Facilities Technician Services

Contract No. 2016-28

MIAMI LAKES
Growing Beautifully

The Town of Miami Lakes Council:

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

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

SECTION 1

TERMS AND CONDITIONS

1.1 DEFINITION OF TERMS

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

Contract means the documents that have been executed by the Contractor and the Town subsequent to approval of award by the Town.

Contract Documents means the Contract as may be amended from time to time, to include but not be limited to clarifications, directives, change orders, payments and other such documents issued under or relating to the Contract.

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

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

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

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

Emergency Work means Work identified by the Town that requires the Contractor to respond with Personnel within sixty (60) minutes of notification by the Project Manager(s).

Personnel means a person(s) assigned by the Contractor to complete the Work under assigned under the Contract, including all tools, equipment and means of transportation necessary to perform the Work.

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

Premium Time means any time outside of Regular Hours during which Contractor shall be paid at 1.5 times the hourly rate stated in the Bid Form.

Project Manager means the individual(s) assigned by the Town Manager to manage the Work assigned and performed under the Contract.

Regular Hours means the hours specified in Article 1.48 during which the Contractor shall be paid.

Services mean the Scope of Work and all of the tasks required by the Contract Documents.

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

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

Work or Task means work or tasks to be completed as issued under the Contract.

Work Order means a document issued by the Town awarding a specific Project to a Contractor.

1.2 INTENTION OF THE TOWN

It is the intent of the Town to describe herein the Work to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract. Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade or industry meanings are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. The Town shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

1.3 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.

Dates and time periods set forth in any Work Order issued under the Contract for the commencement and completion of Work is included because of its importance to the Town.

1.4 NOTICES

Whenever either party desires to give written notice to the other relating to the Contract, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice shall remain 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:

For Town:

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

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

For Contractor:
Eskimo Air Conditioning & Appliances

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

1.5 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 or any plans, 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 will govern;

- Revisions and Change Orders to the Contract shall govern over the Contract.
- The Contract Documents shall govern over the Contract.

- Terms and Conditions in the Contract will govern over terms and conditions stated on the plans or in the specifications.

1.6 INDEMNIFICATION

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

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

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

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

1.7 INSURANCE

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

a. **Worker's Compensation and Employer's Liability Insurance:** For all employees of the Contractor as required by Florida Statute 440

b. **Employer's Liability:** Limit for each bodily injury by an accident shall be $300,000 policy limit for each accident, per employee, including bodily injury caused by disease.

c. **Comprehensive Business Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than $300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must

be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

d. **Commercial General Liability ("CGL").** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than $300,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office.

- CGL Required Endorsements
- Employees included as insured
- Contingent Liability/Independent Contractors Coverage
- Contractual Liability
- Waver of Subrogation

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

e. **Certificate of Insurance:** Contractor shall provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically cite this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.

f. **Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town shall be named as additional insured under the CGL and business automobile insurance. Town shall be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

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

Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this section or any other section of the Contract.

Issuance of a purchase order/work order is contingent upon receipt and maintaining of the required insurance documents. Failure to comply may result in the rescission of the award.

The Contract is responsible for assuring that the insurance required certificates remain in full force for the duration of the Contract. Failure to maintain such insurance certificates may result in delays in issuing payment to the Contractor, issuance of a stop work order by the Town, or termination of the Contract for default.

1.8 GENERAL REQUIREMENTS

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

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

The Contractor agrees to replace any of the Contractor's personnel assigned to a Task(s) 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 necessary to perform the Work, in a competent and professional manner.

The Contractor shall at all times cooperate with the Project Manager and coordinate its respective Work efforts to most effectively and efficiently performance of the Work.

1.9 RULES AND REGULATIONS

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

1.10 SITE INVESTIGATION AND REPRESENTATION

Should the Contractor identify any utilities, structures, etc., which will or may be encountered during the performance of the Work, the Town shall be consulted immediately in order for a decision to be made on the potential relocation or other action(s) to be taken as it relates to the Work. The Contractor shall not purposefully disrupt or disconnect any type of utility whatsoever without first obtaining the prior written approval of the Town or applicable utility owner.

