at all times. The Contractor shall provide safe facilities for such access so the Project Manager and Consultant may perform their functions under the Contract. The Project Manager and Consultant will make periodic visits to the Work Site to become generally familiar with the progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract Documents.

The Project Manager and Consultant 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 Documents.

The Project Manager and Consultant will have authority to reject work that does not conform to the Contract Documents. Whenever, in his or her opinion, it is considered necessary or advisable to ensure the proper completion of the Contract Documents the Project Manager and Consultant will have authority to require special inspections or testing of the work, whether or not such work is fabricated, installed or completed. Neither the Project Manager's nor Consultant's authority to act under this paragraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager or Consultant to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the work.

All interpretations and recommendations of the Project Manager and Consultant shall be consistent with the intent of the Contract Documents.

The Project Manager and Consultant 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.

## **25. Inspection of Work**

Consultant, Inspectors, and Miami DDA shall at all times have access to the work during normal work hours, and Contractor shall provide proper facilities for such access and for inspecting, measuring and testing.

Should the Contract Documents, the Consultant/Inspector Project Manager's instructions, any laws, ordinances, or any public authority require any of the work to be specially tested or approved, Contractor shall give Project Manager and Consultant timely notice of readiness of the Work for testing. If the testing or approval is to be made by an authority other than Miami DDA, timely notice shall be given of the date fixed for such testing. Testing shall be made promptly, and, where practicable, at the source of supply. If any of the work should be covered up without approval or consent of Project Manager or Consultant, it must, if required by the Project Manager or Consultant, be uncovered for examination and properly restored at Contractor's expense.

Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with the Miami DDA's testing laboratory or entity. The Contractor

shall give the Miami DDA and the Consultant timely notice of when and where tests and inspections are to be made so that the Miami DDA or Consultant may be present for such procedures.

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 Documents, Miami DDA shall pay the cost of reexamination and replacement by means of a Change Order. If such work is not in accordance with the Contract Documents, Contractor shall pay such cost.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Miami DDA or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

Inspectors shall have no authority to permit deviations from, or to relax any of the provisions of the Contract Documents 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 Consultants.

The payment of any compensation, whatever may be its character or form, or the giving of any gratuity or the granting of any favor by the Contractor to any Inspector, directly or indirectly, is strictly prohibited, and any such act on the part of the Contractor will constitute a breach of this Contract.

## **26. Taxes**

Contractor shall 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.

## **27. Separate Contracts**

Prior to the commencement of the work the Project Manager or the Consultant will notify the Contractor of all on-going projects or projects scheduled to commence during the work that may require coordination. The Contractor shall be responsible for coordinating the work with any other project to minimize any potential adverse impact. Contractor shall not be entitled to any days of delay for failure to properly coordinate the work. The Consultant and the Project Manager will assist the Contractor in coordinating the work. However, the sole responsibility for coordination rests with the Contractor.

If any part of Contractor's work depends for proper execution or results upon the work of any other persons, Contractor shall inspect and promptly report to Project Manager and Consultant any defects in such work that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's work as fit and proper for the reception of Contractor's work, except as to defects, which may develop in other contractor's work after the execution of Contractor's work.

Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, Contractor shall be liable to the affected contractor for the cost of such interference or impact.

To ensure the proper execution of subsequent work, Contractor shall inspect the work already in place and shall at once report to Project Manager and Consultant any discrepancy between the executed work and the requirements of the Contract Documents.

### **28. Lands of Work**

Miami DDA shall provide, as may be indicated in the Contract Documents, 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 Miami DDA for the use of Contractor.

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

### **29. Coordination of Work**

The Project Site may be occupied and may operate on a twenty-four hour seven days a week schedule. Contractor shall ensure that the performance of the work does not impact any ongoing operations at Project site, which also includes the delivery of any materials and equipment. Access to and egress from the Project Site shall be coordinated with the Project Manager and the Consultant to minimize interference to regular and emergency operations of the facility.

Contractor may be required to coordinate the work with other contractors performing work at the Project site.

### **30. Differing Site Conditions**

In the event that, during the course of the work, Contractor encounters subsurface or concealed conditions at the Project site which differ materially from those shown in the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, Contractor, without disturbing the conditions and before performing any work affected by such conditions, shall, within twenty-four (24) hours of their discovery, notify the Project Manager and Consultant in writing of the existence of the aforesaid conditions. Project Manager and the Consultant shall, within two (2) business days after receipt of Contractor's written notice, investigate the site conditions identified by Contractor. If, in the sole opinion of 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 shall recommend an equitable adjustment to the Contract Documents Price or Contract Documents Time, or both. If the Project Manager and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the

adjustment shall be referred to the Director for determination. Should the Director determine that the conditions of the Project site are not so materially different to justify a change in the terms of the Contract Documents, the Director shall so notify the Project Manager, Consultant, and Contractor in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

No request by Contractor for an equitable adjustment to the Contract Documents under this provision shall 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 shall be allowed if made after the date certified by Consultant or Project Manager as the date of substantial completion.

### **31. Existing Utilities**

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 either the Miami DDA for their accuracy or completeness. No request for additional compensation or contract time resulting from encountering utilities not shown will be considered. The Contractor shall explore sufficiently ahead of the work to allow time for any necessary adjustments the Contractor must coordinate all utility locations through "Sunshine State One Call of Florida, Inc."

### **32. Contractor's Responsibility for Utility Properties and Service**

Where the Contractor's operations could cause damage or inconvenience to railway, telephone, fiber optic, television, electrical power, oil, gas, water, sewer, or irrigation systems, the Contractor shall make all arrangements necessary for the protection of these utilities and services or any other known utilities.

Notify all utility companies that are affected by the construction operation at least 48 hours in advance. Under no circumstance expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, locate, expose, and provide temporary support for all existing underground utilities and utility poles where necessary.

The Contractor and his Subcontractors shall be solely and directly responsible to the owner and operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions, or claims of any character brought because of any injuries or damage which may result from the construction operations under the Contract Documents.

Neither the Miami DDA nor its officers or agents shall be responsible to the Contractor for damages as a result of the Contractor's failure to protect utilities encountered in the work. In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility.

In the event water service lines that interfere with trenching are encountered, the Contractor may, by obtaining prior approval of the water utility, cut the service, dig through, and restore the service with similar and equal materials at the Contractor's expense and as approved by the Project Manager or Consultant.

Replace, with material approved by the Project Manager or Consultant, at Contractor's expense, any and all other laterals, existing utilities or structures removed or damaged during construction, unless otherwise provided for in the Contract Documents and as approved by the Project Manager or Consultant.

Replace with material approved by the Project Manager or Consultant, at Contractor's expense, any existing utilities damaged during the work.

### **33. Interfering Structures**

The Contractor shall take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground. An attempt has been made to show major structures on the furnished Drawings. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and is presented as a guide. The Contractor shall field verify all locations.

### **34. Field Relocation**

During the execution of the work, it is expected that minor relocations of the work may be necessary. Such relocations shall be made only by the direction of the Project Manager or Consultant at the Contractor's expense. If existing structures are encountered that will prevent construction as shown, the Contractor shall notify the Project Manager or Consultant before continuing with the work in order that the Project Manager or Consultant may make such field revisions as necessary to avoid conflict with the existing structures. Where the Contractor fails to notify the Project Manager or Consultant when an existing structure is encountered, and proceeds with the work despite this interference, the Contractor does so at his own risk.

### **35. Contractor's Use of Work Site**

Limitations may be placed on the Contractor's use of the Project site and such limitations will be identified by the Project Manager. In addition to such limitations, the Project Manager may make storage available to the Contractor at his sole discretion based on availability of space. The Contractor shall also coordinate and schedule deliveries so as to minimize disruptions to Miami DDA day-to-day operations.

The Contractor shall limit its use of the Project site, so as to allow for the Miami DDA's continuous operation. This is necessary, as the Project Site may remain in operation during the work.

The Contractor shall:

Confine operations at the Project site to the areas permitted by the Project Manager or Consultant; not disturb portions of the Project site beyond the specified areas; conform to Project site rules and regulations affecting the work.

Keep existing driveways and entrances serving surrounding facilities clear and available to the Miami DDA, its employees and the public at all times; not use areas for parking and/or storage of materials except as authorized by the Project Manager.

Assume all responsibility for its tools, equipment and materials, including any materials purchased for the work and not accepted by the Miami DDA, and its vehicles while performing work for the Miami DDA and/or while parked or stored at a Miami DDA facility. The Miami DDA assumes no liability for damage or loss to the items specified in this paragraph.

Access to parking and egress from the Project site shall be subject to the approval of the Project Manager.

### **36 Warranty of Materials and Equipment**

Contractor warrants to Miami DDA 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 shall 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 Documents.

### **37. Material and Equipment Shipment, Handling, Storage and Protection Preparation for Shipment**

When practical, equipment shall be factory assembled. The equipment parts and assemblies that are shipped unassembled shall be furnished with assembly plan and instructions. The separate parts and assemblies shall be factory match-marked or tagged in a manner to facilitate assembly. All assemblies are to be made by the Contractor at no additional cost to the Miami DDA.

Generally, machined and unpainted parts subject to damage by the elements shall be protected with an application of a strippable protective coating, or other approved protective method.

Equipment shall be packaged or crated in a manner that will provide protection from damage during shipping, handling, and storage.

The outside of the package or crate shall be adequately marked or tagged to indicate its contents by name and equipment number, if applicable; approximate weight; state any special precautions for handling; and indicate the recommended requirements for storage prior to installation.

#### **Packaging and Delivery of Spare Parts and Special Tools**

All packaging shall be properly marked to identify the associated equipment by name, equipment, and part number. Parts shall be packaged in a manner for protection against damage from the elements during shipping, handling, and storage. Ship in boxes that are

marked to indicate the contents. Delivery of spare parts and special tools shall be made prior to the time associated equipment is scheduled for the initial test run.

#### Shipment

All equipment and material shall be shipped with freight and shipping paid, FOB job site. The Contractor shall request a 7-day advance notice of shipment from manufacturers, and, upon receipt of such notice, provide the Engineer with a copy of the current delivery information concerning equipment items and material items of critical importance to the Project schedule.

#### Receiving

The Contractor shall unload and record the receipt of all equipment and materials at the jobsite.

All costs for receiving, inspection, handling, storage, insurance, inventory control, and equipment maintenance for the Contractor-Supplied and Miami DDA-Supplied materials and equipment shall be included in the prices Bid and no extra compensation will be allowed.

#### Inspection

Immediately upon receipt of equipment and materials at the project site, the Contractor shall inspect for completeness and any evidence of damage during shipment. Miami DDA supplied equipment and material shall be inspected and inventoried together with Miami DDA's Inspector. Should there appear to be any shortage or damage, the Project Manager or Consultant shall be immediately notified; and the Contractor shall be fully responsible for informing the manufacturers and the transportation company of the extent of the shortage or damage. If the item or items require replacing or supplying missing parts, the Contractor shall take the necessary measures to expedite the replacement or supply the missing parts.

#### Handling

Equipment and materials received for installation on this Project shall be handled in accordance with the manufacturer's recommendations, and in a manner that will prevent damage.

#### Storage

Equipment and materials shall be stored prior to installation as recommended by the manufacturer. Generally, materials such as pipe shall be stored off the ground in approved storage yards. Items subject to damage by the elements, vandalism, or theft shall be stored in secure buildings. Items requiring environmental control for protection shall be provided with the necessary environmentally controlled storage facilities at no cost to the Miami DDA.

#### Insurance

The Contractor's insurance shall adequately cover the value of materials delivered but not yet incorporated into the work.

#### Inventory Control

Equipment and materials shall be stored in a manner to provide easy access for inspection and inventory control. The Contractor shall keep a running account of all materials in storage to facilitate inspection and to estimate progress payments for materials delivered but not installed in the work.

*Equipment's Maintenance Prior to Acceptance by the Miami DDA*

Provide the required or manufacturer's recommended maintenance during storage, during the installation, and until such time as the Miami DDA accepts the equipment for full-time operation.

*Salvage Equipment*

Any salvageable pipe, fittings, or other miscellaneous material or equipment removed during construction and not reused in the work shall be cleaned, hauled, and stored by the Contractor at his own expense, where directed by the Project Manager or Consultant, and shall remain the property of the Miami DDA. All other material shall be disposed of by the Contractor at his own expense.

**38. Manufacturer's Instructions**

The Contractor shall:

Comply with manufacturer's requirements for the handling, delivery and storage of all materials. Where required by the Contract Documents, Contractor shall submit manufacturer's printed instructions for delivery, storage, assembly, and installation.

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 Documents including the Contract Documents.

Inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.

Provide attachment and connection devices and methods for securing the Work; secure Work true to line plumb and level, and within recognized industry standards; allow for expansion and building movement; provide uniform joint width in exposed Work; arrange joints in exposed Work to obtain the best visual effect and refer questionable visual effect choices to the Consultant for final decision when applicable to the work.

Recheck measurements and dimensions of the work, as an integral step in starting each portion of the work.

Install each unit or section of work during favorable weather conditions, which shall ensure the best possible results in coordination with the entire Project and isolate each unit of Work from incompatible work as necessary to prevent potential interference among each section and/or deterioration of equipment.

Coordinate enclosure of the work, which requires inspections and tests so as to minimize the necessity of uncovering work for that purpose.

When required by the Contract Documents or the manufacturer, a qualified representative shall be present to observe field conditions, conditions of surface and installation, quality of workmanship, and applications. Manufacturer's representative shall provide the Contractor and the Project Manager or Consultant a written report of field observations.

