

**AGREEMENT
DISASTER DEBRIS MONITORING SERVICES**

Contract No. 2017-45



The Town of Miami Lakes Council:

**Mayor Manny Cid
Vice Mayor Timothy Daubert
Councilmember Luis Collazo
Councilmember Tony Lama
Councilmember Ceasar Mestre
Councilmember Frank Mingo
Councilmember Nelson Rodriguez**

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

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RECITALS

This Agreement made this ____ day of _____ in the year 2017 ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and **Witt O'Brien's**, hereinafter called the "Contractor" with its office located at 1201 15th Street, NW, Suite 600, Washington, DC 20005.

RECITAL

WHEREAS to obtain Public Assistance ("PA") grant funding from Federal Emergency Management Agency ("FEMA") requires that debris removal operations resulting from a federally declared emergency requires monitoring to document eligible quantities and reasonable expenses and ensure that the work performed is eligible for FEMA PA, and;

WHEREAS the Town issued a Request for Proposal ("RFP") 2017-45 on April 27, 2017 for Disaster Debris Monitoring Services ("Services") and Contractor's proposal ("Proposal"), in response thereto, was selected as one of the most qualified for the provision of said Services. The RFP and the Proposal are expressly incorporated into and made a part of this Agreement as if set forth in full.

B. **WHEREAS**, the Town, through action of the Town Commission has selected the Contractor in accordance the Town's Procurement Ordinance 12-142 and FEMA PA guidelines, and the applicable provisions of the Town Procurement Ordinance, to provide the Services as described herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, agree as follows:

SECTION 1
TERMS AND CONDITIONS

1.1 Definition of Terms

Additional Work or Additional Services means Work authorized by the Town through a Work Order Proposal that is for work in addition to that initially assigned to the Contractor under a Work Order.

Agreement or Contract means the RFP, the Addenda, the Response to the RFP, and this document that has been executed by the Contractor and the Town subsequent to approval of award by the Town Council.

Agreement Documents or Contract Documents means the Agreement, and any change orders, modifications, directives, and clarifications, Work Orders, Supplemental Work Orders, Work Order Proposals, invoices, payments and similar documents produced in connection with the Agreement.

Attachments mean any attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.

Fee means the amount of compensation mutually agreed upon for Services to be provided under a Work Order.

Change Order means a written document ordering a change to the Contract that is covered under a Work Order. A change order must comply with the Agreement Documents.

Cure means the action taken by the Contractor promptly after receipt of written notice from the Town of a breach of the Agreement Documents, which will be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, service, or other elements of the Work or the Agreement 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.

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

Days mean calendar days.

Event means a natural or man-made disaster as declared by the federal, state, county or local government entity.

Final Completion means the date established for completion of the Work under a Work Order.

Hourly Rates: means the hourly rate to be paid to the Contractor inclusive of all direct and indirect cost, and profit.

Inspector means an authorized representative of the Town assigned to make necessary inspections of the Work or Services furnished by Contractor

Notice To Proceed means a written letter or directive issued by the Town Manager or designee directing that the Contractor begin Work under a Work Order.

Project as used herein refers to a task or assignment issued through a Work Order to the Contractor resulting from an event that requires Debris Monitoring Services.

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

Request For Information (RFI) means a request from the Contractor seeking an interpretation or clarification relative to the Agreement Documents. The RFI, which will be clearly marked RFI, will clearly and concisely set forth the issue(s) or item(s) requiring clarification or interpretation and why

the response is required. The RFI must set forth the Contractor's interpretation or understanding of the document(s) in question, along with the reason for such understanding.

Scope of Services means the Work or Services to be performed by the Contractor in accordance with the Agreement Documents.

Services or Work as used herein refers to all reasonably necessary and inferable labor, equipment, materials required to perform the Scope of Services required by the Agreement Documents.

Subcontractor means a person, firm or corporation having a direct contract with the Contractor to perform Work under the Agreement Documents.

Supplemental Work Order means a Work Order issued by the Town that modifies the a previously issued Work Order.

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 Order means an assignment of Work issued by the Town to the Contractor for the performance of Work under the Agreement.

Work Order Proposal or Proposal means a proposal submitted by the Contractor at the Town's request which includes the scope and projected cost for a Project or for additional Work under the Agreement.

1.2 Time is of the Essence

Contractor will promptly perform its duties under the Agreement 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 Agreement. All Work will be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Agreement or Work Order.

All dates and periods of time set forth in the Agreement Documents, inclusive of any Work Orders issued under the Agreement Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, were included because of their importance to the Town.

In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Article 1.49, Extension of Time, the Contractor understands that, except and only to the extent provided otherwise in the Agreement, the occurrence of events of delay within the Contractor's, control of the Work will not excuse the Contractor from its obligation to achieve completion of the Work within the approved schedule, and will not entitle the Contractor to any adjustment.

The Contractor acknowledges that the Town is purchasing the right to have the Contractor continuously working on the Event for the full duration of the Event to ensure the timely completion of the Work.

1.3. Agreement Term

The Agreement will commence upon execution of the Agreement and continue for a period of three (3) years. The Town, at its sole discretion may exercise an option to renew ("OTR") the Agreement for a period of up to two additional years on a year to year basis. The Town reserves the right to extend this Agreement for up to one hundred and twenty (120) Days beyond the Agreement period and will notify the Contractor in writing of the extension. This Agreement may be extended beyond the one hundred and twenty (120) Days, upon the approval of the Town Council.