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. The Contractor shall not purposefully disrupt or disconnect any type of utility whatsoever without first obtaining the prior written approval of the Project Manager.

1.11 METHOD OF PERFORMING THE WORK

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

The Work to be performed shall be done in such a manner so as not to interfere with the normal Town operations. The manner in which the Work is performed shall be subject to the approval of the Project Manager, 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 Town services without the prior written approval of the Project Manager.

The Contractor shall protect public and private property, and utilities from injury or loss arising in connection with the Work, and take all necessary precautions to prevent accidents, injuries, or damage to persons or property on or near the Work.

The Contractor shall be responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, irrigation, walks, drives, structures or utilities). Contractor shall be

responsible for documentation including photos of the work site before and after the authorized services/work is conducted to verify property's pre-existing and post-existing condition.

1.12 COORDINATION OF THE WORK

Operations and events/programs may be ongoing at locations where Work will be performed. The Contractor shall coordinate the Work with the Project Manager to minimize any potential adverse impacts.

1.13 SAFETY PRECAUTIONS

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to property, persons, or employees.

The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. Any fines levied by the above mentioned authorities for failure to comply shall be the sole responsibility of the Contractor.

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

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

The Contractor shall provide such equipment as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the performance of the Work. Contractor shall immediately report to the Project Manager every accident to persons and shall furnish in writing full information, including witness statements, regarding any and all accidents.

The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.

Contractor shall provide a complete set of Material Safety Data Sheets (MSDS) to the Project Manager prior to initial product utilization. This information must be provided prior to the use of any such materials, or supplies.

For additional information on the Federal Right to Know Regulation, contact OSHA at www.OSHA.gov or call (954) 424-0242.

1.14 LABOR, MATERIALS, AND EQUIPMENT

Unless otherwise directed by the Project Manager, Contractor shall provide labor, tools, equipment, means of transportation, and any other non-consumable articles necessary for the proper execution and completion of the Work. The Town may supply all consumable materials to be used in the performance of services; however the Town reserves the right to access materials and equipment through the Contractor using the pre-determined percentage mark-up.

In addition to materials required to complete the Work, the Town may also provide equipment such as an electronic tablet or other device to be utilized by the Contractor. The Contractor shall ensure that the device is kept in good working condition and will be responsible for paying for repairs or replacement costs if the device is damaged, lost or stolen while checked out by the Contractor.

The Town may rent specialty equipment including bucket trucks, hi-lifts, and scaffolding and similar items; however the Town reserves the right to access equipment through the Contractor using the pre-determined percentage mark-up.

At the Project Manager's direction, Contractor shall be responsible for pick up and drop off of rental equipment as applicable.

1.15 PROJECT SUPERVISION

Contractor shall be responsible for all supervision of the Work to ensure that the Work is performed in accordance with the Contract Documents.

The Project Manager and the Contractor shall meet as often as deemed necessary by the Project Manager, before, during, or after the performance of the Work to review the Work and resolve any outstanding issues.

1.16 SUBCONTRACTORS

Contractor shall not subcontract any of the Work to be performed under this Contract, unless approved by the Town Manager.

1.17 AUTHORITY OF THE PROJECT MANAGER(S)

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

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

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

The Project Manager may dictate means, methods, techniques, sequences or procedures, or for safety precautions 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.

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

The Project Manager or designee shall inspect the Work and has the authority to reject Work that does not conform to the Contract Documents.

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

1.18 DEFECTIVE OR NON-COMPLIANT WORK

Contractor shall promptly either correct all rejected Work or remove such rejected Work and replace it with compliant Work. Contractor shall bear all direct, and indirect costs of such removal or corrections.

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

1.19 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.

1.20 REMOVAL OF UNSATISFACTORY PERSONNEL

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

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

The Town may request that a Contractor's employee be removed for accepting gratuities.

1.21 CLAIMS

Any claim shall be made by written notice by Contractor to the Town representatives identified in Article 1.4 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 Town Manager or designee allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes shall be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract shall be waived if not submitted in strict accordance with the requirements of this Article.