### **39. Manufacturer's Warranty**

Contractor shall provide all manufacturers' warranties. All warranties, expressed and/or implied, shall be made available to the Miami DDA for material and equipment covered by this Contract Documents. All material and equipment furnished shall be fully guaranteed by the Contractor against factory defects and workmanship. At no expense to the Miami DDA, the Contractor shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty. The Contract Documents may supersede the manufacturer's standard warranty. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

### **40. Submittals**

Contractor shall check and approve all shop drawing, samples, product data, schedule of values, and any and all other submittals to make sure they comply with the Contract Documents prior to submission to the Project Manager or Consultant.

Contractor by approving and submitting any submittals, represents that they have verified the accuracy of the submittals, and they have verified all of the submittal information and documentation with the requirements of the Contract Documents. At time of submission the Contractor shall advise the Contractor in writing of any deviations from the Contract Documents. Failure of the Contractor to advise the Project Manager or Consultant of any deviations shall make the Contractor solely responsible for any costs incurred to correct, add or modify any portion of the work to comply with the Contract Documents.

Each shop drawing submittal shall contain a title block containing the following information:

- Number and title of drawing, including Contract title and Number
- Date of drawing and revisions
- Name of Contractor and Subcontractor (if any) submitting drawings
- Name of Project, Building or Facility
- Specification Section title and number
- Contractor's Stamp of approval, signed by the Contractor or his checker
- Space above the title block for Project Manager' or Consultant's action stamp
- Submittal or re-submittal number (whether first, second, third, etc.)

Date of submittal

Contractor shall sign, in the proper block, each sheet of shop drawing and data and each sample label to certify compliance with the requirements of the Contract Documents. Shop drawing submitted without the stamp and signature shall be rejected and it will be considered that the Contractor has not complied with the requirements of the Contract Documents. Contractor shall bear the risk of any delays that may occur as a result of such rejection.

Miami DDA shall not be liable for any materials, fabrication of products or work commenced that requires submittals until the Project Manager or Consultant has returned approved submittals to the Contractor.

Project Manager or Consultant shall make every effort to review submittals within fourteen (14) calendar days from the date of receipt by the Project Manager or Consultant. Project Manager or Consultant's review shall only be for conformance with design concepts and the information provided in the Contract Documents. The approval of a separate item shall not constitute approval of an assembly in which the item functions. The Project Manager or Consultant shall return the shop drawings to the Contractor for their use and distribution.

Acceptance of any submittal shall not relieve the Contractor of any responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has given written notice to the Project Manager or Consultant of the specific deviations and the Consultant has issued written approval of such deviations.

By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that all materials, field measurements and field construction criteria related thereto have been verified, checked and coordinated with the requirements of the work and have been verified, checked and coordinated with this Contract Documents.

Contractor shall be responsible for the distribution of all shop drawings, copies of product data and samples, which bear the Project Manager's or Consultant's stamp of approval. Distribution shall include, but not be limited to; job site file, record documents file, sub-contractor, suppliers, and other affected parties or entities that require the information.

The Contractor shall also provide copies of all plans approved and permitted by the required governing authorities.

The Contractor shall not be relieved of responsibility for errors or omissions in any and all submittals by the Project Manager's or Consultant's acceptance thereof. The Contractor warrants the adequacy for the purpose intended of any shop drawings or portion of a shop drawing that alters, modifies or adds to the requirements of the Contract Documents.

Nothing in the Project Manager's or Consultant's review of Shop Drawings, Submittals and Samples shall be construed as authorizing additional work or increased cost to the Miami DDA.

#### **41. Shop Drawings**

Contractor shall submit Shop Drawings as required by the Contract Documents. The purpose of the Shop Drawings is to show, in detail, the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with this Contract Documents.

Within five (5) calendar days after Miami DDA's award of the Contract, Contractor shall submit to Project Manager or Consultant a complete list and submittal log of items for which Shop Drawings are to be submitted and shall identify the critical items and all submittal

dates. Approval of this list by Project Manager or Consultant shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

After the approval of the list of items required in above, Contractor shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

Contractor shall thoroughly review and check the Shop Drawings and each and every copy shall show its approval thereon. Contractor shall submit three (3) sets of shop drawings.

If the Shop Drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.

Project Manager or Consultant shall review and accept or reject with comments, Shop Drawings within fourteen (14) calendar days from the date received. Project Manager's or Consultant's approval of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents and not indicated on the Shop Drawings. No work called for by Shop Drawings shall be performed until said Shop Drawings have been approved by Project Manager and/or Consultant. Approval shall not relieve Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.

No approval will be given to partial submittals of Shop Drawings for items, which interconnect and/or are interdependent where necessary to properly evaluate the design. It is Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them and then make one submittal to Project Manager and/or Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

The minimum size for shop drawings shall be 11" X 17". Each shop drawing shall be clear, thoroughly detailed and shall have listed on it all Contract Documents references, drawing number(s), specification section number(s) and the shop drawing numbers of related work. Shop drawings must be complete in every detail, including location of the work. Materials, gauges, methods of fastening and spacing of fastenings, connections with other work, cutting, fitting, drilling and any and all other necessary information per standard trade practices or as required for any specific purpose shall be shown.

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Project Manager and/or Consultant are entitled to rely upon the accuracy and completeness of such calculations and certifications

submitted by the Contractor. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

Contractor shall keep one set of Shop Drawings marked with Project Manager's and/or Consultant's approval at the job site at all times.

#### **42. Product Data**

Contractor shall 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 shall supplement manufacturer's standard data to provide information unique to the work.

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

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

#### **43. Samples**

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

#### **44. Record Set**

Contractor shall maintain in a safe place at the Project site one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the Project Manager or Consultant, in good order and annotated to show all changes made during construction. The record documents shall be continuously updated by Contractor throughout the prosecution of the work to accurately reflect all field changes that are made to adapt the work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. As a condition precedent to Miami DDA's obligation to pay Contractor, the Contractor shall provide evidence, satisfactory to the Project Manager and the Consultant, that Contractor is fulfilling its obligation to continuously update the record documents. All buried items, outside the Project site, shall be accurately located on the record documents as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The record documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record documents shall be available to the Miami DDA and the Consultant for reference. Upon completion of the work and as a condition precedent to Contractor's entitlement to final payment, the record documents shall be delivered to the

Project Manager or Consultant by the Contractor. The Record Set of Drawing shall be submitted in both hard copy and as electronic plot files.

#### **45. Supplemental Drawings and Instructions**

The Project Manager or Consultant shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning the Contract Documents or its performance, provided such supplemental instructions involve no change in the Contract Documents price or this Contract Documents time.

Project Manager or Consultant shall have the right to modify the details of the plans and specifications, to supplement the plans and specifications with additional plans, drawings or additional information as the Work proceeds, all of which shall be considered as part of the Contract Documents. In case of disagreement between the written and graphic portions of the Contract Documents, the written portion shall govern.

#### **46. Contractor Furnished Drawings**

A Contract Document may require the Contractor to furnish design, shop and/or as-built drawings depending on the nature and scope of the work to be performed. The following applies to the different types of drawings.

The Project Manager and/or Consultant shall, after review of the drawings, initial and mark the drawings in one of the following manners:

1. ACCEPTED - No correction required.
2. PROCEED AS CORRECTED - Minor changes or corrections identified. Work can proceed subject to re-submittal and acceptance of the drawings.
3. REVISE AND RESUBMIT- Significant changes or corrections are recommended. Submittal must be revised and resubmitted for acceptance prior to Work proceeding.
4. REJECTED - Not in accordance with the contract and/or Contract Documents due to excessive changes or corrections or other justifiable reason. Drawings must be corrected and resubmitted prior to any Work being performed.

Revisions required by the permitting jurisdiction must also be reviewed and accepted by the Project Manager or Consultant prior to resubmission to the permitting agency.

Acceptance by the Miami DDA shall not relieve the Contractor from responsibility for errors and omissions in the drawings.

#### **47. 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 Landscape Architect/Engineer of record if sufficient information is submitted by Contractor to allow Miami DDA and Landscape Architect/Engineer of record 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 Miami DDA and Landscape Architect/Engineer of record from anyone other than Contractor.

If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Landscape Architect/Engineer of record for acceptance thereof, certifying that the proposed substitute shall 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 shall 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 Documents 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 will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall 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 shall be considered by the Engineer of Record in evaluating the proposed substitute. The Landscape Architect/Engineer of Record 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 Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Landscape Architect/Engineer of Record, if the Contractor submits sufficient information to allow the Landscape Architect/Engineer of Record to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Landscape Architect/Engineer of Record shall be the same as those provided herein for substitute materials and equipment.

The Landscape Architect/Engineer of Record shall be allowed a reasonable time within which to evaluate each proposed substitute. The Landscape Architect/Engineer of record and the Miami DDA shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Miami DDA's and the Landscape Architect/Engineer of record's prior written acceptance, which shall be evidenced by either a Change Order or an approved submittal. The Miami DDA and the Landscape Architect/Engineer of record may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Miami DDA and the Landscape Architect/Engineer of Record rejects the proposed substitute, at their discretion, the Miami DDA may require the Contractor to reimburse the Miami DDA for the charges of the Landscape Architect/Engineer of Record for evaluating the proposed substitute.

#### **48. Miami DDA Furnished Drawings**

The Miami DDA, in its sole discretion, may furnish design drawings. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager

any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the work, and shall be responsible for any errors or revisions of the work, which might have been avoided by notifying the Miami DDA prior to commencement. This shall also apply to any revisions or omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI). The Miami DDA shall respond to all RFI's in writing.

The Contractor shall have no basis for any claim for additional costs resulting from their failure to identify any required revisions, omissions and/or errors, not identified in writing to the Project Manager or Consultant prior to commencing the work.

#### **49. Interpretation of Drawings and Documents**

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project, should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and/or specifications and the Contractor agrees to abide by the Project Manager's or Consultants interpretation and perform the work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

#### **50. Product Tests**

All tests required to be performed by the Contractor, shall be made at the expense of the Contractor.

#### **51. Field Directives**

The Project Manager or Consultant may at times issue field directives to the Contractor based on visits to the Project Site. Such Field Directives shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the work, the Contractor shall, within 48 hours, notify the Project Manager or Consultant that the work 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 Miami DDA's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the Project Manager or Consultant that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive. At no time shall the Contractor refuse to comply with the directive. Failure to comply with the directive may result in a determination that the Contractor is in default of the Contract.

#### **52. Changes in the Work or Contract Documents**

Without invalidating the Contract Documents and without notice to any Surety, Miami DDA reserves and shall have 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 Documents as may be considered necessary or desirable to complete fully and acceptably the proposed

construction of a Project in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

Any changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto. This section shall not prohibit the issuance of Change Orders executed only by Miami DDA.

### **53. Continuing the Work**

Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Miami DDA, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract price or Contract time for completion. The work shall not be delayed or postponed pending resolution of any disputes or disagreements.

### **54. Change Orders**

Changes in the quantity or character of the work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the Miami DDA.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, Miami DDA reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to the Director as set forth in Article 88, Resolution of Disputes. During the pendency of the dispute, and upon receipt of a Change Order approved by Miami DDA, Contractor shall promptly proceed with the change in the Work involved and advise the Project Manager, Consultant, and Director in writing within seven (7) calendar days of Contractor's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

On approval of any Contract change increasing the Contract Price, Contractor shall ensure that the performance bond and payment bond (if applicable) are increased so that each reflects the total Contract Price as increased.

Under circumstances determined necessary by Miami DDA, Change Orders may be issued unilaterally by Miami DDA.

The Miami DDA 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 Documents. Any such changes will be known as ("Extra Work").

No Extra Work shall be performed except pursuant to written orders of the Project Manager or Consultant expressly and unmistakably indicating his/her intention to treat the Work

described therein as Extra Work. In the absence of such an order, the Project Manager or Consultant may direct, order or require the Contractor to perform any Work including that which the Contractor deems to be Extra Work. The Contractor shall nevertheless comply and shall promptly and in no event after, begin the performance thereof or incur cost attributable thereto and give written notice to the Project Manager stating why he deems such work (hereinafter "Disputed Work") to be Extra Work. Said notice is for the purposes of (1) affording an opportunity to the Project Manager to cancel such order, direction or requirements promptly; (2) affording an opportunity to the Project Manager to keep an accurate record of materials, labor and other items involved; and (3) affording an opportunity to the Miami DDA to take such action as it may deem advisable in light of such disputed Work.

#### **55. Change Order Procedure**

Extra Work shall result in an equitable adjustment (increase or decrease) to the Contract representing the reasonable cost or the reasonable financial savings related to the change in Work. Extra Work may also result in an equitable adjustment in the Contract schedule for performance for both the Extra Work and any other Work affected by the Extra Work.

The Miami DDA shall initiate the Extra Work procedure by a notice to Contractor outlining the proposed Extra Work. Upon receipt of the notice to proceed with the Extra Work, the Contractor is required to immediately start the Extra Work. The Contractor is required to obtain permission for an extension to start the Extra Work if it is beyond the Contractor's ability to start within the allotted timeframe.

The Contractor is required to provide the Project Manager with a detailed Change Proposal Request, which shall include requested revisions to the Contract, 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 Miami DDA 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 Change Proposal Request. The Contractor's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the Extra Work on the Project. If the Contractor fails to notify the Project Manager or Consultant of the schedule changes associated with the Extra Work, it will be deemed to be an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences. The Contractor agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of fifteen (15%) percent of the direct labor and material costs, unless the Project Manager determines that the complexity and risk of the Extra Work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Contractor and the Miami DDA. If an agreement on the Extra Work is reached, both parties shall execute the Extra Work order in writing via a Change Order. The execution by the Contractor of the Change Order shall serve as a release of the Miami DDA from all claims and liability to the Contractor relating to, or in connection with, the Extra Work, including any impact, and any prior acts, neglect or default of the Miami DDA relating to the Extra Work.