Work Orders will expire as stated on each individual Work Order issued under the Agreement, which may extend beyond the expiration of the Agreement term. The provisions of any specific Work Order, which commences prior to the expiration date of the Agreement and extends beyond said expiration of the Agreement will survive the expiration thereof and the Agreement will continue in full force and effect for such Work Orders.

1.4. Pricing

Hourly rates will not exceed the rates specified in the Price Schedule of the Agreement. The rates will remain firm and fixed for the initial term of the Agreement, including any option or extension periods. The Contractor may offer incentive discounts to the Town at any time during the Agreement term, including any renewal or extension thereof. The Town reserves the right to negotiate lower hourly rates or other pricing arrangements on a Work Order basis.

1.5 Price Adjustments

Contractor may request a price adjustment prior to the expiration of the initial Contract term and prior to the completion of an OTR year.

Any request for price adjustments will be subject to an adjustment only if increases or decreases occur in the industry. Such adjustment will be based on the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Dep't. of Labor, and will not exceed five percent.

The yearly increase or decrease in the CPI will be that latest Index published and available for the calendar year ending 12/31, prior to the end of the contract year then in effect, as compared to the index for the comparable month, one-year prior.

Any requested adjustment will be fully documented and submitted to the Town at least 90 days prior to the contract anniversary date. Any approved cost adjustments will become effective on the beginning date of the approved contract extension.

The Town may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the Town does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the Town, the Agreement will be considered cancelled on the scheduled expiration date.

1.6 Progress Payments

Contractor may make application for payment for Work performed under a Work Order at intervals of not more than once a month. All applications will be submitted in triplicate and the Contractor will only use the Town's Invoice Form, if provided by the Town.

Invoices will be prepared based on the books of account kept by the Contractor and will be supported by copies of payroll distribution, bills of receipt, documents or reports required by the Agreement, or other documents reasonably required by the Town, and will show the Town's Agreement number

All applications for payment will be made in accordance with the State of Florida Local Government Prompt Payment Act.

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

- Failure of Contractor to provide any and all documents required by the Agreement that are not in accordance with FEMA regulations.

A Work Order may require the Contractor to submit specific documents not required by the Contract.

1.7. **Taxes**

Contractor will pay all applicable sales, consumer, use and other taxes required by law.

1.8. **Labor and Materials**

Unless otherwise provided herein, Contractor must provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

1.9. **Notices**

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

For the Town:

Mr. Alex Rey
Town Manager
Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014
reva@miamilakes-fl.gov

Mr. Raul Gastesi
Town Attorney
Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014
gastesir@miamilakes-fl.gov

Procurement Department
Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014
procurement@miamilakes-fl.gov

For the Contractor:

Contract Notices:
Attention: Director of Contracts
818 Town & Country Blvd., Suite 200
Houston, TX 77024
Phone: 281-606-4721
Alternate Phone: 202-207-2935
contractrequests@wittobriens.com
Cc: cdetillieu@wittobriens.com

Legal Notices:
Witt O'Brien's, LLC
Attention: Legal Counsel
2200 Eller Drive
Fort Lauderdale, FL 33316
pjimenez@ckor.com
Cc: cdetillieu@wittobriens.com

During the Work the Contractor will maintain continuing communications with Design-Build Professional and the Project Manager. The Contractor will keep the Town fully informed as to the progress of the Project at all times through ongoing communications with the Project Manager.

1.10. **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 Agreement Documents by reference and a term, statement, requirement, the specifications and plans prepared by the Consultant, or provision of the Agreement Documents the following order of precedence will apply:

In the event of conflicts in the Agreement the order of precedence stated below will govern;

- Revisions and Change Orders to the Agreement
- Agreement Terms and Conditions
- Supplemental Work Order
- Work Order
- Scope of Services
- RFP 2017-45
- Contractor's RFP Response

Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality will govern.

1.11. Indemnification

The Contractor will indemnify and hold harmless Town, its officers, agents, and employees, from all liabilities, damages, losses, and expenses, including, but not limited to, 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 Agreement, caused by the negligence, recklessness or misconduct, or any act or omission of Contractor and anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable in the performance of this Agreement limited to the limits of the Performance Bond. Neither party shall be liable for, and each party expressly waives and releases the other party from, and against, any and all consequential, indirect, punitive or special damages.

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

Contractor will require the Consultant and all Subconsultant and Subcontractor agreements to include a provision that they will indemnify the Town.

This indemnity will survive the cancellation or expiration of the Agreement. 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. Statute.

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

1.12. Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor will provide on a primary basis, pay for, and maintain in force until all of its Work to be performed under this Agreement the insurance coverages set forth herein.

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

- Waiver of subrogation

- Statutory State of Florida
- Limits of Liability

Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Where the Contractor is using an employee leasing company for any or all of its personnel furnished under this Agreement the Contractor will complete the Leased Employee Affidavit (Exhibit A).

1.12.2 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.

1.12.3 Commercial General Liability (CGL): Contractor will maintain coverage issued **on the most recent version of the ISO form as filed for use in Florida, or its equivalent** 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:

- Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000.00)** per project. Contractor will maintain in force until at least three years after completion of all Work required under the Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage.
- Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- CGL Required Endorsements
 - Employees included as insured
 - Independent Contractors Coverage
 - Contractual Liability
 - Waiver of Subrogation
 - Premises and/or Operations
 - Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

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

1.12.4 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:

- Owned Vehicles.
- Hired and Non-Owned Vehicles.
- Employers' Non-Ownership.
- Employees included as insured

Town will be listed as an Additional Insured

1.12.5 Umbrella Policy

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)**.