1.22 DISPUTES AND MEDIATION

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

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

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager identified in Article 1.4, Notices, of the claim or dispute

The Contractor shall submit its dispute in writing, with all supporting documentation, to the Procurement Manager, as identified in Article 1.4, Notices. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

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

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

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

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Term, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator shall be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

1.23 CONTINUING THE WORK

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

1.24 FRAUD AND MISREPRESENTATION

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

1.25 STOP WORK ORDER

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order 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 Town shall either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 1.28, Termination for Convenience.

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

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

1.26 TERMINATION FOR CONVENIENCE

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

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

- Take such action as may be necessary for the protection and preservation of the Town's materials and property;
- Remove all materials, supplies or equipment that may be used by the Contractor on the Work;
- Take no action that shall increase the amounts payable by the Town under the Contract Documents; and take reasonable measures to mitigate the Town's liability under the Contract Documents; and
- All documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

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

1.27 CONTRACTOR'S RIGHT TO TERMINATE

The Contractor will have the right to terminate this Agreement, in writing, within thirty (30) days from the date of the Town's receipt of a written statement from Contractor except that when an open permit exists.

1.28 TOWN MAY AVAIL ITSELF OF ALL REMEDIES

The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. 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.

1.29 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

Contractor shall not unlawfully discriminate against any person, shall provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contact.

1.30 INDEPENDENT CONTRACTOR

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

1.31 THIRD PARTY BENEFICIARIES

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

1.32 ASSIGNMENT OR SALE OF CONTRACT

The performance of this Contract shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor. 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.

Any transference without Town approval shall be cause for the Town to terminate this Contract.

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.

1.33 MATERIALITY AND WAIVER OF BREACH

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

1.34 DEFENSE OF CLAIMS

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

1.35 FUNDS AVAILABILITY

Funding for this Contract is contingent on the availability of Town funds.

1.36 ACCESS TO AND REVIEW OF RECORDS

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

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

1.37 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN

In the event the Contractor may be deemed to have a cause of action against the Town, no action shall lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Contract Documents by reason of any act or omission or requirement of the Town 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 the Contract is terminated under the provisions of the Contract, unless such action is commenced within six (6) months after the date of such termination by the Town.

1.38 APPLICABLE LAW AND VENUE OF LITIGATION

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

1.39 ATTORNEY'S FEES AND COSTS

Contractor hereby agrees that in the event either the Town or Contractor must initiate litigation to enforce this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs, at all levels of litigation, including trials and appeals, including fees for litigating entitlement to and amount of attorney's fees.

1.40 NON-EXCLUSIVE CONTRACT

The Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and services enumerated herein, or any portion thereof, as it sees fit, including but not limited to: Award of other contracts, use of another contractor, or perform the Work with its own employees.

1.41 SEVERABILITY

In the event 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.

1.42 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.

1.43 ENTIRE AGREEMENT

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

1.44 COMPENSATION AND WORK HOURS

The Contractor shall provide pre-approved Personnel on an as needed basis at the direction of the Project Manager or designee. A Work Order will define appropriate scope tier in accordance with Attachment "A". Contractor shall be paid for actual work performed unless otherwise stipulated in Work Order. The Town will schedule work in four hour blocks and if the Town fails to do so will guarantee a minimum of four (4) times the hourly rate.

For the purposes of this agreement, the Town's business hours are 8:30 am until 5:00 pm, Monday through Friday. Special Town events may be held on Saturdays between the hours of 8:00 am until 10:00 pm. Overtime rates shall apply to any work commenced outside of aforementioned hours or on Sunday at a rate of 1.5 times the regular hourly rate. No overtime rates are permitted on equipment. All Work shall be performed in accordance with the hours set forth in the Town's noise Ordinance No. 04-50 unless otherwise specified in writing.

The Town reserves the right to request Contractor's Price Proposal for minor Town-owned projects. The Price Proposal submitted by the Contractor shall establish the time to perform a Work Order.

1.45 CONTRACT TERM

This Agreement shall be effective upon execution and remain in effect for a period of three (3) years. The Town at its sole option may opt to renew (OTR) the Contract for two (2) additional twelve (12) month periods. Any Option shall be effective upon receipt of a written notice from the Town Manager to the Contractor.