Upon execution of a change order that affects the Contract Time the Contractor shall, within five (5) business days submit a revised Project schedule reflecting the changes against the baseline schedule.

**56. No Oral Changes**

Except to the extent expressly set forth in the Contract, no change in or modification, termination or discharge of the Contract or, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the parties charged, therewith or their duly authorized representative.

**57. Value of Change Order Work**

The value of any work covered by a Change Proposal Request or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways: Where the Work involved is covered by unit prices contained in the Contract, by application of unit prices to the quantities of items involved.

By mutual acceptance of a lump sum, which Contractor and Project Manager acknowledge contains a component for overhead and profit.

On the basis of the "cost of Work," determined as provided in this, plus a Contractor's fee for overhead and profit, which is determined as provided in this Article.

The term "cost of Work" means the sum of all direct costs necessarily incurred and paid by Contractor in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by the Project Manager, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in herein.

Payroll costs for employees in the direct employ of Contractor in the performance of the Work described in the Change Proposal Request under schedules of job classifications agreed upon by Project manager and Contractor. Payroll costs for employees not employed full time on the Work covered by the Change Proposal Request shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by Miami DDA.

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Miami DDA deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Miami DDA. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Miami DDA and Contractor shall make provisions so that they may be obtained. Rentals of all construction

equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Miami DDA with the advice of Consultant and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

Payments made by Contractor to Subcontractors for work performed by Subcontractors. If required by Miami DDA, Contractor shall obtain competitive bids from Subcontractors acceptable to Contractor and shall deliver such bids to Miami DDA who will then determine, with the advice of Consultant, which bids will be accepted. If the Subcontract provides that the Subcontractor is to be paid on the basis of cost of the Work plus a fee, the Subcontractor's cost of the Work shall be determined in the same manner as Contractor's cost of the work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

Cost of special consultants, including, but not limited to, consultants, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.

Supplemental costs including the following:

The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work except for local travel to and from the site of the work.

Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the work, and less market value of such items used but not consumed which remains the property of Contractor.

Sales, use, or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

Deposits lost for causes other than Contractor's negligence; royalty payments and fees for permits and licenses.

The cost of utilities, fuel and sanitary facilities at the site.

Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.

Cost of premiums for additional bonds and insurance required because of changes in the Work.

A) The term "cost of the Work" shall not include any of the following:

Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, consultants, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether

at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications., all of which are to be considered administrative costs covered by Contractor's fee.

Expenses of Contractor's principal and branch offices other than Contractor's office at the site.

- B) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments. Cost of premiums for all Bonds and for all insurance whether or not Contractor is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.

Costs due to the negligence or neglect of Contractor, any Subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

- C) Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Article.

Contractor's fee allowed to Contractor for overhead and profit shall be determined as follows:

A mutually acceptable fixed fee or if none can be agreed upon, a fee based on the following percentages of the various portions of the cost of the Work:

Where the Contractor self-performs the Work, Contractor's fee shall not exceed ten percent (10%).

Where a sub-contractor performs the Work, Contractor's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and

No fee shall be payable for special consultants or supplemental costs.

The amount of credit to be allowed by Contractor to Miami DDA for any such change, which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, however, Contractor shall not be entitled to claim lost profits for any work not performed.

Whenever the cost of any work is to be determined pursuant to this Article, Contractor will submit in a form acceptable to Project Manager or Consultant an itemized cost breakdown together with the supporting data.

Where the quantity of any item of the work that is covered by a unit price is increased or decreased by more than twenty percent (20%) from the quantity of such work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.

Whenever a change in the work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, Contractor shall submit an initial cost estimate acceptable to the Project Manager or Consultant.

Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.

Whenever a change involves Contractor and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Contractor and each Subcontractor shall be itemized separately.

Each Change Order must state within the body of the Change Proposal Request whether it is based upon unit price, negotiated lump sum, or "cost of the Work."

### **58. Extra Work Directive**

If the parties fail to reach agreement with respect to the proposed Extra Work, or in case or extenuating circumstances, the Miami DDA may nevertheless issue a directive to the Contractor to do the proposed Extra Work. Immediately upon receipt of the Extra Work Directive, the Contractor shall be obligated to proceed with the Work set forth in that directive.

Except as provided below, the Contractor shall be entitled to initiate a dispute pursuant to the Article 88, Resolution of Disputes, by furnishing a written statement to the Project Manager within five (5) days of the Extra Work Directive, based upon any aspect, of such Extra Work which the Contractor disputes. Such dispute must relate to specific matters raised or specific matters reserved by the Contractor in its proposal and have not been resolved prior to the issuance of the Extra Work Directive. The written statement must set forth all details of the Contractor's claim including the manner that the disputed item was specified in the Contractor's proposal. During the pendency of any dispute hereunder, the Contractor must proceed with Work as set forth in the Extra Work Directive unless otherwise advised by the Project Manager's written instructions. In the event there is a dispute as to price, the Contractor will be paid in accordance with the following paragraph. This payment(s) will be in full satisfaction of the Contractor's claim for an adjustment to the value of the Contract.

Compensation for Extra Work in the event of the parties' inability to agree upon a mutually satisfactory price shall be as follows:

No payment will be made to the Contractor for Extra Work in excess of "Actual and Necessary Cost" which is to say time and materials plus a mark-up not to exceed 10%. This will not vary, whether the Extra Work is performed by the Contractor or his subcontractor. Any exceptions must be approved by the Project Manager.

"Actual and Necessary Net Cost" shall be deemed to include the actual and necessary cost of the Extra Work for (i) labor, which includes wages, payroll deductions, if any, made by the Contractor as employer pursuant to bona fide collective bargaining labor agreements applicable to the Work; (ii) contributions to the State Unemployment Insurance Law, (iii)

excise taxes pursuant to Federal Social Security Act; (iv) any increases in public liability and property damage insurance or performance and payment bonds occasioned solely by the Extra Work, (v) the actual and necessary operating expenses (except the expense of supplies and small tools not operated by mechanical or electrical power), power for such plant and a reasonable rental for the same (including small power tools), as determined by the Project Manager; and (vi) any additional materials necessary for the performance of the Extra Work.

In case any Work or materials shall be required to be done or furnished under the provisions of this Article, the Contractor shall at the end of each day furnish to the Miami DDA such documentation as the Miami DDA may require to support all the costs of the Extra Work. If payments on account are desired as the Extra Work progresses, the Contractor shall render an itemized statement showing the total amount expended for each class of labor and for each kind of material on account of each item of Work as a condition precedent to the inclusion of such payment in a partial estimate. Upon the request of the Miami DDA, the Contractor shall produce for audit by the Miami DDA, books, vouchers, collective bargaining labor agreements, records or other documents showing the actual cost for labor and materials. Such documents shall not be binding on the Miami DDA. The Project Manager shall determine any questions or dispute as to the correct cost of such labor or materials or plant.

In case the Contractor is ordered to perform Work under this Article, which in the opinion of the Project Manager, it is impracticable to have performed by the Contractor's own employees, the Contractor will, subject to the approval of the Project Manager, be paid the actual cost to Contractor of such Work, and in addition thereto five (5%) percent to cover the Contractor's superintendence, administration and other overhead expenses.

Payment of any amount under this Article shall be subject to subsequent audit and approval, disapproval, modification or revision by representatives of the Miami DDA.

### **59 Field Layout of the Work and Record Drawings for Drainage Projects**

The Contractor, through the services of a State of Florida Registered Land Surveyor, shall establish the line and benchmarks and other reference points for the installation of the pipeline or structure.

For pipelines, this will consist of establishing all points of bend (but not necessarily bevel pipe unless in close proximity to other facilities), valves, tees, crosses and other stations not more than 100 feet apart along the proposed centerline of the pipe, or along a stationed offset line as shown on the Plans, marked by a nail in a metal cap if in pavement, with the station painted nearby or by a nail in the top of a wooden stake driven flush with the ground with the station marked on a flag stake nearby, if not in pavement.

For structures, this will consist of base lines, stakes at corners, centers and center lines, auxiliary lines, and a bench mark from which to establish the elevations.

The Contractor shall make his equipment and men available to the Inspector for spot-checking the accuracy of the Work. The Project Manager or Consultant shall require the

Work to be brought within the tolerances specified elsewhere before backfill is placed or the construction is otherwise hidden.

The entire responsibility for establishing and maintaining line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, maintenance access structures, handholes, fittings and other work and shall prepare record or "as-built" drawings of the same which are signed and sealed by a State of Florida Registered Land Surveyor. Contractor shall deliver these records in good order to Project Manager or Consultant as the work is completed. The Contractor shall supply the Consultant with a copy of the Registered Land Surveyor's layout of the Work immediately upon its availability to his own forces. The cost of all such field layout and recording work is included in the prices bid for the appropriate items. All record drawings shall be made on reproducible paper and shall be delivered to Project Manager or Consultant prior to, and as a condition of, final payment.

Contractor shall maintain in a safe place at the Project site one record copy of all Drawings, Plans, Specifications, Addenda, written amendments, Change Orders, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These documents shall be kept in a clean, legible, and dry condition and shall not be used for construction purposes. These record documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available at all times to Consultant and Project Manager for reference. Upon Final Completion of the Project and prior to Final Payment, these record documents, samples and Shop Drawings shall be delivered to the Project Manager.

During the entire construction operation, the Contractor shall retain the services of a State of Florida Registered Land Surveyor who shall maintain records of the installation, including all deviations from the plans and specifications by obtaining "As-built" dimensions and elevations. The surveyor shall prepare record as-built drawings showing correctly and accurately all changes and deviations made during construction, including approved construction variances to reflect the Work as it was actually constructed. "As-Built" drawings shall be submitted to the Miami DDA on a monthly basis.

#### Recording of Project Record

Record all information for pipeline Projects and on-site Projects concurrently with construction progress.

Do not conceal any Work until as-built information is recorded by the Contractor and the Miami DDA.

All locations for future connections or tie-ins shall be left unburied and uncovered until the Miami DDA's surveying forces obtain and record the as-built information. This is in addition to the Contractor's recorded information.

Restrained pipe, end line valves, thrust blocks need to be left uncovered for the last complete length. Inline valves and tees shall be left exposed for 1 length on both sides plus the face end. Record the elevation, deviation from horizontal and vertical alignment and the inclination for these items.

Maintain records of all pipeline Project and on-site Project deviations from Drawings and

Specifications by a Florida Registered Land Surveyor.

For Pipe Installation in All Pipeline Projects and On-site Projects: During entire construction operation retain the services of a State of Florida Registered Land Surveyor (FRLS) who shall maintain records of the installation, including all deviations from Drawings and Specifications.

(FRLS) shall record as-built dimensions and elevations every twenty-five feet (25') or portion thereof along pipeline and at every abrupt change in direction of the new line.

(FRLS) shall record locations and elevations for each valve, fitting, service line, fire hydrant, water sampling point, and also for above ground piping and other appurtenances along the pipeline. Specific locations and elevation of equipment, the buildings and miscellaneous items installed inside them shall be recorded as applicable.

Contractor's FRLS shall prepare as-built record drawings showing correctly and accurately the installation, embracing all changes and deviations made during construction, including all approved construction variances, to reflect the Work as it was constructed.

Record Drawings shall be prepared on 4-mil Mylar as specified hereinafter. Record Drawings and three (3) blue line copies shall be signed and sealed by the Surveyor and shall be submitted to the Miami DDA for the Project Manager's or Consultant's review within ten (10) calendar days following the completion date of successful pressure testing of all mains and appurtenances under the Contract Documents.

If the Consultant determines that the Drawings are not acceptable, they will be returned to the Contractor with a cover letter noting the deficiencies and/or reasons for the disapproval. Contractor shall have ten (10) calendar days to correct all exceptions taken by the Project Manager or Consultant and resubmit as-built record drawings to the Consultant for final acceptance.

Prior to, and as a condition precedent to Final Payment, Contractor shall submit to Miami DDA, Contractor's record drawings or as-built drawings acceptable to Project Manager or Consultant.

**60. Sub-section 60 of Section 2 has been deleted.**

**61. As-Built Drawings**

If Drawings are provided then the Contractor, during performance of the Work, shall maintain records of all deviations from the Drawings and Specifications as approved by the Project Manager or Consultant and prepare As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction 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 Miami DDA and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth and voltage in each conduit.

Legibly mark to record actual construction, on-site structures and site Work as follows:  
Depths of various elements of foundation in relation to finish first floor datum.

All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Actual installed pipe material, class, etc.

Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.

Field changes in dimensions and details.

Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Details not on original Contract Drawings.

Equipment, conduit, electrical panel locations.

Project Manager's or Consultant's schedule changes according to Contractor's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

Manufacturer, trade name, catalog number and Supplier of each product and item of equipment actually installed.

Changes made by Project Manager's or Consultant's written instructions or by Change Order.

Approved Shop Drawings: Provide record copies for each process, equipment, piping, electrical system and instrumentation system.

As-built documents shall be updated monthly as a condition precedent to payment.

## **62. Worker's Identification**

The Contractor's employees, who include any subcontractor, shall wear an identification card provided by the Contractor. The identification card shall bear the employee's picture, name, title and name of the employer. Failure by a Contractor's employee to wear such identification may result in his removal from the Work until such time as the identification card is obtained and worn. Such removal shall not act as a basis for the Contractor to submit a claim for an extension of time.