Excess coverage over the policies as follows:

- Commercial General Liability
- Business Automobile Liability

Town will be listed as an additional insured.

1.12.6 Professional Liability Insurance

Contractor agrees to maintain Professional Liability Insurance with a limit of not less than one million (\$1,000,000) per occurrence on per Event basis.

The above policies must provide the Town with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change. If the initial insurance expires prior to the completion of the Work, renewal copies of policies will 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 the Town with at least thirty (30) days' notice of cancellation and/or restriction.

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

The Town's Agreement number and title must appear on each Certificate of Insurance and the Town Certificate Holder must read:

Town of Miami Lakes
6601 Main Street
Miami Lakes, FL 33014

Companies authorized to do business in the State of Florida, with the following qualifications, will issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by the Town Manager prior to insurance approval.

Where a self-insured retention or deductible exceeds \$100,000 the Town reserves the right to request a copy of the Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Contractor agrees to maintain a retroactive date prior to the effective date of the Agreement.

The Town Manager reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Contractor in accordance with Section 1, General Conditions, Article 1.9, Notices. Contractor will comply with such requests unless the insurance coverage is not then readily available in the national market. An additive or deductive change order will be issued to adjust the contract value as necessary.

1.13. Performance and Payment Bond

Contractor must within five (5) calendar days of a hurricane watch issued for the Miami Lakes area, furnish a Performance/Payment Bond containing all the provisions of the attached Performance/Payment forms.

The Performance and Payment Bonds ("Bonds") must be in the amount of one million dollars (\$1,000,000) guaranteeing to the Town the completion and performance of the Work covered in the Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project(s). Each Bond must be with a Surety, which is qualified pursuant to Article 1.14, Qualification of Surety.

Each Bond must continue in effect for one year after completion of the Work with liability equal to one million dollars (\$1,000,000), or an additional bond must be conditioned that Contractor will, upon notification by Town, correct any defective or faulty work or materials which appear within one year after completion of the Work.

The Town must be listed as an Obligee.

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

Alternate Form of Security:

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

1.14 Surety

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

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

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

1.15 General Requirements

The employee(s) of the Contractor will be considered to be at all times its employee(s), and not an 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 Work a sufficient number of competent and qualified 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 will at all times cooperate with the Town and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

1.16. Method of Performing the Work

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

If the Project Manager reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project, the Project Manager will 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 Work within the specified time; and/or (3) the Town at its sole option may also have Work performed by a third party contractor.

The Contractor will furnish to the Project Manager a complete listing of 24-hour telephone numbers at which the Key Personnel of the Contractor and all of its Subcontractors can be reached should the need arise at any time.

1.17 Site Investigation and Representation

The Contractor acknowledges that it has, prior to the submission of a Work Order Proposal, satisfied itself as to the nature and potential location(s) of the Work to be performed for an Event. The Contractor will also satisfy itself as to the general and local conditions, particularly those bearing upon availability of transportation, disposal, handling and storage of materials, availability of labor, water, electric power, the type of equipment and facilities needed preliminary to and during the performance of the Work, and all other matters which can in any way affect the Work.

Any failure by the Contractor to acquaint itself with the conditions that may impact the performance of the Work will not relieve Contractor from responsibility for properly estimating the difficulty or cost thereof under the Agreement Documents.

1.18. Work Orders

No specific value has been established for this Agreement as Services will be provided on an Event-by-Event basis. The compensation for all Work and Services performed under this Agreement, including all costs associated with such Work and Services, must be as stated in Work Order(s) issued as a result of this Agreement.

Where the Town determines that the Contractor's Services are required to adequately respond to an Event the Town will request the Contractor to submit a Proposal based on the Scope of Services

required to respond to the Event. The Town may accept the Work Order Proposal as submitted or negotiate the parameters of the Proposal. The Town upon acceptance of the Proposal will issue a Work Order to the Contractor authorizing the Services to be provided. Said Work Order will include the maximum cost authorized under the Work Order and the timeframe for completion of the Work. Any revisions to a Work Order previously issued will be authorized through Supplemental Work Order issued in accordance with the Contract.

An Event may require that the Contractor commence Work prior to the submission of a Work Order proposal or negotiations being completed. Where such circumstances occur the Town will issue a Work Order allowing for a limited Scope of Services to be provided, inclusive a time for performance and maximum cost for the Work.

1.19. Supplemental Work Orders

Any change in the Work that results in changes in the scope, value or time for performance previously authorized under a Work Order, will be authorized only by a Supplemental Work Order approved in advance, and issued in accordance with the provisions of the Agreement Documents.

In instances where the Contractor identifies work as work not within the scope of the Work Order or Contract ("Extra Work") the Contractor will give written notice to the Project Manager. Should the Town's Project Manager or Procurement Manager determine that the work is within the Scope of Work and directs the Contractor to proceed with the Work without additional compensation or time the Contractor must notify the Project Manager or Procurement Manager of any objection it has to the Town's position, stating why it 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 Town to take such action as it may deem advisable in light of such disputed Work.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the time or cost for completion of a Work Order, and a Supplemental Work Order or Change Order has not been issued, the Town reserves the right at its sole option to either terminate the Agreement or Work Order 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 Town Manager as set forth in Article 1.38, Resolution of Disputes.

During the pendency of the dispute, and upon receipt of a directive to proceed by the Town, Contractor must promptly proceed with the change(s) in the Work. Failure to proceed with the work will place the Contractor in default of the Agreement.

On approval of any Agreement change increasing the Agreement Price, Contractor will ensure that the Performance Bond and Payment Bond are increased so that each reflects the total Agreement Price as increased.