1.46 PRICE ADJUSTMENTS DURING THE CONTRACT

Contractor's price(s) shall remain fixed and firm during the term of Contract with the following exception:

Adjustments to the rates paid under this Contract may be annually indexed to inflation as defined by the Consumer Price Index (CPI) calculated by the U.S. Department of Labor as applied to the County of Miami-Dade using the Consumer Price Index, Miami, All Urban Consumers figures provided for the period ending December 31 and thereafter on an annual basis in the same way for succeeding years. Said increases must be requested in writing by the Contractor not later than thirty (30) days prior to the expiration of each Contract year and will be effective upon the commencement of the new Contract year. Retroactive increases shall not be permitted.

1.47 INVOICES

Contractor shall provide the Town with an invoice every thirty (30) days. Unless otherwise approved in writing in advance the Contractor must use the invoice form provided by the Town. At a minimum the invoice must contain the following information:

- Name and address of the Contractor

- Contract number
- Purchase Order Number
- Date of invoice
- Invoice numbers (Invoice numbers cannot be repeated)
- Applicable hourly rate(s)
- Extension amount(s)
- Total value of the invoice

Failure to include the above information will delay payment. Payments will not be made based on statements of accounts.

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

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

- Defective/Rejected Work not remedied.
- Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or Town because of Contractor's performance.
- Failure of Contractor to provide any and all documents required by the Contract Documents.
- Any amount of any claim by a third party;
- Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town 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.

1.48 UNIFORMS

All Contractor employees shall wear a distinctive, neat, and freshly laundered uniform shirt as provided by the Town. The Project Manager may request removal of any employee not properly uniformed. Uniform, including shoes, color and design, must be approved by the Project Manager.

Appropriate protective clothing, shoes and other safety equipment must be worn as required by the Project Manager.

1.49 VEHICLE IDENTIFICATION

The Town shall issue a vehicle identification magnet with the Town's logo to Contractor on a check-out basis. All vehicles used in the performance of Contractor's work/services shall be identified accordingly. Under no circumstances shall the Contractor display the magnet when not performing pre-authorized services for the Town.

1.50 SCAVENGING

Scavenging by any of the Contractor's personnel is prohibited and the Project Manager may require removal any employee who scavenges from performing any further Work.

1.51 WARRANTY

Contractor shall warrant its work for ninety (90) days from date of completion. Where equipment is installed the manufacturer's warranty shall be provided to the Town.

End of Section

SECTION 2

WORK ORDER ASSIGNMENTS

2.1 WORK ORDER BASED TASKS

A Work Order must be issued for all Work performed under the Contract. Work Orders may be issued based hourly rates, or time and materials depending on the type of Work to be performed with payments based on the rates established in Attachment "A". The chosen methodology will be the most cost-effective for the Town, taking into account administrative time, necessary coordination, required materials and other factors. The execution of the contract does not entitle Contractor to perform any specific Work or job.

Upon identifying Tasks to be performed on an as needed basis, the Project Manager will notify the Contractor of the required services. This notification will include the following:

- A Work Order for Work to be performed based on pre-established pricing
- A request for a Work Order Proposal ("WOP") for review by the Project Manager

A. Work Orders for As-Needed Tasks

The Project Manager may issue a Work Order based on pre-established Contract Pricing. In such instances the Work Order shall include:

- Scope of Work, including the location of the Work and whether a site visit is required
- Timeframe for performing the Work
- Any additional information necessary to complete the Task

B. Work Order Proposals for Work on Minor Town-owned construction projects – Not to exceed $10,000 per request

The Project Manager may request a WOP where time and materials or non pre-priced items are included in the Work. As part of the request for a WOP the Project Manager shall include:

- Work to be performed
- Location of the Work
- Any special requirements or equipment necessary to perform the work

Contractor shall prepare a WOP that includes the following:

- Cost to perform the Work in accordance with ceiling rates established in Attachment "A". The request for WOP may stipulate how the cost is to be provided such as time and materials, task order, etc. and will also identify if materials and equipment costs are to be included in the price or are to be shown as reimbursable. Project Manager must pre-authorize in writing any reimbursable.
- Timeframe from completion of the Work from receipt of Work Order.
- Any other information requested by the Project Manager

End of Section

ATTACHMENT "A"

Contract Rates

Non-Skilled Rate $__NA_____/per hour

Skilled Rate $___25_____/per hour

Mark-up for materials/equipment* %____5_____ (Not to exceed)

* Supplier invoice must be attached as support to any Contractor mark-up items. The mark up only applies to Contractor furnished materials and equipment.