## **63. Removal of Unsatisfactory Personnel**

The Miami DDA 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 Sub-Contractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Contractor shall respond to the Miami

DDA within seven (7) 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 Miami DDA shall make the final determination as to the removal of unsatisfactory personnel from Work assigned by Miami DDA. The Contractor agrees that the removal of any of its employees does not require the termination or demotion of employee(s).

#### **64. Substantial Completion, Punch List, & Final Completion**

The Work shall 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 and/or substantial variations from the Contract Documents and the Work is fit for its intended purpose. Upon Substantial Completion, the Project Manager and the Contractor shall sign the Substantial Completion Inspection Form. The signing of this form shall not relieve the Contractor from its obligation to complete the Project.

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. No request for Substantial Completion inspection is to be submitted until the Contractor has obtained a Certificate(s) of Occupancy, Certificate of Completion or Completion or a Temporary Certificate of Occupancy or any other approvals from agencies having jurisdiction over the Work. The Project Manager or Consultant shall 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 shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the Project Manager and/or Consultant, 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 shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Miami DDA.

Where the Punch List is limited to minor omissions and defects, the Project Manager shall indicate that the Work is substantially complete subject to completion of the Punch List. Where the Project Manager or Consultant determines, on the appropriate form that the Work is not substantially complete, the Project Manager or Consultant shall provide a list of all open items necessary to achieve Substantial Completion. Upon completion of such Work, the Contractor shall request another Substantial Completion inspection.

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

Upon the receipt of all documentation, resolution of any outstanding issues and issuance of final payment, the Project Manager or Consultant shall notify the Contractor in writing of the closeout of the Project.

The Miami DDA will prepare a Certificate of Substantial Completion in the form which shall establish the Date of Substantial Completion. Once substantial completion is achieved the Miami DDA shall be responsible for security, maintenance, heat, utilities, damage to the

Project site, and insurance; and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties required by the Contract Documents shall commence on the date of Final Acceptance completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents.

#### **65. Acceptance and Final Payment**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager and/or Consultant shall, within ten (10) calendar days, make an inspection thereof. If Project Manager and/or Consultant find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment **shall** be issued by Project Manager, stating that the requirements of the Contract Documents 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 shall deliver to the Project Manager or Consultant a final release of all liens arising out of the Contract Documents, 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; and the final bill of materials, if required, and payment application. Contractor shall deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the Final Certificate for Payment.

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

The acceptance of final payment shall 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.

#### **66. NPDES Requirements**

Contractor shall 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 shall be included in the Bid prices. For further information on compliance requirements for NPDES and SWPPP contact the Miami DDA of Miami Public Works Department at (305) 416-1200 or visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>.

### **67. Force Majeure**

Should any failure to perform on the part of Contractor be due to a condition of force majeure as that term is interpreted under Florida law, then the Miami DDA may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor shall request a time extension from the Miami DDA within two (2) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall 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 may not include the acts or omissions of Sub-contractors.

### **68. Extension of Time**

Any reference in this section to the Contractor shall be deemed to include suppliers, and permitted Sub-Contractors, whether or not in privities 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 and/or Notice to Proceed (NTP) by the neglect or failure of the Miami DDA or by a Force Majeure, then the Contract Time set forth in the Contract shall be extended by the Miami DDA 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.

**Note:** A delay meeting all the conditions of the above, shall be deemed an Excusable Delay.

The Miami DDA 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 shall be made within ten (10) 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 shall 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 shall reasonably deem necessary or helpful in considering the requested extension.

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

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall 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 shall promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same shall have been granted. The Miami DDA shall be afforded the right to intervene and become a party to any suit or proceeding in which any such injunction shall be obtained and move to dissolve the same or otherwise, as the Miami DDA may deem proper.

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, shall not waive the Miami DDA's rights under the Contract, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

#### **69. Notification of Claim**

Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Contractor to the Project Manager and to Consultant within ten (10) business days of the commencement of the event giving rise to the claim and 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 shall be provided unless the Project Manager or Consultant allows an additional period of time to ascertain more accurate data in support of the claim and such notice shall be accompanied by Contractor's written notarized statement that the adjustment 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 for changes in the Contract Time or Contract Price shall be determined by the Project Manager or Consultant in accordance with Article 69, Contractor's Damages for Delay hereof, if Miami DDA and Contractor cannot otherwise agree. It is expressly and specifically agreed that any and all claims for changes to the Contract time or Contract price shall be waived if not submitted in strict accordance with the requirements of this Article.

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 therefore as provided in this Article. Such delays shall include, but not be

limited to, acts or neglect by any separate contractor employed by Miami DDA, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

#### **70. Extension of Time not Cumulative**

In case the Contractor shall be delayed for any period of time by two or more of the causes mentioned in Article 70, Excusable, Delays, the Contractor shall not be entitled to a separate extension for each one of the causes; only one period of extension shall be granted for the delay.

#### **71. Contractor's Damages for Delay**

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Miami DDA by reason of any delays except as provided herein. Contractor shall not be entitled to an increase in the Contract price or payment or compensation of any kind from Miami DDA 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 reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Miami DDA or its Consultant. Otherwise, Contractor shall be entitled only to extensions of the Contract Time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Except as may be otherwise specifically provided for in the Contract Documents, the Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the Miami DDA or any of its representatives (whether it is an Excusable Delay or otherwise) and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work. In this regard, the Contractor alone hereby specifically assumes the risk of such delays, including without limitation: delays in processing or approving shop drawings, samples or other submittals or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner. Contractor shall not receive monetary compensation for Miami DDA delay. Time extensions may be authorized by the Miami DDA in certain situations.

#### **72. Excusable Delay, Non-Compensable**

Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its subcontractors, suppliers and vendors, and is also caused by circumstances beyond the control of the Miami DDA or Consultant, or (ii) is caused jointly or concurrently by Contractor or its subcontractors, suppliers or vendors and by the Miami DDA or Consultant. Then Contractor shall be entitled only to a time extension and no compensation for the delay.

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 67, Notification of Claim, hereof.

Failure of Contractor to comply with Article 67, Notification of Claim hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

### **73. Defective Work**

Project Manager or Consultant shall have the authority to reject or disapprove work which Project Manager or Consultant finds to be defective. If required by Project Manager or Consultant, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with non-defective work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

Should Contractor fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Project Manager or Consultant, Miami DDA shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Miami DDA in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor, or may be charged against the Performance Bond. In the event of failure of Contractor to make all necessary repairs promptly and fully, Miami DDA may declare Contractor in default.

If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, 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 Miami DDA, shall promptly correct such defective or nonconforming Work within the time specified by Miami DDA without cost to Miami DDA, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered, or obligate Miami DDA to final acceptance.

### **74. Acceptance of Defective or Non-Conforming Work**

The Miami DDA, in its sole discretion may elect to accept in writing defective or non-conforming work instead of requiring its removal and correction. In such instances, a Change Order will be issued to reflect an appropriate reduction in the Contract sum, or, if the amount is determined after final payment, any difference in the amount shall be paid to the Miami DDA by the Contractor.

### **75. Uncovering Finished Work**

The Project Manager's, Inspector's and/or Consultant's right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager /or Consultant shall notify the Contractor in writing concerning all uncovered finished work. Should the Work prove to be in accordance with the Contract Documents, the uncovering or taking down and the replacing and the restoration of the

parts removed will be treated as Extra 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 shall be at the expense of the Contractor. Such expenses shall also include repayment to the Miami DDA 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.

#### **76. Correction of Work**

The Contractor shall promptly correct all Work rejected by the Project Manager or Consultant as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the Miami DDA's additional services thereby made necessary.

The Contractor further agrees that, after being notified in writing by the Project Manager or Consultant, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Contractor will commence and prosecute with due diligence all Work necessary to fulfill the terms of the Contract and to complete the Work within a reasonable period of time, as determined by the Project Manager or Consultant, and in the event of failure to so comply, the Contractor does hereby authorize the Miami DDA to proceed to have such Work done at the Contractor's expense and that the Contractor will pay the cost thereof upon demand. The Miami DDA shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Contractor's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel, property, or licensees, the Miami DDA may undertake, at the Contractor's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Contractor not being in accordance with the requirements of the Contract.

If, within one (1) year after the date of final completion of the Project or within such longer period of time as may be prescribed by law, by the Contract Documents, or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Miami DDA to do so. The Miami DDA shall give such notice promptly after discovery of the condition.

All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Contract Documents without cost to the Miami DDA.

#### **77. Maintenance of Traffic and Public Streets**

##### Scope of Work:

The Contractor shall be responsible for the maintenance of public streets and traffic control necessary to perform the Work under the Contract Documents. The cost of traffic control shall be included in the Contractor's Bid.

##### Regulations:

As used herein, any reference to Miami-Dade County, its departments, or its published regulations, permits and data, shall be synonymous and interchangeable with other recognized governing bodies over particular areas or streets, or their departments, published regulations (i.e., Manual of Uniform Traffic Control Devices (MUTCD), FDOT Roadway and Bridge Standard Index Drawing Book), permits or data. The Contractor shall abide by all applicable laws, regulations, and codes thereof pertaining to Maintenance of Traffic (MOT) on public streets, detour of traffic, traffic control and other provisions as may be required for this Project.

*Maintenance of Traffic (MOT):*

The Contractor shall be fully responsible for the MOT on public streets, detour of traffic (including furnishing and maintaining regulatory and informative signs along the detour route), traffic control, and other provisions, throughout the Project, as required by the Manual of Uniform Traffic Control Devices (MUTCD), and FDOT Roadway and Bridge Standard Index drawing Book. Traffic shall be maintained according to corresponding typical traffic control details as outlined in the previous noted standards. No street shall be completely blocked, nor blocked more than one-half at any time, keeping the other one-half open for traffic, without specific approval.

If required by the Project Manager or Consultant, Traffic Division or FDOT or as otherwise authorized by the Project Manager or Consultant, the Contractor shall make arrangements for the employment of uniformed off-duty policemen to maintain and regulate the flow of traffic through the work area. The number of men required and the number of hours on duty necessary for the maintenance and regulation of traffic flow shall be provided by the Miami DDA or Miami Police Department.

The Contractor shall provide all barricades with warning lights, necessary arrow boards and signs, to warn motorists of the Work throughout the Project. Adequate approved devices shall be erected and maintained by the Contractor to detour traffic.

Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic safety at all times. The Contractor shall provide necessary access to all adjacent property during construction.

The Contractor shall be responsible for the provision, installation and maintenance of all MOT and safety devices, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Roadway and Bridge Standards index drawing book. In addition, the Contractor shall be responsible for providing the Consultant with MOT plans for lane closures and/or detours for approval. These plans (sketches) shall be produced, signed and sealed by a professional Engineer registered in the State of Florida, employed by the Contractor and certified under FDOT Procedure NPIL No. 625-010-010.

Where excavations are to be made in the vicinity of signalized intersections, attention is directed to the fact that vehicle loop detectors may have been embedded in the pavement. Verify these locations by inspecting the site of the Work and by contacting the Sunshine State One-Call Center (1-800-432-4770), 48 hours prior to any excavation. Any loop detector which is damaged, whether shown on the Plans or not, shall be repaired or replaced to the satisfaction of the Miami Dade County Signs and Signal Division (Phone No. 305-592-3470).

Where applicable, the Contractor shall notify the Traffic Division 24 hours in advance of the construction date or 48 hours in advance of construction within any signalized intersection. Temporary pavement will be required over all cuts in pavement areas, and also where traffic is to be routed over swale or median areas. When the temporary pavement for routing traffic is no longer necessary, it shall be removed and the swale or median areas restored to their previous condition.

Pavement markings damaged during construction shall be remarked, as required by the Traffic Division.

*Maintenance of Traffic for Bypass Pumping:*

The Contractor shall take appropriate steps to ensure that all temporary pumps, piping and hoses are protected from vehicular traffic and pedestrian traffic.

*Lane Closures:*

Where construction of the Project shall involve lane closures public streets, the following shall apply:

Lane closures require a Lane Closure Permit, obtained two weeks prior to planned construction, with a minimum 48-hour prior notice to local police and emergency departments (some police jurisdictions may require considerably more notice). Lane closures of a one day or less duration will generally not be approved for major collector streets or for arterial streets during the hours of 7am to 9am and 4pm to 6pm weekdays.

**78. Location and Damage to Existing Facilities, Equipment or Utilities**

As far as possible, all existing utility lines in the Project area will be shown on the plans. However, Miami DDA does not guarantee that all lines are shown, or that the ones indicated are in their true location. It shall be the Contractor's responsibility to field verify all underground and overhead utility lines or equipment affecting or affected by the Project. No additional payment will be made to the Contractor because of discrepancies in actual and plan location of utilities, and damages suffered as a result thereof.

The Contractor shall notify each utility company involved at least fourteen (14) calendar days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. Relocation of water mains or other utilities for the convenience of the Contractor shall be paid by the Contractor. All charges by utility companies for temporary support of its utilities shall be paid for by the Contractor. All costs of permanent utility relocation to avoid conflict shall be the responsibility of the utility company involved. No additional payment will be made to the Contractor for utility relocations, whether or not said relocation is necessary to avoid conflict with other lines.

The Contractor shall schedule the Work in such a manner that the Work is not delayed by the utility providers relocating or supporting their utilities. The Contractor shall coordinate its activities with any and all public and private utility providers occupying the right-of-way. No compensation will be paid to the Contractor for any loss of time or delay.

All overhead, surface or underground structures and utilities encountered are to be carefully protected from injury or displacement. All damage to such structures is to be completely repaired within a reasonable time; needless delay will not be tolerated. The Miami DDA reserves the right to remedy such damage by ordering outside parties to make such repairs at the expense of the Contractor. All such repairs made by the Contractor are to be made to the satisfaction of the utility owner. All damaged utilities must be replaced or fully repaired. All repairs are to be inspected by the utility owner prior to backfilling.