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

1.20. Change Orders

The Town reserves the right to order changes which may result in revisions to the Contract that are not covered by a Work Order. Such revisions will only be authorized through the issuance of a Change Order, which will be issued in accordance with the requirements of the Contract. Such Change Orders must be contained in a written document, executed by both parties. However, under circumstances determined necessary by the Town, a Change Order may be issued unilaterally by the Town.

1.21. No Oral Changes or Work Orders

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

1.22. Press Release or Other Public Communication

Under no circumstances will the Contractor, without the express written consent of the Town:

- Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the Town, or the Work being performed hereunder, unless the Contractor obtains prior written approval from the Town Manager or Project Manager. Such approval may be withheld if for any reason the Town believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the Town; and

Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or Service provided by the Contractor or such parties have been approved or endorsed by the Town.

1.23. Project Management

Where a Contractor is awarded Work, the Contractor will be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Agreement Documents.

1.24. Contractor's Key Staff

The parties acknowledge that Contractor was selected by Town, in part, on the basis of qualifications of particular staff identified in Contractor's response to Town's solicitation, hereinafter referred to as "Key Staff". Contractor will ensure that Key Staff, including Contractor and, where applicable, Subcontractor Key Staff are available for Work hereunder as long as said Key Staff is in Contractor's or Subcontractor's employ. Contractor will obtain prior written acceptance of Project Manager to change Key Staff. Contractor will provide Project Manager, or designee with such information as necessary to determine the suitability of proposed new Key Staff. Project Manager will act reasonably in evaluating Key Staff qualifications. Such acceptance will not constitute any responsibility or liability for the individual's ability to perform. Key Staff will be listed Key Staff in Form B.

1.25. Superintendence and Supervision

The Contractor will keep the Agreement under his own control and it will be its responsibility to see that the Work is properly supervised and carried on faithfully and efficiently.

The orders of the Town are given through the Project Manager, which instructions are to be strictly and promptly followed in every case. Contractor will keep an Operations Superintendent on the Project during its progress, a full-time competent English speaking Operations Superintendent, and who will have full authority by the Contractor to direct the performance of the Work and make arrangements for all necessary materials, equipment, and labor without delay, and any necessary assistants, all satisfactory to Town's Project Manager. The Operations Superintendent will not be changed except with the written consent of Town's Project Manager, unless the Operations Superintendent proves to be unsatisfactory to Contractor or ceases to be in its employ. The Operations Superintendent will represent Contractor and all directions given to the Operations Superintendent will be as binding as if given to Contractor and will be confirmed in writing by Town's

Project Manager upon the written request of Contractor. Contractor will give efficient supervision to the Work, using its best skill and attention. The Project Manager will be provided telephone number(s) for the Operations Superintendent where the Operations Superintendent can be contacted during normal working hours as well as after hours for emergencies.

The Town's Project Manager and Contractor will meet as necessary during the course of the Work to review and agree upon the Work performed and any outstanding issues.

Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction.

1.26 Authority of the Town's Project Manager

The Project Manager, will 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 Agreement.

The Town's Procurement Manager will be responsible for determining and providing any interpretations of clarifications of the requirements of the Agreement.

The Contractor will be bound by all determinations or orders of the Project Manager and will 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 will have authority to act on behalf of the Town to the extent provided by the Agreement, unless otherwise modified in writing by the Town. All instructions to the Contractor will be issued in writing. All instructions to the Contractor will be issued through the Town Manager, Project Manager or Procurement Manager.

The Project Manager will have access to the Project Site at all times. The Contractor must provide safe facilities for such access so the Project Manager may perform their functions under the Agreement. The Project Manager 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 Agreement Documents.

The Project Manager will not be responsible for 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 Agreement Documents.

The Project Manager will have authority to reject Work that does not conform to the Agreement Documents. Neither the Project Manager's authority to act under this Article, nor any decision made by him in good faith, either to exercise or not to exercise such authority, will give rise to any duty or responsibility of the Project Manager to the Contractor, any Subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

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

1.27. Subcontractors

A Subcontractor is any person or entity that is performing, furnishing, supplying or providing any portion of the Work pursuant to a contract with Contractor. Contractor will be solely responsible for and have control over the Subcontractors.

All subcontracts must:

- require each Subcontractor to be bound to the Contractor to the same extent Contractor is bound to the Town by the terms of the Agreement Documents, as those terms may apply to the portion of the Construction Work to be performed by the Subcontractor;
- require the Subcontractor to indemnify and hold harmless the Town, its officers, agents, directors, and employees, and instrumentalities as provided in this Agreement.
- a provision requiring Subcontractor to maintain insurance in accordance with the Agreement Documents;
- provide that the Town will be an additional insured on all insurance policies required to be provided by the Subcontractor that are required of the Contractor;
- a provision that neither Contractor nor such Subcontractor will have the right to require arbitration of any disputes in those cases where the Town (or its assignee) is a party;
- a provision that Subcontractor will promptly notify the Town (with a copy to Contractor) of any default of Contractor under the Subcontract, whether as to payment or otherwise;
- provisions that Subcontractor will comply with all applicable laws (including prompt payment) and the Town requirements as set forth in the Agreement and maintain all files, records, accounts of expenditures for Subcontractor's portion of the Work to the standards set forth in the Agreement.