Work Category Examples

A. Non-Skilled
- Moving, pickup and delivery of any materials.
- Paint touch ups.
- Furniture moving and minor adjustments.
- Replacement of light bulbs.
- Hanging frames.
- Replace battery of frames.
- Replace water filters.
- Set up and break down for town wide events.
- Clean and organize offices/storage areas.
- Graffiti removal.

B. Skilled
- Restore and repair concrete surfaces.
- Resurface and replace damage floors, walls, pavements and other concrete structures.
- Level and straighten surfaces.
- Provide a floated, troweled or texture surface.
- Cure and protect concrete surfaces.
- Minor plumbing repairs.
- Test and identify plumbing problems, repairing or replacing where necessary.
- Heavy equipment and/or hand tools operations.
- Repairs, identifies breakdowns, and replaces joints, valves, pumps, and boiler.
- Conducts preventive plumbing maintenance work as needed.
- Test and identify electrical problems, repairing or replacing where necessary.
- Inspect electrical components, including transformers and circuit breakers.
- Install wire and lighting systems.
- Install new or repair existing fence systems.
- Paint interior or exterior.
- Test and identify HVAC problems, repairing or replacing where necessary.
- Provide monthly HVAC services to all town facilities.
- Carpentry services including new or repair of existing.
- Replace and adjustment of door hardware.
- Install of benches and park equipment.
- Replace and install traffic signs.

SECTION 4

FORMS

SWORN STATEMENT ON PUBLIC ENTITY CRIMES

SECTION 287.133(3)(a), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Town of Miami Lakes

by Alex Hernández

[print individual's name and title]

for ESKIMO Air Conditioning & Appliances

[print name of entity submitting sworn statement]

whose business address is

1370 NW 183 st.

Miami FL

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: _____)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

   a. A predecessor or successor of a person convicted of a public entity crime; or

   b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA }
} SS:
COUNTY OF MIAMI-DADE }

I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Miami Lakes, its elected officials, and Pasimo or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Title: President

Sworn and subscribed before this

28 day of April, 2016

_____

Notary Public, State of Florida

Mariel Parra.

(Printed Name)

My commission expires: _____

MARIEL D. PARRA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF110346
Expires 4/7/2018

natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

✓ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[attach a copy of the final order]**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO

UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

_____
Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this 29 day of APRIL, 2016.

Personally known _____

OR produced identification H650006 7052 Notary Public – State of FLORIDA

DRIVERS LICENSE My commission expires MAY 28, 2018

(type of identification)

LUIS GARCIA
MY COMMISSION # FF 127238
EXPIRES: May 28, 2018
Bonded Thru Notary Public Underwriters

_____
(Printed, typed or stamped commissioned name notary public)

END OF SECTION

CONTRACT EXECUTION FORM

This Contract 2016-28 ES (contract number) made this 3rd day of May in the year 2016 in the amount of $ AS NEEDED by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Eskimo Air Cond. & Appliances (name of Contractor)

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

Attest:

By: _____
Gina Inguanzo, Town Clerk

By: _____
Town Attorney

TOWN OF MIAMI LAKES

By: _____
Alex Rey, Town Manager

Signed, sealed and witnessed in the presence of:

By: _____

As to the Contractor:

Eskimo Air Conditioning & Appliances

By: _____
Name: Alexi Hernandez
Title: President

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

CORPORATE RESOLUTION

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

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

Now, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS that the Alexis Hernández (Presidente)
(type title of officer)

Alexis Hernández, is hereby authorized
(type name of officer)

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

DATED this 29 day of Abril, 2016.

_____
Corporate Secretary

(Corporate Seal)