#### **79. Stop Work Order**

The Miami DDA 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 shall 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 Miami DDA shall either:

- A) Cancel the Stop Work Order; or Terminate the Work covered by such order as provided in Article 87, Termination for
- B) Convenience.
- C) If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time for Substantial Completion to the extent that, in the opinion of the Project Manger or Consultant, the Contractor may have been delayed by such suspension. In the event the Project Manger or Consultant 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 shall not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

#### **80. 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 Miami DDA, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Project Manager or Consultant has given notice of same.

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 Miami DDA has directed such suspension, will entitle the Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

### **81. Use of Completed Portions**

Miami DDA shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance or beneficial use or occupancy of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Contractor shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as determined by Project Manager or Consultant.

In the event Miami DDA takes possession of any completed or partially completed portions of the Project, the following shall occur:

Miami DDA shall give notice to Contractor in writing at least thirty (30) calendar days prior to Miami DDA's intended occupancy of a designated area.

Contractor shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from Project Manager or Consultant.

Upon Project Manager or Consultant's issuance of a Certificate of Substantial Completion, Miami DDA will assume full responsibility for maintenance, utilities, subsequent damages of Miami DDA and public, adjustment of insurance coverage's and start of warranty for the occupied area.

Contractor shall complete all items noted on the Certificate of Substantial Completion within the time specified by Project Manager or Consultant on the Certificate of Substantial Completion, as specified in the Punch List and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Project Manager or Consultant shall issue a Certificate of Final Payment relative to the occupied area.

If Miami DDA finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by Miami DDA and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

### **82. Cleaning Up; Miami DDA's Right to Clean Up**

Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of a Project, Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, Miami DDA may do so and the cost thereof shall be charged to Contractor. If a dispute arises between Contractor

and separate contractors as to their responsibility for cleaning up, Miami DDA may clean up and charge the cost thereof to the contractors responsible therefore as the Project Manager and/or Consultant shall determine to be just. All combustible waste materials shall be removed from the Project at the end of each day. Cleaning operations should be controlled to limit dust and other particles adhering to existing surfaces.

**83. Removal of Equipment**

In case of termination of this Contract before completion for any cause whatsoever, Contractor, if notified to do so by Miami DDA, shall promptly remove any part or all of Contractor's equipment and supplies from the property of Miami DDA. If the Contractor does not comply with Miami DDA's order, the Miami DDA shall have the right to remove such equipment and supplies at the expense of Contractor.

**84. Set-offs, Withholdings, and Deductions**

The Miami DDA 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, and/or;

Any unpaid legally enforceable debt owed by the Contractor to the Miami DDA.

The Miami DDA shall notify the Contractor in writing of any such withholdings. Any withholding, which is ultimately held to have been wrongful, shall be paid to the Contractor in accordance with the Local Government Prompt Payment Act.

**85. Event of Default**

An event of default shall 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, shall include but not limited to, the following:

The Contractor has not performed the Work in a timely manner;

The Contractor has refused or failed, except in case for which an extension of time is provided, 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 or materials they have provided;

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 Miami DDA where required by the Contract;

The Contractor has failed in the representation of any warranties stated herein; and

When, in the opinion of the Miami DDA, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work, the Miami DDA shall notify the Contractor in writing that it must, within the time frame set forth in the Miami DDA's request, provide adequate assurances and a plan of action to the Miami DDA, in writing, of the Contractor's ability to perform in accordance with the terms of the Contract Documents. In the event that the Contractor fails to provide to the Miami DDA the requested assurances within the prescribed time frame, the Miami DDA may:

Treat such failure as a repudiation of the Contract and/or;

Resort to any remedy for breach provided herein or by law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.

In the event the Miami DDA may, at its sole discretion, terminate the Contract for default, the Miami DDA or its designated representatives may immediately take possession of all applicable documentation and data.

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

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

In the event that the Miami DDA determines that the Contractor is in default of its obligations under the Contract, the Miami DDA 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 specified time frame or the Contract with the Miami DDA may be terminated. The Miami DDA is under no obligation to issue such notification. The Miami DDA may grant an extension to the cure period if the Miami DDA deems it appropriate and in the best interest of the Miami DDA, without waiver of any of the Miami DDA's rights hereunder. The Miami DDA, 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 Miami DDA.

#### **87. Termination for Default**

If Contractor fails to comply with any term or condition of the Contract Documents, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default if one has been granted by the Miami DDA, the Director in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon any advances for which Work has not been performed, paid by the Miami DDA to Contractor while Contractor was in default shall be immediately returned to the Miami DDA. The Director may also suspend any payment or part thereof or order a

Work stoppage until such time as the issues concerning compliance are resolved. Contractor understands and agrees that termination of this Contract under this Article shall not release Contractor from any obligation accruing prior to the effective date of termination.

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

Contractor fails to obtain the insurance or bonding herein required by the Contract.

Contractor fails to comply with any of its duties under the Contract Documents, with any terms or conditions set forth in this Contract, beyond any specified period allowed to cure such default.

Contractor fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by the Contract.

Where it has been determined that the Contractor has been erroneously terminated under this Article, such termination shall be deemed to have been occurred under Article 87, Termination for Convenience. The Miami DDA in its sole discretion may terminate the Contract without providing the Contractor a written notice to cure.

#### **88. Remedies in the Event of Termination for Default**

If a Termination for Default occurs, the Contractor and the surety, if applicable) shall be notified of the effective date of the termination and shall be liable for all damages resulting from the default, including but not limited to re-procurement costs and other direct damages. The Contractor shall stop Work as of the date of notification of the termination and immediately remove all labor, equipment and materials (not owned or paid for by the Miami DDA) from the Work Site. The Miami DDA assumes no liability for the Contractor's failure to remove such items from the Project site as required.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

As an alternative to termination, the Miami DDA may bring suit or proceedings for specific performance or for an injunction.

#### **89. Termination for Convenience**

In addition to cancellation or termination as otherwise provided for in the Contract, the Miami DDA may at any time, in its sole discretion, with or without cause, terminate the Contract by written notice to the Contractor. Such Written Notice shall state the date upon which Contractor shall cease all Work under the Contract and vacate the Project site. The Contractor shall, upon receipt of such notice, unless otherwise directed by the Miami DDA:

- A) Stop all Work on the Project on the date specified in the notice ("the Effective Date");
- B) Take such action as may be necessary for the protection and preservation of the Miami DDA's materials and property;

C) Cancel all cancelable orders for materials and equipment;

Assign to the Miami DDA and deliver to the site, or any other location specified by the Project Manager, any non-cancelable orders for materials and equipment that can not otherwise be used except for Work under the Contract and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;

Take no action that shall increase the amounts payable by the Miami DDA under the Contract Documents; and

Take reasonable measures to mitigate the Miami DDA's liability under the Contract Documents.

All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Miami DDA. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Miami DDA.

In the event that the Miami DDA exercises its right to terminate the Contract pursuant to the Contract Documents, the Miami DDA will pay the Contractor:

For the actual cost or the fair and reasonable value, whichever is less, of (1) the portion of the Project completed in accordance with the Contract through the completion date, and (2) non-cancelable material(s) and equipment that is not of any use to the Miami DDA except in the performance of the Contract, and has been specifically fabricated for the sole purpose of the Contract but not incorporated in the Work; and

To the extent practical, the fair and reasonable value shall be based on the price established as a result of the Contract. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract.

The amount due hereunder may be offset by all payments made to the Contractor.

All payments pursuant to this Article shall be accepted by the Contractor in full satisfaction of all claims against the Miami DDA arising out of the termination including, Further, the Miami DDA may deduct or set off against any sums due and payable under this Article any claims it may have against the Contractor.

Contractor shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

All payments made under the Contract are subject to audit.

## **90. Resolution of Disputes**

To minimize all disputes and litigation, it is agreed by the parties hereto that the Director or designee shall decide all claims, and disputes of whatever nature which may arise relative to the interpretation of the Contract Documents and fulfillment of the Contract Documents

as to the character, quality, amount and value of any Work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents and the Director's estimates and decisions upon all claims, and disputes shall be final and binding. Any claim or dispute which cannot be resolved by mutual agreement of the Project Manager, Consultant and Contractor shall be submitted to the Director in writing within fourteen (14) calendar days. The Director or designee shall notify the Consultant and Contractor in writing of his/her decision within fourteen (14) calendar days from the date of the submission of the claim, or dispute, unless the Director requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, Contractor, Consultant and Miami DDA shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

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 Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection 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.

#### **91. Mediation-Waiver of Jury Trial**

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the construction of a Project, and/or following the completion of the Project, the parties to this Contract agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of a certified Mediator on a 50/50 basis. The Contractor agrees to include such similar contract provisions with all Sub-Contractors retained for the Work, thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Contract.

#### **92. Miami DDA May Avail Itself of All Remedies**

The Miami DDA may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Miami DDA. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other

remedy. The Miami DDA's rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.

### **93. Permits, Licenses and Impact Fees**

Pursuant to the Public Bid Disclosure Act, each license, permit or fee **REQUIRED BY THE MIAMI DDA AND PAYABLE TO THE MIAMI DDA** by virtue of this construction as part of the Contract is waived as follows:

Miami DDA's Master Permit Fee and applicable Major Trade Permit fees (i.e. Mech., Plumbing, Elec., & Fire) are waived. Any other permit fees not directly related to the actual construction of the Project (i.e. Permits for dumpsters, job trailers) are not waived"...Licenses, permits and fees which may be required by Miami-Dade County, the State of Florida, or other governmental entities are not waivable."

Except as otherwise provided within the Contract Documents, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Contractor pursuant to the Contract Documents shall be secured and paid for by Contractor. It is Contractor's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

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

### **94. Compliance with Applicable Laws**

The Contractor shall comply with all applicable laws, regulations, building and construction codes of the Federal government, the State of Florida, the County, and the Miami DDA.

The attention of the Contractor is directed to the requirements of the Florida Building Code and the Codes of Miami-Dade County and the Miami DDA of Miami, Florida, governing the qualifications for Contractor and Sub-Contractor doing business anywhere in the Miami DDA.

### **95. 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 Miami DDA for any right or privilege applicable to an officer or employee of the Miami DDA, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

The Contractor's staff shall not be employees of the Miami DDA, and the Contractor alone shall be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Contract shall impose any liability or duty on the Miami

DDA on account of the Contractor's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Contractor as a subcontractor, expert, consultant, independent contractors, specialist, trainee, employee, servant or agent or for taxes of any nature, including, but not limited to: unemployment insurance; worker's compensation and anti-discrimination, or workplace legislation of any kind. The Contractor hereby agrees to indemnify and hold harmless the Miami DDA against any such liabilities, even if they arise from actions directed or taken by the Miami DDA.

#### **96. Third Party Beneficiaries**

Neither Contractor nor Miami DDA intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to the Contract and that no third party shall be entitled to assert a claim against either of them based upon the Contract. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract.

#### **97. Successors and Assigns**

The performance of the Contract shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the written consent of the Miami DDA. 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 shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Miami DDA approval.

Any transference without Miami DDA approval shall be cause for the Miami DDA to nullify the Contract. Any assignment without the Miami DDA's consent shall be null and void. The Contractor shall have no recourse from such cancellation. The Miami DDA may require bonding, other security, certified financial statements and tax returns from any proposed assignee and the execution of an assignment/ assumption agreement in a form satisfactory to the Miami DDA Attorney as a condition precedent to considering approval of an assignment.

The Contractor and the Miami DDA each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of the Contract and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

#### **98. Materiality and Waiver of Breach**

Miami DDA and Contractor agree that each requirement, duty, and obligation set forth in this Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof.

Miami DDA's failure to enforce any provision of the Contract Documents shall not be deemed a waiver of such provision or modification of the Contract Documents. A waiver of any breach of a provision of the Contract Documents shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Contract Documents.

**99. Severability**

In the event the any provision of the Contract Documents is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Contract, and the remainder of the Contract Documents shall 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 shall be made within seven (7) calendar days after the finding by the court becomes final.

**100. Applicable Law and Venue of Litigation**

This Contract shall 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 herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**101. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the Miami DDA Manager, Director or designee.

**102. Entire Agreement**

The Contract Documents, as they may be amended from time to time, represent the entire and integrated Contract between the Miami DDA 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 Documents shall not be deemed to be a waiver of any other breach of any provision of the Contract Documents.

**103. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act**

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by Miami DDA, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

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

#### **104. Evaluation**

Contractor acknowledges that upon completion of the of the Work under the Contract Documents and/or at any other time deemed appropriate by the Miami DDA a performance evaluation report will be completed by the Miami DDA. A copy of each performance evaluation shall also be forwarded to the Contractor. The performance evaluations will be kept in Miami DDA files for evaluation on future solicitations.

#### **105. Commodities manufactured, grown, or produced in the Miami DDA of Miami, Miami -Dade County and the State of Florida**

Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within the Miami DDA of Miami, Miami-Dade County and the State of Florida, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within the Miami DDA of Miami, Miami-Dade County and the State of Florida shall be given preference.

#### **106. Royalties and Patents**

All fees, royalties, and claims for any invention, or pretended inventions, or patent of any article, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of the Work or appurtenances, are hereby included in the prices stipulated in the Contract for said Work.

#### **107. Continuation of the Work**

Any Work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the Miami DDA and the involved contractor, continue until completion at the same prices, terms and conditions.