Contractor will be fully responsible for all acts and omissions of its Subcontractor and of persons directly or indirectly employed by its Subcontractors and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in the Agreement Documents will create any contractual relationship between any Subcontractor and Town or any obligation on the part of Town to pay or to see the payment of any monies due any Subcontractor. Town may furnish to any subcontractor evidence of amounts paid to Contractor on account of Work performed.

Contractor will be required to comply with all Town requirements for Subcontractor utilization reports, if required.

If Contractor requires a Subcontractor to obtain performance and payment bonds, then such bonds will name the Contractor and the Town as co-obligees, will cover all warranties and guarantees of the Subcontractor, and will comply with all bond requirements under this Agreement.

Contractor will require all Subcontractor agreements to include a provision that they will indemnify and hold harmless the Town, its officers, agents, directors, and employees, and instrumentalities as herein provided

1.28. Worker's Identification

The Contractor's employees, who include Consultant, any Subcontractor, and/or Subconsultant, will wear an identification card or similar identification provided by the Contractor. The identification will 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 the individual's removal from the Work, until such time as the identification card is obtained and worn. Such removal will not act as a basis for the Contractor to submit a claim for an extension of time due to any resulting delay.

1.29. Removal of Unsatisfactory Personnel

The Project Manager may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, Consultant, or any or Subconsultant or Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Agreement Documents. The Contractor will respond, in writing to the Project Manager within seven (7) days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that should not occur. The Town

will make the final determination as to the removal of unsatisfactory personnel from Work assigned by Town. The Contractor agrees that the removal of any of its employees does not require the termination or demotion of said employee(s).

1.30. Rules, Regulations, and Licenses

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

1.30. Permits, Licenses and Impact Fees

Pursuant to the Public Bid Disclosure Act, each license, permit or fee **REQUIRED BY THE TOWN AND PAYABLE TO THE TOWN** by virtue of this construction as part of the Agreement will be paid as follows:

Town's permit fees will be paid by the Contractor and reimbursed by the Town. "Licenses, permits and fees which may be required by Miami-Dade County, the State of Florida, or other governmental entities are not "waivable" and must be paid by the Contractor. The Town will reimburse the Contractor for such licenses, permits, and fees upon being provided documentation from the applicable entity that payment(s) have been made.

Except as otherwise provided within the Agreement 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 Agreement Documents will 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(s) for whom a Certificate of Competency is required.

Impact fees levied by the Town will be waived and Miami-Dade County will be paid by Contractor and reimbursed by the Town. Contractor will 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 will include profit or overhead of Contractor.

1.32. Compliance with Applicable Laws

The Contractor will comply with all applicable laws, regulations, environmental, transportation, building, and construction codes of the Federal government, the State of Florida, the County, and the Town.

1.33. Progress Meetings

The Town will conduct a kick-off meeting prior to the commencement of the Work under a Work order. Contractor will attend progress and coordination meetings as required by the Project Manager to help ensure efficient and timely completion of the Work in a manner that will maximize the recovery of FEMA PA funds.

The Contractor will arrange for the participation of its Subcontractors when the Project Manager requires their presence.

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

1.34. Project Site Facilities

The Contractor will arrange any facilities, which are required to perform the Work. Any request by the Contractor to locate temporary facilities on Town property will require the prior written approval of the Project Manager.

The Contractor will furnish an adequate supply of drinking water for its personnel and its Subcontractors.

1.35. Security

Security will be provided by the Debris Monitoring Contractor and may be augmented by the Town's police force.

1.36. Accidents

The Contractor will 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 will 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 every accident to persons or damage to property, and will furnish in writing full information, including testimony of witnesses regarding any and all accidents.

1.37. Safety Precautions

Contractor will be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its Work. Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees performing Work and other persons who may be affected thereby. Contractor will designate a responsible member of its organization whose duty will be the prevention of accidents.

Contractor will 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 will erect and maintain all necessary safeguards for such safety and protection. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work will continue until such time as all the Work is completed and Project Manager has issued the Contractor a notice of Final Acceptance.

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

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

1.38. Resolution of Disputes

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

The initial step will be for the Contractor to notify the Project Manager in writing of the claim or dispute and submit a copy to the Town of Miami personnel identified in Article 1.9, Notices.

Should the Contractor and the Project Manager fail to resolve the dispute the Contractor will submit their dispute in writing, with all supporting documentation, to the Town's Procurement Manager, at the address identified in Article 1.9, Notices. Upon receipt of said notification the Town's Procurement Manager will review the issues relative to the claim or dispute and issue a written finding.

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

Appeal to the Town Manager for his/her resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the amount of compensation determined by the Town Manager's require approval or disapproval by the Town Commission the Contractor will only be entitled to seek judicial relief after:

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

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing, in accordance with Article 1.9, Notices, within fourteen (14) 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 Agreement Price or Agreement 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) days after Final Completion of the Work, the parties will participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator will 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.

Contractor will continue perform the Work and provide all Services required by the Agreement during the resolution of any dispute of claim made in accordance with the Agreement.

1.39. 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(s), and/or following the completion of the Project(s), the parties to this Agreement agree all unresolved disputes between them will 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 Agreement.

1.40 Termination for Convenience

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

The Contractor will, upon receipt of such notice, unless otherwise directed by the Town:

- Stop all Work on the Project on the date specified in the notice (“the Effective Date”);
- Take such action as may be necessary for the protection and preservation of the Town’s materials and property;
- Cancel all cancelable orders for materials and equipment;
- Assign to the Town 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 Agreement and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;
- Take no action that will increase the amounts payable by the Town under the Agreement Documents; and
- Take reasonable measures to mitigate the Town’s liability under the Agreement Documents.
- All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Agreement, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation will be cause to withhold any payments due without recourse by Contractor until all documentation is delivered to the Town.