#### **108. Review of Records**

Miami DDA shall have the right to inspect and copy, at Miami DDA's expense, the books and records and accounts of Contractor which relate in any way to the Project, and to any claim for additional compensation made by Contractor, and to conduct an audit of the financial and accounting records of Contractor which relate to a Project and to any claim for additional compensation made by Contractor including but not limited to all payroll records, invoices for materials, and books of accounts. Such records shall conform to Generally Accepted Accounting Principles requirements (GAAP), and shall only address those transactions related to the Contract.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise Contractor shall retain and make available to Miami DDA all such books and records and accounts, financial or otherwise, which relate to the Project and to any claim for a period of five (5) years following Final Completion of the Project.

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.

Contractors shall develop the proper forms and reports acceptable to the Miami DDA for the administration and management of the Contract Documents.

**109. No Interest**

Any monies not paid by Miami DDA when claimed to be due to Contractor under the Contract Documents, including, but not limited to, any and all claims for damages of any type, shall not be subject to interest including, but not limited to prejudgment interest. However, the provisions of Section 218.74(4), Florida Statutes as such relates to the payment of interest, shall apply to valid and proper invoices.

**110. Payments Related to Guaranteed Obligations**

The Miami DDA may withhold from any payments to be made such sums as may reasonably be necessary to ensure completion of the Project with respect to defective Work, equipment or materials which may be identified by the Project Manager.

The Miami DDA may deduct from any payment due the Contractor an amount equal to its cost incurred on account of the Contractor's failure to fully perform its obligations under the Contract.

The Project Manager, prior to withholding or deducting any monies hereunder, shall give the Contractor notice of the defective Work, equipment or material and the basis for the withholding or deduction.

Upon the Project Manager's determination that the Contractor has fulfilled its obligations, the Miami DDA will pay the Contractor any monies owed, subject to Contractor's submission of, or compliance with, any remaining documentation or obligation, as the case may be, in accordance with the Contract Documents.

**111. Consent of Miami DDA Required for Subletting or Assignment**

If the Contractor assigns, transfers, sublets or otherwise disposes of the Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the Miami DDA, such action shall be an Event of Default. Nothing herein shall 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.

**112. Agreement Limiting Time in Which to Bring Action Against the Miami DDA**

In the event the Contractor may be deemed to have a cause of action against the Miami DDA, no action shall lie or be maintained by the Contractor against the Miami DDA upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Miami DDA or its agents, unless such action shall be commenced within six (6) months after the date of issuance of a final payment under the Contract, or if final payment has not been issued within six (6) months of substantial completion of the Work or upon any claim relating to monies required to be retained for any period after the issuance of the said certificate, unless such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract

Documents, or if the Contract is terminated or declared abandoned under the provisions of the Contract unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the Miami DDA.

**113. Defense of Claims**

Should any claim be made or any legal action brought in any way relating hereto or to the Work hereunder, except as expressly provided herein, the Contractor shall diligently render to the Miami DDA, after additional compensation is mutually agreed upon, any and all assistance which the Miami DDA may require of the Contractor.

**114. Contingency Clause**

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

**115. Mutual Obligations**

This document, change order, field directive, and written clarifications issued under the Contract, and the Contractor's submittals, shall constitute the Contract Documents between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by their duly authorized representatives.

Nothing in the Contract shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

In those situations where the Contract Documents imposes an indemnity obligation on the Contractor, the Miami DDA, may at its expense, elect to participate in the defense of the claim if the Miami DDA should so choose. Furthermore, the Miami DDA may, at its own expense, defend or settle any such claim if the Contractor fails to diligently defend such claim, and thereafter seek indemnity for such cost from the Contractor.

**116. Contract Extension**

The Miami DDA reserves the right to exercise its option to extend the Contract for up to ninety (90) calendar days beyond the original Contract period. In such event, the Miami DDA will notify the Contractors in writing of such extensions.

**117. Non-Exclusivity**

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

**118. Nature of the Agreement**

The Contractor shall provide the services set forth in the Contract Documents. The Contractor shall provide full and prompt cooperation with the Miami DDA in all aspects of the Work to be performed.

The Contractor acknowledges that the Contract Documents require the performance of all things necessary for or incidental to the effective management and performance of a Project. All things not expressly mentioned in the Contract Documents, but necessary to carrying out its intent are required by the Contract Documents, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated. The Contractor shall furnish all labor, materials, tools, supplies and other items required for the completion of the Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

**119. Contract Documents Contains all Terms**

The Contract Documents and all documents incorporated herein 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 Documents shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**120. Applicable Law and Venue of Litigation**

This Contract shall 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 herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**121. Survival**

The parties acknowledge that any of the obligations in the Contract Documents will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the Miami DDA under the Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration thereof.

## **Section 3 - Supplemental Terms and Conditions**

### **1. Contract Time**

The Contract will be for a period of six months from the date of award.

### **2. Award of Projects**

Upon completion of the Scope of Work, which may or may not include drawings for a Project Phase, as defined below, CIP will identify the Contractor with the lowest bid based on specific site conditions and any drawings. This will be accomplished by CIP first identifying the appropriate Category award list. CIP will then calculate the lowest bidder in the Category by multiplying the estimated quantities for each item times the unit bid prices from each Contractor in the Category. A Project Phase means a specific areas of work to be awarded on an as needed basis within the Project boundaries. Each Project Phase will be awarded separately from any other Project Phases.

CIP will then notify, in writing, the Contractor with the lowest total price and provide it with the spreadsheet used for the calculations, the timeframe for completing the Project, and any available drawings. The Contractor will also be provided a deadline to respond to CIP for the Contractor to be considered for award of a Project Phase.

The Contractor is responsible to visit the site, review the drawings and the spreadsheet, to confirm that the proposed value for award of the Project is correct. The Contractor is required to respond to the Miami DDA, within the specified timeframe, with any recommended revisions to the quantities and confirmation that they can perform the work in the stipulated timeframe. CIP will review any recommended revisions and in its sole discretion accept or reject, in writing, the proposed revisions. The Contractor will have twenty-four (24) hours to accept or reject the award of the Project.

Upon acceptance of the award of a Project Phase CIP will issue a Notice to Proceed. Where the Contractor rejects the Project or where the Contractor fails to respond within the stipulated timeframes CIP will then go to the next lowest bidder.

CIP, in its sole discretion, may terminate for default any Contractor who fails to accept three Projects within a one (1) year period.

### **3. Progress Payments**

Any Project that is anticipated to take less than thirty (30) days shall be paid upon Final Completion of the Project.

Where a Project is anticipated to exceed thirty (30) days the Contractor may make application for payment for Work completed during the Project at intervals of not more than once a month or upon completion and Final Acceptance of the Work. Where the time frame for completion of the Work is less than or equal to one month or a Schedule of Values is not required, the Contractor shall submit the appropriate documentation as defined below. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated progress schedule as required by Article 5 of the Supplemental Terms and Conditions 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 Consultant. Each application for payment shall be submitted in triplicate for approval. Miami DDA shall make payment to Contractor within thirty (30) days after approval of Contractor's application for payment.

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

Miami DDA 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 Miami DDA 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 Miami DDA and/or Consultant for extended construction administration.

Failure of Contractor to provide any and all documents required by the Contract Documents.

Contractor shall submit separate Applications for Payment for each Project.

The Miami DDA will pay, and the Contractor shall accept as full compensation for the Work, the sums specified in the Contractor's application for payment, as accepted by the Miami DDA.

Contractor may be paid for materials or equipment purchased and stored at the Project Site or another location. 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 shall be conditioned upon submission by the Contractor of paid invoices and an executed Material Purchased/Stored On-Premises form to establish the Miami DDA's title to such materials or equipment, or otherwise protect the Miami DDA's interest, including applicable insurance in the name of Miami DDA and transportation to the site.

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

#### **4. Liquidated Damages**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract Documents or any approved extension of time the Contractor shall pay to the Miami DDA the sum. In the event of a delay in completion beyond the date set forth in the Contract Documents the Contractor shall pay to the Miami DDA for each and every calendar day of unexcused delay, the sum of three hundred dollars (**\$300.00**) per day, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified of any exceptions. The total amount of liquidated damages shall not exceed the value of the Contract.

The Miami DDA shall 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 Miami DDA. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the Miami DDA, the Contractor shall pay the difference upon demand by the Miami DDA. Should the Contractor fail to compensate the Miami DDA for any liquidated damages, the Miami DDA shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Miami DDA contract until such indebtedness is paid in full to the Miami DDA.

The Miami DDA shall notify the Contractor that it is incurring liquidated damages.

#### **5 Schedule of Values**

The Contractor must submit three copies of a Schedule of Values, which must be submitted within ten (10) calendar days of the issuance of the Notice of Award. The Schedule of Values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. Proportional shares of the Contractor's overhead and profit should be included in each line item. Each line item shall be identified with the number and title of the major specification section or major components of the items. The Project Manager or Consultant may require further breakdown after review of the Contractor's submittal. The Miami DDA reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under both Schedules of Values shall not exceed 10% of the value of the Contract.

The approved schedule of values shall be updated through the submittal of the Miami DDA's Payment Application Form.

#### **6. Project Schedules**

Contractor shall submit a proposed Project schedule as follows:

Schedule identifying all tasks within the critical path. The proposed Project schedule shall be submitted within ten (10) calendar days of the Notice of Award and such submittal shall be subject to the Project Manager and Consultant's review. Subsequent to such review of said schedule the Contractor shall establish said schedule as the baseline schedule. All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract

Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.

All Project Schedules shall be prepared in Microsoft Project 2003 or earlier unless otherwise approved by the Project Manager. At the time of submission of schedules Contractor shall submit a hard copy as well as an electronic version. Such electronic version shall not be submitted in a .pdf format and shall be capable of being incorporated in to the Miami DDA's baseline schedules.

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

The project is expected to be completed well within the terms of the Contract time limit of six months.

#### **7. 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 Miami DDA 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 shall, beginning with the second request for payment, attach a Partial Release of Lien/Subcontractor's Statement of Satisfaction for each application for payment. Failure to submit such documentation may delay payments. The Miami DDA may, in its sole discretion withhold payments for Work performed by Subcontractor where no release of lien has been submitted. The Contractor shall submit with the final payment request, for any Project where subcontractors have performed Work, a Final Release of Lien/Subcontractor's Statement of Satisfaction for each Subcontractor marked as a final. Failure to submit such documentation will result in delay in payment or the Miami DDA withholding from the final payment such funds as necessary to satisfy any Subcontractor claims.

Where the Contractor has submitted a Performance/Payment Bond the Contractor may, in lieu of the Release of Lien/Subcontractor's Statement of Satisfaction, submit Consent of Surety to Requisition Payment.

#### **8. Progress Meetings**

The Miami DDA shall conduct a pre-construction conference prior to the commencement of the Work. Contractor shall hold progress and coordination meetings as required by the Project Manager or Engineer, to provide for the timely completion of the Work.

Contractor shall arrange and conduct regular bi-weekly job site Project status meetings with the Project Manager and/or Consultant. Contractor shall use the job site meetings as a tool

for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Contractor shall identify the party or parties responsible for following up on any problems, delay items or questions, and Contractor shall note the action to be taken by such party or parties. Contractor shall revisit each pending item at each subsequent meeting until resolution is achieved. Contractor shall attempt to obtain from all present any potential problems or delaying event known to them for appropriate attention and resolution. Contractor shall be responsible for keeping minutes of the meeting and distribution of the minutes to all parties in attendance.

The Contractor shall arrange for the participation of its subcontractors and/or vendors when the Project Manager requires their presence.

The Contractor shall maintain minutes of the meeting and distribute copies of the minutes to all parties in attendance.

### **9. Request for Information**

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

### **10. 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 the Project Manager or Consultant and if sufficient information is submitted by Contractor to allow the Project Manager or Consultant 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 the Project Manager or Consultant from anyone other than Contractor.

If the Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make application to the Project Manager or Consultant for acceptance thereof, certifying that the proposed substitute shall 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 shall 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 Work 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 will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall 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 shall be considered by the Project Manager or Consultant in evaluating the proposed substitute. The Project Manager or Consultant 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 the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Project Manager or Consultant, if the Contractor submits sufficient information to allow the Project Manager or Consultant to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager or Consultant shall be the same as those provided herein for substitute materials and equipment.

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

Contractor shall maintain sole liability and responsibility for ensuring that all substitutions and any required design of such are in full compliance with and meet all the requirements of the Contract Documents.

## **11. Project Site Facilities**

The Contractor shall arrange for all Project-site facilities as maybe necessary to enable the Project Manager or Consultant to perform their respective duties and to accommodate any representatives of the Miami DDA which the Miami DDA may choose to have present at the Project. Project-site facilities, include, but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the Construction Work.

Contractor's, Sub-Contractor's, supplier's, materialmen's personnel shall not use the Miami DDA restrooms that may be available at the Project 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 shall provide and maintain at his 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 Sub-Contractors shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

The Contractor shall furnish an adequate supply of drinking water for its and its Sub-Contractors' employees.

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

The Contractor shall be required to obtain all necessary permits required for any Project site facilities. Contractor shall 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 shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

## **12. Project Laboratory Testing Services**

The Miami DDA shall provide and pay for all Project Laboratory Services to perform quality assurance and quality control testing, except for those that may be required by regulatory agencies. Contractor shall be responsible for the costs associated with all such tests.

## **13. Security**

The site where the Work is to be performed may not be a secure site and the public may have access to the site. The Contractor shall have sole responsibility for the security of all Work materials, tools, equipment and Work at the Project site. The Miami DDA shall not be liable for any damage or loss to such materials, tools, equipment and Work and the Contractor shall be responsible for the repair or replacement of all Work such materials, tools, and equipment.

## **14. Construction Signage**

Where required by the Contract Documents the Contractor shall provide construction signage.

The Miami DDA shall provide the Contractor the wording and layout for the signs at the pre-construction conference. The Contractor shall furnish the two Miami DDA signs at the Project Site as follows:

The first sign must be manufactured by Image 2000, 45 East 9<sup>th</sup> Court, Hialeah, Florida (305) 884-2240 or approved equal. The sign shall be 4 feet wide and 8 feet high and constructed of pressure sensitive 2 mil cast vinyl over-mounted with 3 mil mylar and mounted to 1 MDO with painted back. The sign shall be mounted on 4 inch square wood or perforated "U" channel metal posts painted white, and be readable at eye level. The colors to be used on the sign are as follows: the background shall be white with blue lettering; the seal shall be white and gold with blue lettering form.

The second sign shall reflect other funding sources for the Project and shall reflect the Project information. The sign shall be 4 feet wide by 8 feet high by ¾ inch (thick) exterior plywood, suitably mounted and readable at eye level. The colors shall be blue and white.

The background shall be white and all lettering shall be blue Helvetica. All paint shall be rated outdoor enamel. The Miami DDA will provide the Miami DDA Seal in decal form.

The Contractor shall also post appropriate construction site warning signs at the Work Site. Such signs shall be posted to warn pedestrian and vehicle traffic. Signage shall also be placed waterside to alert boater to the construction zone, requiring idle speed and a minimum clearance distance. Contractor shall provide drawings for the signage, which shall be subject to approval by the Consultant.

The Project Manager and the Miami DDA shall approve the locations for all signage.

## Section 4 - BID FORM

Submitted: \_\_\_\_\_  
Date

Miami Downtown Development Authority  
200 S Biscayne Blvd, Ste 2929  
Miami, Florida 33131

The undersigned, as Bidder, hereby declares that the only persons interested in this bid as principal are named herein and that no person other than herein mentioned has any interest in this bid or in the Contract to be entered into; that this Bid is made without connection with any other person, firm, or parties making a Bid; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder further declares that it has examined the Contract Documents and all addenda thereto furnished before the opening of the bids, as acknowledged below; and that it has satisfied itself about the Work to be performed; and that it has submitted the required Bid Guaranty; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

The Bidder agrees, if this Bid is accepted, to contract with the Miami DDA, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

Bid No: 08-09-001

Title: Landscape and Irrigation Construction for Brickell Avenue

The Bidder also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the Miami DDA, each for not less than the total Contract award Value price plus alternates, if any, and to furnish the required Certificate(s) of Insurance.

The undersigned further agrees that the Bid guaranty accompanying the Bid shall be forfeited if Bidder fails to execute said Contract, or fails to furnish the required Performance Bond and Payment Bond or fails to furnish the required Certificate(s) of Insurance within fifteen (15) calendar days after being notified of the award of the Contract.

In the event of arithmetical errors, the Bidder agrees that these errors are errors, which may be corrected by the Miami DDA. In the event of a discrepancy between the price Bid in figures and the price Bid in words, the price in words shall govern. Bidder agrees that any unit price listed in the Bid is to be multiplied by the stated quantity requirements in order to arrive at the total. Bidder further agrees that all estimated quantities will be used solely for bid comparison purposes for the Miami DDA to determine the lowest Bidders. No guarantee is expressed or implied as to the total quantity of Work to be issued to a Contractor.

**BID FORM:**

Note: Bidders are bidding on a lump sum basis for the purpose of determining the lowest responsive and responsible Bidders. However, Contractors will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed.

**PROCEDURE FOR COMPLETING THE LINE ITEM PRICING:**

The failure to bid on the required bid items or all of the items in a specific category will result in the rejection of a Bid as non-responsive.

All Bidders must bid on all items.

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1.	Mobilization	LS	1	\$ _____	\$ _____
1A.	Removal of Existing Irrigation System	LS	1	\$ _____	\$ _____
1B.	Maintenance of Traffic	LS	1	\$ _____	\$ _____
1C.	Aspidistra Elatior (Cast Iron Plant) – 3 gal	Each	770	\$ _____	\$ _____
2.	Annuals	Each	3453	\$ _____	\$ _____
3	Alpina Sanderae (Variegated Ginger) – 3 gal	Each	724	\$ _____	\$ _____
4.	Crinum Augustum (Queen Emma) – 3 gal	Each	217	\$ _____	\$ _____
5	Ficus (Green Island Ficus) – 3 gal	Each	1286	\$ _____	\$ _____
6.	Hamelia Nodosa (Dwarf Firebush) – 3 gal	Each	880	\$ _____	\$ _____
7.	Liriope Muscari “Variegata” (Variegated Liriope) – 1 gal	Each	5591	\$ _____	\$ _____
8.	Nephrolepis Exaltata (Boston Fern “Compacta”) – 3 gal	Each	2112	\$ _____	\$ _____
9.	Ophiopogon Japonicus (Mondo Grass) – 1 gal	Each	3600	\$ _____	\$ _____
10.	Philodendron Burle Marx – 3 gal	Each	708	\$ _____	\$ _____

11.	Philodendron Spp. (Rojo Congo) – 3 gal	Each	816	\$ _____	\$ _____
12.	Psychotria Sulzneri (Velvet leaf wild coffee) – 3 gal	Each	123	\$ _____	\$ _____
13.	Peperomia Obtusifolia (Peperomia) – 1 gal	Each	979	\$ _____	\$ _____
14.	Philodendron Xanadu (Xanadu) – 3 gal	Each	276	\$ _____	\$ _____
15.	Schefflera Arboricola (Dwarf Schefflera Variegated) – 3 gal	Each	128	\$ _____	\$ _____
16.	Tulbaghia Violacea (Society Garlic) – 1 gal	Each	1580	\$ _____	\$ _____
17.	Shrub Spray	Each	121	\$ _____	\$ _____
18.	12" pop-up spray	Each	496	\$ _____	\$ _____
19.	1" Solenoid valve	Each	16	\$ _____	\$ _____
20.	1 ½" Solenoid valve	Each	6	\$ _____	\$ _____
21.	4 Station Controller	Each	2	\$ _____	\$ _____
22.	12 Station Controller	Each	2	\$ _____	\$ _____
23.	Rain Sensor	Each	4	\$ _____	\$ _____
24.	Pressure Vacuum Breaker	Each	4	\$ _____	\$ _____
25.	#12 AWG Wire	LF	1800	\$ _____	\$ _____
26.	#14 AWG Wire	LF	9000	\$ _____	\$ _____
27.	2" HDPE Sleeve	LF	80	\$ _____	\$ _____
28.	3" HDPE Sleeve	LF	100	\$ _____	\$ _____
29.	4" HDPE Sleeve	LF	70	\$ _____	\$ _____
30.	6" HDPE Sleeve	LF	110	\$ _____	\$ _____

31.	2" SCH 40 PVC Sleeve	LF	20	\$ _____	\$ _____
32.	3" SCH 40 PVC Sleeve	LF	40	\$ _____	\$ _____
33.	2 1/2" SCH 40 PVC	LF	1040	\$ _____	\$ _____
34.	2" SCH 40 PVC	LF	60	\$ _____	\$ _____
35.	1 1/2" SCH 40 PVC	LF	540	\$ _____	\$ _____
36.	1 1/4" SCH 40 PVC	LF	800	\$ _____	\$ _____
37.	1" SCH 40 PVC	LF	2400	\$ _____	\$ _____
38.	3/4" SCH 40 PVC	LF	1900	\$ _____	\$ _____
39.	Gate Valve	Each	4	\$ _____	\$ _____
40.	Valve Box	Each	26	\$ _____	\$ _____
41.	Grounding Location	Each	3	\$ _____	\$ _____
42.	Wire Conduit	Each	1750	\$ _____	\$ _____
	Total:				\$ _____

BID FORM:

DIRECTIONS: Complete Part I Or Part II, Whichever Applies, And Parts III And IV.

**Part I:** Listed below are the dates of issue for each Addendum received in connection with this Bid:

Addendum No. 1, Dated \_\_\_\_\_  
Addendum No. 2, Dated \_\_\_\_\_  
Addendum No. 3, Dated \_\_\_\_\_  
Addendum No. 4, Dated \_\_\_\_\_

**Part II:** \_\_\_\_\_ No addendum was received in connection with this Bid.

**Part III: Certifications**

The Bidder, by virtue of signing the Bid Form, affirms that the Bidder is aware of the following, and shall comply with all the stated requirements.

1. Affirmative Action Plan

Successful bidder(s) shall establish an Affirmative Action Plan or an Affirmative Action Policy pursuant to Ordinance #10062 as amended. Effective date of implementation must be indicated on the policy: and

2. First Source Hiring

Bidder certifies that it has read and understood the provisions of Miami DDA of Miami Ordinance Section 18-110, pertaining to the implementation of a "First Source Hiring Agreement". Evaluation of bidder's responsiveness to Ordinance Section 18-110 may be a consideration in the award of a contract.

3. Non-Collusion

Bidder certifies that the only persons interested in this Bid are named herein; that no other person has any interest in this Bid or in the Contract to which this Bid pertains; that this Bid is made without connection or arrangement with any other person; and

4. Drug Free Workplace

The undersigned Bidder hereby certifies that it will provide a drug-free workplace program by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Bidder's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing a continuing drug-free awareness program to inform its employees about:

- (i) The dangers of drug abuse in the workplace;
  - (ii) The Bidder's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs;
- and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Giving all employees engaged in performance of the Contract a copy of the statement required by subparagraph (1);

(4) Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered Contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;

(5) Notifying the Miami DDA in writing within ten (10) calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:

Taking appropriate personnel action against such employee, up to and including termination; or

Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs (1) through (6); and

## 5. Lobbying

The undersigned certifies to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This undersigned shall require that the language of this certification be included in the award documents for "All" sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure; and

**\* Note:** In these instances, "All" in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per QMB).

6. Debarment, Suspension and Other Responsibility Matters

The Bidder certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 1.b of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective Bidder is unable to certify to any of the statements in this certification, such Bidder shall submit an explanation to the Miami DDA.

**Part IV; Certification – Trench Safety Act**

The Bidder, by virtue of signing the Bid Form, affirms that the Bidder is aware of the Trench Safety Act, and will comply with all applicable trench safety standards. Such assurance shall be legally binding on all persons employed by the Bidder and subcontractors.

The Bidder is also obligated to identify the anticipated method and cost of compliance with the applicable trench safety standards.

Bidder acknowledges that included in the various items of the proposal and in the total Bid price are costs for complying with the Florida Trench Safety Act. These items are a

breakout of the respective items involving trenching and will not be paid separately. They are not to be confused with bid items in the schedule of prices, nor be considered additional work.

BID FORM:

The Bidder further identifies the costs and methods summarized below:

Description	Unit	Quantity Price	Unit Price	Extended	Method
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total \$ \_\_\_\_\_

Attached is a Bid Bond [ ], Cash [ ], Money Order [ ], Unconditional / Irrevocable Letter of Credit [ ], Treasurer's Check [ ], Bank Draft [ ], Cashier's Check [ ], Bid Bond Voucher [ ] or Certified Check [ ] No. \_\_\_\_\_ Bank of \_\_\_\_\_ for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The Bidder shall acknowledge this Bid and certifies to the above stated in Part III and IV by signing and completing the spaces provided below.

Firm's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

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

Facsimile No.: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Social Security No. or Federal I.D.No.: \_\_\_\_\_

Dun and Bradstreet No.: \_\_\_\_\_ (if applicable)

If a partnership, names and addresses of partners:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BID FORM:**  
(IF CORPORATION)

**CERTIFICATE OF AUTHORITY**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.

I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Secretary: \_\_\_\_\_

Print: \_\_\_\_\_

(IF PARTNERSHIP)

**CERTIFICATE OF AUTHORITY**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the to execute bids on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Partner: \_\_\_\_\_

Print: \_\_\_\_\_

(IF JOINT VENTURE)

**CERTIFICATE OF AUTHORITY**

Joint ventures must submit a joint venture agreement indicating that the person signing this Bid is authorized to sign Bid documents on behalf of the joint venture. If there is no joint venture agreement each member of the joint venture must sign the Bid and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

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(IF INDIVIDUAL)

**CERTIFICATE OF AUTHORITY**

I HEREBY CERTIFY that, I (Name) \_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_ (If Applicable) have executed and am bound by the terms of the Bid to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_  
Print: \_\_\_\_\_

**BID FORM:**

NOTARIZATION

STATE OF \_\_\_\_\_ )

SS:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did not) take an oath.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

Section 5- Attachments

**BID BOND FORM** (Page 1 of 3)

STATE OF \_\_\_\_\_ )  
SS:  
COUNTY OF \_\_\_\_\_ )

KNOWN ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ as Principal, \_\_\_\_\_ as Surety, are held and firmly bound unto The Miami DDA, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid, dated \_\_\_\_\_, 20 , for:

Landscape and Irrigation Construction for Brickell Avenue, Bid No. 08-09-001

NOW THEREFORE:

If the principal shall not withdraw said Bid within sixty (60) days after date of opening the same, and shall within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the Miami DDA, in accordance with the bid as accepted, and give bond with good and sufficient Surety or Sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or,

In the event if the withdrawal of said Bid within the period specified, or the failure to enter into such contract and give such bond within the time specified, if the principal shall pay the Miami DDA the difference between the amount specified in said Bid and the amount for which the Miami DDA may procure the required Work and supplies, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

**BID BOND FORM** (Page 2 of 3)

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., 20\_\_\_\_, the name and corporate seal of each party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

WITNESS: (If Sole Ownership, Partnership, or Joint Venture, two (2) Witnesses are required. If Corporation, Secretary only will attest and affix seal.)