In the event that the Town exercises its right to terminate the Agreement pursuant to the Agreement Documents, the Town will pay the Contractor:

- For the actual cost or the fair and reasonable value, whichever is less, of (1) the portion of the Project(s) completed in accordance with the Agreement through the completion date, and (2) non-cancelable material(s) and equipment that is not of any use to the Town except in the performance of the Agreement, and has been specifically fabricated for the sole purpose of the Agreement but not incorporated in the Work; and
- To the extent practical, the fair and reasonable value will be based on the price established as a result of the Agreement. In no event, will any payments under this Paragraph exceed the maximum cost set forth in the Agreement.
- The amount due hereunder may be offset by all payments made to the Contractor.
- All payments pursuant to this Article will be accepted by the Contractor in full satisfaction of all claims against the Town arising out of the termination including, Further, the Town may deduct or set off against any sums due and payable under this Article any claims it may have against the Contractor.
- Contractor will not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.
- All payments made under the Agreement are subject to audit

Upon the Town’s payment in full of the amounts due the Contractor under this Article, the Contractor grants the Town full use of the Work and any Work Product to complete the Project and subsequently occupy the Project.

1.41 Event of Default

An event of default will mean a breach of the Agreement or 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, will 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 Consultant, Subcontractor, Subconsultant 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 Town where required by the Agreement;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Work, the Town will notify the Contractor in writing that it must, within the time frame set forth in the Town's request, provide adequate assurances and a plan of action to the Town, in writing, of the Contractor's ability to perform in accordance with the terms of the Agreement Documents. In the event that the Contractor fails to provide to the Town the requested assurances within the prescribed time frame, the Town may:
 - Treat such failure as a repudiation of the Agreement 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 Town may, at its sole discretion terminate the Agreement for default, the Town or its designated representatives may immediately take possession of all applicable documentation and data.
- Where the Town erroneously terminates the Agreement or for default, the terminations will be converted to a Termination for Convenience, and the Contractor will have no further recourse of any nature for wrongful termination.

1.42. Notice of Default-Opportunity to Cure

In the event that the Town determines that the Contractor is in default of their obligations under the Agreement, the Town will notify the Contractor, specifying the basis for such default, and advising the Contractor that such default must be cured within a specified reasonable time frame or the Agreement with the Town may be terminated. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, in the event of a breach by the Contractor, may have a default corrected by its own forces or another Contractor and any such reasonable costs incurred (which are not reimbursable by FEMA) will be deducted from any sums still due to the Contractor under any contract with the Town.

1.43. Termination for Default

If Contractor fails to comply with any term or condition of the Agreement Documents, or fails to perform any of its obligations hereunder, then Contractor will be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default, the Town Manager in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Agreement whereupon any advances for which Work has not been performed, paid by the Town to Contractor while Contractor was in default will be immediately returned to the Town. The Town Manager 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 Agreement under this Article will not release Contractor from any obligation accruing prior to the effective date of termination. Upon Termination for Default and the Town fully satisfying all of its obligations under this Agreement the Town will have full use of the Work Product in connection with the Town's completion and occupancy of the Project.

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 Agreement.
- Contractor fails to comply with any of its duties under the Agreement Documents, with any terms or conditions set forth in this Agreement, 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 Agreement.

Where it has been determined that the Contractor has been erroneously terminated under this Article, such termination will be deemed to have been occurred under Article 1.40, Termination for Convenience.

1.44. Remedies in the Event of Termination for Default

If a Termination for Default occurs, the Contractor and the bond provider will be notified of the effective date of the termination and will be liable for damages to the limits of the provided bond resulting from the default, including but not limited to the difference in procurement costs not reimbursed by FEMA and other direct damages

The Contractor will 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 Town) from the Work Site. The Town assumes no liability for the Contractor's failure to remove such items from the Project(s) site(s) as required.

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

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

1.45. Town May Avail Itself of All Remedies

The Town 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 will 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 Town. The exercise or the beginning of the exercise, of one remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The Town's rights and remedies as set forth in the Agreement Documents are not exclusive and are in addition to any other rights and remedies in law or in equity

1.46. Liquidated Damages-Intentionally Omitted

1.47. Continuing the Work

Contractor will carry on the Work and adhere to the Work schedule(s) during all disputes or disagreements with Town, including disputes or disagreements concerning a request for a Change Order, or Supplemental Work Order. The Work will not be delayed or postponed pending resolution of any dispute(s) or disagreement(s).

1.48. 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 Town 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 must request a time extension from the Town within two (2)

working days of said Force Majeure occurrence. Any time extension will be subject to mutual agreement and will not be cause for any claim by the Contractor for extra compensation unless additional services are required by the Town. **Do Not Include** inclement weather except for significant weather events that adversely impact the critical path of the Project Schedule, if required, or completion of the work, and does not include the acts or omissions of Subcontractors or suppliers.

1.49. Extension of Time

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

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

1. 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;
2. The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
3. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

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

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

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

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

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

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

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Articles 1.48 or 1.49, Excusable Delay, Non-Compensable, the Contractor will not be entitled to a separate extension for each one of the causes, only one period of extension will be granted for the delay.

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

The permitting of the Contractor to proceed with the Work subsequent to the date specified in the Work Order, the making of any payment to the Contractor, the issuance of any Supplemental Work Order, or Change Order, will not waive the Town's rights under the Agreement, including but not limited to the assessment of liquidated damages or declaring Contractor in default.