PRINCIPAL: (Name of Firm)

\_\_\_\_\_  
\_\_\_\_\_

Affix Seal

\_\_\_\_\_  
(Signature of authorized officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
City State Zip

Surety:

\_\_\_\_\_  
(Corporate Surety)

Affix Seal

\_\_\_\_\_  
\_\_\_\_\_  
Surety Secretary

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
City State Zip

**BID BOND FORM** (Page 3 of 3)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_ of said corporation; that I know his signature, and the signature hereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

(Corporate Seal) \_\_\_\_\_

STATE OF \_\_\_\_\_)

SS:

COUNTY OF \_\_\_\_\_)

Before me, a Notary Public duly commissioned, and qualified, personally appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath, says that he/she is the attorney-in-fact, for the \_\_\_\_\_ and that he/she has been authorized by \_\_\_\_\_ to execute the foregoing bond on behalf of the Contractor named therein in favor of The Miami DDA of Miami, Florida.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ A. D., 20\_\_\_\_.

INSTRUCTIONS: (Bid Bonds must be accompanied by a Power of Attorney, in compliance with Instructions to Bidders)

\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission Expires:  
\_\_\_\_\_

SUPPLEMENT TO BID FORM:  
QUESTIONNAIRE

THIS COMPLETED FORM **MUST BE SUBMITTED WITH THE BID**, THE MIAMI DDA MAY, AT ITS SOLE DISCRETION, REQUIRE THAT THE BIDDER SUBMIT ADDITIONAL INFORMATION NOT INCLUDED IN THE SUBMITTED FORM. SUCH INFORMATION MUST BE SUBMITTED WITHIN SEVEN (7) CALENDAR DAYS OF THE MIAMI DDA'S REQUEST. FAILURE TO SUBMIT THE FORM OR ADDITIONAL INFORMATION UPON REQUEST BY THE MIAMI DDA SHALL RESULT IN THE REJECTION OF THE BID AS NON-RESPONSIVE.

The undersigned authorized representative of the Bidder certifies the truth and accuracy of all statements and the answers contained herein.

1. How many years has your organization been in business while possessing one of the licenses, certifications, or registrations?

License/Certification/Registration Name and Number	# Years
_____	_____
_____	_____
_____	_____

1A. What is your primary business? \_\_\_\_\_

2. What is the last project of this nature that you have completed? (in excess of \$1,000,000.00)

\_\_\_\_\_  
\_\_\_\_\_.

3. Have you ever failed to complete any work awarded to you? If so, where and why?

\_\_\_\_\_  
\_\_\_\_\_.

4. Give owner names, addresses and telephone numbers, and Surety and project names, for all projects for which you have performed work, where your Surety has intervened to assist in completion of the project, whether or not a claim was made.

\_\_\_\_\_  
\_\_\_\_\_.

5. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed work:

(name)	(address)	(phone #)
(name)	(address)	(phone #)
(name)	(address)	(phone #)

6. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all coventurers.)

NAME OF PROJECT	OWNER & PHONE #	TOTAL CONTRACT VALUE	% OF COMPLETION PER CONTRACT	COMPLETION TO DATE

(Continue list on insert sheet, if necessary.)

7. Has a representative of the Bidder completely inspected the proposed project and does the Bidder have a complete plan for its performance?

Yes No

8. Will you subcontract any part of this Work? If so, provide the following details for each subcontractor(s) that will perform work under the contract amount. (Attach additional sheets if necessary)

Subcontractor Name	Approx. Percentage	Small Business Status	Description of Work

The foregoing list of Subcontractor(s) may not be amended after award of the Contract without the prior written approval of the Project Manager, whose approval shall not be unreasonably withheld.

9. What equipment do you own that is available for the Work?

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10. What equipment will you purchase for the proposed Work?

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11. What equipment will you rent for the proposed Work?

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12. State the name of your proposed project manager and superintendent and give details of his or her qualifications and experience in managing similar work.

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13. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name).

13.1 The correct name of the Bidder is \_\_\_\_\_.

13.2 The business is a (Sole Proprietorship) (Partnership) (Corporation).

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13.3 The address of principal place of business is

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13.4 The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

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13.5 List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

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13.6. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

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13.7. List and describe all successful Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).

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13.8 List all claims, arbitrations, mediations, civil actions, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; a description of the subject matter of the dispute; and the final outcome of the claim.

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13.9. List and describe all criminal proceedings or hearings concerning business related offenses in which the Bidder, its principals or officers or predecessor organization(s) were defendants.

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13.10. Has the Bidder, its principals, officers or predecessor organization(s) been debarred or suspended from bidding by any government during the last five (5) years? If yes, provide details.

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13.11. Under what conditions does the Bidder request Change Orders?

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13.12. What is the nature and amount of the three largest change orders submitted by the bidder within the past five years, and their disposition?

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SUPPLEMENT TO BID FORM:  
CUSTOMER REFERENCE LISTING

Contractors shall furnish the names, addresses, and telephone numbers of a minimum of five (5) firms or government organizations for which the Contractor has provided services for projects of similar size, scope and complexity over a five (5) year period.

- 1) Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person/Contract Amount \_\_\_\_\_  
Telephone No. /Fax No. \_\_\_\_\_
  
- 2) Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person/Contract Amount \_\_\_\_\_  
Telephone No. /Fax No. \_\_\_\_\_
  
- 3) Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person/Contract Amount \_\_\_\_\_  
Telephone No. /Fax No. \_\_\_\_\_
  
- 4) Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person/Contract Amount \_\_\_\_\_  
Telephone No. /Fax No. \_\_\_\_\_
  
- 5) Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person/Contract Amount \_\_\_\_\_  
Telephone No. /Fax No. \_\_\_\_\_

SUPPLEMENT TO BID FORM:  
OFFICE LOCATION AFFIDAVIT (Page 1 of 2)

Please type or print clearly. This Affidavit must be completed in full, signed and notarized ONLY IF YOU MAINTAIN AN OFFICE WITHIN THE CORPORATE LIMITS OF THE CITY OF MIAMI, FL.

Legal Name of Firm: \_\_\_\_\_

Entity Type: (Check One)             Partnership    Sole Proprietorship    Corporation

Corporation Document No: \_\_\_\_\_ Date Established \_\_\_\_\_

Occupational License No: \_\_\_\_\_ Date of Issuance \_\_\_\_\_

Office Location (Establishment of the Bidder):

PRESENT

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

City: \_\_\_\_\_ State: \_\_\_\_\_ How long at this location \_\_\_\_\_

PREVIOUS

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

City: \_\_\_\_\_ State: \_\_\_\_\_ How long at this location: \_\_\_\_\_

According to Section 18-85 of the City of Miami Code, as amended:

The "Miami DDA Commission may offer to a responsible and responsive local bidder, who maintains an office in the City of Miami, the opportunity of accepting a Bid at the low bid amount, if the original bid amount submitted by the local bidder does not exceed 110 percent of the lowest other responsible and responsive bidder."

The intention of this section is to benefit local bona fide Bidders to promote economic development within the corporate limits of the City of Miami.

I (we) certify, under penalty of perjury, that the office location of our firm has not been established with the sole purpose of obtaining the advantage granted bona fide local Bidders by this section.

SUPPLEMENT TO BID FORM:  
OFFICE LOCATION AFFIDAVIT (Page 2 of 2)

_____ Authorize Signature	_____ Authorized Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title
_____ Authorized Signature	_____ Authorized Signature

(Must be signed by the corporate secretary of a Corporation or one general partner of a partnership or the proprietor of a sole proprietorship or all partners of a joint venture.)

NOTARIZATION  
STATE OF FLORIDA, COUNTY OF DADE

That: \_\_\_\_\_ personally  
appeared before me and acknowledged the foregoing instrument as his/her act and deed.  
That he/she has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Please submit with your Bid copies of Occupational License, professional and/or trade License to verify local status. The Miami DDA also reserves the right to request a copy of the corporate charter, corporate income tax filing return and any other documents(s) to verify the location of the firm's office.

Section 6- Contract Execution Form

THIS Contract \_\_\_\_\_(contract number) made this \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ by and between THE MIAMI DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF MIAMI, FLORIDA, hereinafter called the "MIAMI DDA," and \_\_\_\_\_(name of Contractor)

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

WITNESS/ATTEST

**(CONTRACTOR NAME)**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

*Print Name, Title*

*Print Name, Title of Authorized Officer or Official*

ATTEST:

(Corporate Seal)

CONTRACTOR Secretary  
(Affirm CONTRACTOR Seal, if available)

ATTEST:

**MIAMI DDA**, a municipal government of the State of Florida

Sandra A. Hernandez, Board Secretary

Alyce M. Robertson, Miami DDA Executive Director

APPROVED AS TO INSURANCE REQUIREMENTS:

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

Meredith J. Nation, Deputy Director  
Miami DDA

Veronica Xiques, Assistant City Attorney for the  
City of Miami assigned to the Miami DDA

CORPORATE RESOLUTION

WHEREAS, \_\_\_\_\_, Inc. desires to enter into an contract with the Miami DDA 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 \_\_\_\_\_, 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 Miami DDA 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 Miami DDA of Miami, Florida, as Obligee, hereinafter called Miami DDA, 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, Bid/Contract No: **07-08-013**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Miami DDA 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 Miami DDA for construction of \_\_\_\_\_, 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 Miami DDA all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Miami DDA 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 shall be, and declared by Miami DDA to be, in default under the Contract, Miami DDA having performed Miami DDA obligations hereunder, the Surety may promptly remedy the default, or shall 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 Documents, and upon determination by Surety of the lowest responsible Bidder, or, if Miami DDA elects, upon determination by Miami DDA and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Miami DDA, 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, shall mean the total amount payable by Miami DDA to Contractor under the Contract and any amendments thereto, less the amount properly paid by Miami DDA to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Miami DDA 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\_\_\_\_\_.

WITNESSES:

\_\_\_\_\_  
Secretary  
(CORPORATE SEAL)  
  
By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name and Title)

IN THE PRESENCE OF:

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

INSURANCE COMPANY:

Agent and Attorney-in-Fact  
Address: \_\_\_\_\_  
(Street)  
\_\_\_\_\_  
(Miami DDA/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 Miami DDA of Miami, Florida, as Obligee, hereinafter called Miami DDA, 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, Bid/Contract No. **08-09-001**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Miami DDA 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. Pays Miami DDA all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Miami DDA 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 SHALL BE VOID; OTHERWISE, IT SHALL 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 shall, 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.

A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, 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.

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.

FORM OF PAYMENT BOND (Page 2 of 2)

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

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bond (Performance Bond and Payment Bond); that \_\_\_\_\_, who signed the Bond(s) on behalf of the Principal, was then \_\_\_\_\_ of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to on behalf of said corporation by authority of its governing body.

(SEAL)

\_\_\_\_\_  
Secretary (on behalf of)  
\_\_\_\_\_  
Corporation

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared \_\_\_\_\_ to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond (Performance Bond and Payment Bond) on behalf of Contractor named therein in favor of Miami DDA.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My commission expires: \_\_\_\_\_

Notary Public, State of Florida at Large  
\_\_\_\_\_

Bonded by \_\_\_\_\_

PERFORMANCE AND PAYMENT GUARANTY FORM  
UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT: (Page 1 of 2)

Date of Issue \_\_\_\_\_

Issuing Bank's No. \_\_\_\_\_

Beneficiary:

Miami DDA

200 S Biscayne Blvd, Ste 2929

Miami, Florida 33131

Applicant:

Amount: \_\_\_\_\_  
in United States Funds

Expiry:

(Date)

Bid/Contract Number \_\_\_\_\_

We hereby authorize you to draw on \_\_\_\_\_

(Bank, Issuer name)

at \_\_\_\_\_ by order

(branch address)

of and for the account of \_\_\_\_\_  
(contractor, applicant, customer)

up to an aggregate amount, in United States Funds, of \_\_\_\_\_ available by  
your drafts at sight, accompanied by:

1. A signed statement from the Miami DDA Manager or his authorized designee, that  
the drawing is due to default in performance of certain obligations on the part  
of \_\_\_\_\_ (contractor, applicant, customer) agreed  
upon by and between the Miami DDA of Miami, Florida and  
\_\_\_\_\_(contractor, applicant, customer),  
pursuant to Bid/Contract No. \_\_\_\_\_ for \_\_\_\_\_ (name of project) and Section  
255.05, Florida Statutes.

Drafts must be drawn and negotiated not later than \_\_\_\_\_.  
(expiration date)

PERFORMANCE AND PAYMENT GUARANTY FORM  
UNCONDITIONAL/IRREVOCABLE LETTER OF CREDIT: (Page 2 of 2)

Drafts must bear the clause: "Drawn under Letter of Credit No. \_\_\_\_\_  
(Number), of \_\_\_\_\_ (Bank name) dated \_\_\_\_\_.

This Letter of Credit shall be renewed for successive periods of one (1) year each unless we provide the Miami DDA with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any renewed one (1) year term. Notification to the Miami DDA that this Letter of Credit will expire prior to performance of the Contractor's obligations will be deemed a default.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, or amplified by reference to any documents, instrument, or agreement referred to herein or to which this Letter of Credit is referred or this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon presentation to the drawee.

Obligations under this Letter of Credit shall be released one (1) year after the Final Completion of the Project by the \_\_\_\_\_.  
(contractor, applicant, customer)

This Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce (1993 revision), Publication No. 500 and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

\_\_\_\_\_  
Authorized Signature