1.50. Excusable Delay, Non Compensable

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

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor must document its claim for any time extension as provided in Article 1.49.

Failure of Contractor to comply with Article 1.49, as to any particular event of delay will be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

1.51. Contractor's Damages for Delay

No claim for damages or any claim, other than for an extension of time, will be made or asserted against Town by reason of any delays except as provided herein. Contractor will not be entitled to an increase in the fee under a Work Order or payment or compensation of any kind from Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision will not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Town. Otherwise, Contractor will be entitled only to extensions of the time for completion of the Work under a Work Order as the sole and exclusive remedy for such resulting delay.

Except as may be otherwise specifically provided for in the Agreement Documents, the Contractor agrees to make no claim for damages for delay of any kind in the performance of the Agreement Documents whether occasioned by any act or omission of the Town or any of its representatives (whether it is an Excusable Delay or otherwise) and the Contractor agrees that any such claim will be compensated solely by an extension of time to complete the performance of the Work under a Work Order.

1.52. Claims

Contractor will only be entitled to submit a claim after submitting its request for additional compensation or time in accordance with Articles 1.20 and 1.49 of the Contract and the request(s) have been denied or the Contractor does not agree with the decision of the Town.

Any claim for a change in the Contract time for completion of any Work, the Contract Term, or Contract price must be made by written notice by Contractor to the Town representatives identified in Article 1.9 within the timeframe established in Article 1.49, effective with the commencement of

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

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

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

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

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract Documents whether occasioned by any act or omission of the Town or any of its representatives and the Contractor agrees that any such claim will be compensated solely by an extension of time to complete performance of the Work due to an Excusable Delay as defined in Articles 1.48, and 1.49. The Contractor alone specifically assumes the risk of such delays, including, without limitation: delays in processing or approving any submittals to the Town or by the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor will not receive monetary compensation for Town delay(s).

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

1.53 Loss & Damage to Property

Contractor will accept responsibility for Work against losses or damages resulting directly or indirectly from the performance of the Work,.

1.54. 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 sixty (60) days (or any lesser period), commencing no sooner than the date the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order will be specifically identified as a "Stop Work Order" issued pursuant to this paragraph. Within the period of sixty (60) days (or the lesser period specified) after a Stop Work Order is delivered to the Contractor, or within any extension to which the parties have agreed the Town will either:

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 1.40, 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 will 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 Manager, the Contractor may have been delayed by such suspension. In the event the Project Manger determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor or any other reason caused by Contractor's fault or omission, the Contractor will not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

1.55. Cleaning Up; Town's Right to Clean Up

Contractor will remove any waste materials and rubbish it generates in the performance of the Work as well as its tools, equipment, machinery and surplus materials upon completion of the Work. If Contractor fails to clean up during the prosecution of the Work or at the completion of the Work, the Town may do so and the cost thereof will be charged to Contractor. If a dispute arises between Contractor and separate contractor as to their responsibility for cleaning up, Town may clean up and charge the cost thereof to the Contractor as the Project Manager will determine to be just.

1.56. Removal of Equipment and Materials

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

1.57. Set-offs, Withholdings, and Deductions

The Town may the Town may withhold any further payments to the Contractor until it determines its damages due to an incurable default, and may instigate court proceedings against the Contractor for any damages caused by the breach.

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

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

1.58. 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 Contractor's staff will not be employees of the Town, and the Contractor alone will be responsible for their Work, the direction thereof, and their compensation and benefits of any kind. Nothing in the Agreement will impose any liability or duty on the Town 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 Subcontractors, Subconsultants, 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 Town against any such liabilities, even if they arise from actions directed or taken by the Town.

1.59. Third Party Beneficiaries

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

1.60. Successors and Assigns

The performance of this Agreement will not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Contractor without the written consent of the Town. It is understood that a sale of the majority of the stock or partnership shares of the Contractor, a merger or bulk sale, an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

Any transference without Town approval will be cause for the Town to nullify this Agreement. Any assignment without the Town's consent will be null and void. The Contractor will have no recourse from such cancellation. The Town 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 Town Attorney as a condition precedent to considering approval of an assignment.

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

1.61. Materiality and Waiver of Breach

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

Town's failure to enforce any provision of the Agreement Documents will not be deemed a waiver of such provision or modification of the Agreement Documents. A waiver of any breach of a provision of the Agreement Documents will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of the Agreement Documents.

1.62. Severability

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

1.63. Applicable Law and Venue of Litigation

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

1.64. Amendments

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

1.65. Entire Agreement

The Agreement Documents, as they may be amended from time to time, represent the entire and integrated Agreement between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Agreement 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 Agreement Documents will not be deemed to be a waiver of any other breach of any provision of the Agreement Documents.

1.66. Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act

Contractor will 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 will affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by Town, 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 will take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Contractor's decisions regarding the delivery of services under the Agreement Documents will 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.

In the event of noncompliance by Contractor, Consultant, Subconsultant or Subcontractor, payment may be withheld or the contract may be canceled in whole or in part.

Contractor has an EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The Contractor will adopt the following statement as his operating policy:

"it is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action will include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

Contractor agrees to apply a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur.

Contractor will have a designated EEO Officer who has the responsibility and authority to administer the Contractor's EEO program.

All of the Contractor's employees who have an active role in the hiring, supervision, or advancement of employees will be made aware of and instructed to implement the EEO policy. In addition, employees, including applicants and potential employees, will be informed of the Contractor's EEO policy through posted notices, posters, handbooks, and employee meetings.

The Contractor will not discriminate in his recruitment practices and should make an effort to identify sources of potential minority and women employees.

Contractor is required to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The Contractor is to promptly investigate all alleged discrimination complaints.

Contractor is required to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

The EEO policy also pertains to Contractor's selection of subcontractors, including material suppliers and equipment leasing companies..

1.67. 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 Agreement for said Work.

1.68. Documentation

The Contractor will maintain, and will require that its Subcontractor(s) and suppliers maintain complete and accurate records to substantiate compliance with the requirements set forth in the Agreement. Records and documents must be maintained in a kept and maintained in a manner that helps ensure FEMA PA reimbursement.

1.69. Review of Records

Town and its representatives will have the right to audit, inspect and copy, at Town'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 will conform to Generally Accepted Accounting Principles requirements (GAAP), and will only address those transactions related to the Agreement.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, will be kept in accordance with such statute. Otherwise Contractor will retain and make available to Town 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.

If an audit inspection or examination in accordance with this Article discloses overcharges in excess of 1% except negotiated fees by the Contractor's to the Town, the actual cost of the Town's audit will be paid by the Contractor's. If the audit discloses contract billing or charges to which Contractor's is not contractually entitled Contractor's will pay over to the Town said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing.

1.70. No Interest

Any monies not paid by Town when claimed to be due to Contractor under the Agreement Documents, including, but not limited to, any and all claims for damages of any type, will 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, will apply to valid and proper invoices.

1.71. Payments Related to Guaranteed Obligations

The Town may withhold from any payments to be made such sums as may reasonably be necessary to ensure recompletion of documents which are deemed to not be FEMA compliant.

The Project Manager, prior to withholding or deducting any monies hereunder, will give the Contractor reasonable 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 Town 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 Agreement Documents.

1.72. Consent of Town Required for Subletting or Assignment

If the Contractor assigns, transfers, sublets or otherwise disposes of the Agreement or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the Town, such action will be an Event of Default. Nothing herein will either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

1.73. Agreement Limiting Time in Which to Bring Action Against the Town

In the event the Contractor may be deemed to have a cause of action against the Town, no action will lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Agreement Documents by reason of any act or omission or requirement of the Town or its agents, unless such action will be commenced within six (6) months after the date of issuance of a final payment under the Agreement, 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 Agreement Documents, or if the Agreement is terminated or declared abandoned under the provisions of the Agreement unless such action is commenced within six (6) months after the date of such termination or declaration of abandonment by the Town.

1.74. 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 will diligently render to the Town, after additional compensation is mutually agreed upon, any and all assistance which the Town may require of the Contractor.

1.75. Availability of Funding

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

1.76. Mutual Obligations

This document, change order, field directive, and written clarifications issued under the Agreement, and the Contractor's submittals, will constitute the Agreement 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 Agreement will 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 Agreement Documents imposes an indemnity obligation on the Contractor, the Town, may at its expense, elect to participate in the defense of the claim if the Town should so choose. Furthermore, the Town 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.

1.77. Nature of the Agreement

The Contractor will provide the services set forth in the Agreement Documents. The Contractor will provide full and prompt cooperation with the Town in all aspects of the Work to be performed.

The Contractor acknowledges that the Agreement Documents require the performance of all things necessary for or incidental to the effective management and performance of a Project(s). All things not expressly mentioned in the Agreement Documents, but necessary to carrying out its intent are required by the Agreement Documents, and the Contractor will perform the same as though they were specifically mentioned, described and delineated.

The Contractor will furnish all labor, materials, tools, supplies and other items required for the completion of the Agreement. All Work will be accomplished at the direction of and to the satisfaction of the Project Manager.

1.78. Agreement Documents Contains all Terms

The Agreement 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 Agreement Documents will be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

1.79. Survival

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

1.80 Joint Preparation

Preparation of this Agreement has been a joint effort of the Town and Contractor and the resulting document will not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

1.81 Nondisclosure

To the extent allowed by law, Contractor agrees not to divulge, furnish or make available to any third person, firm or organization, without Director or designee's prior written consent, or unless incident to the proper performance of the Contractor's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Contractor hereunder, and Contractor will require all of its employees, agents, Subconsultants and Subcontractors to comply with the provisions of this paragraph.

1.82 Truth-In-Negotiation Certificate

By executing the Agreement the Contractor certifies that wage rates and other factual unit costs supporting the cost of the Work performed under the Agreement are accurate, complete, and current at the time of award. The total Agreement payments thereto will be adjusted to exclude any significant sums by which the Town determines the Agreement Price was increased due to inaccurate, incomplete or non-current wage rates and other factual costs. All such price adjustments will be made within 1 year following the end of the Project.

SECTION 2
SCOPE OF SERVICES

2.1. Scope of Work

The Town is contracting for the services of debris monitor(s) to support the overnight and management of debris recovery contractors. The Contractor will also provide a range of related services including truck certification, monitoring debris recovery and disposal services, damage assessment, training, emergency planning, and other services as needed or as requested by the Town. Other services may include facilitating communications and assistance with reporting requirements with FEMA, FHWA, the State of Florida and other federal agencies, and coordination with state and Town insurance representatives.

The RFP the Town issued and the Contractor's RFP Proposal, which are incorporated into and made part of this Agreement contain additional details on the Scope of Services to be provided.

The decision to issue a Work Order to initiate the Contractor's Services will be determined on an Event-by-Event basis, and is dependent upon factors such as the amount and extent of the debris to be removed.

The Scope of Services as stated in Section 3 of RFP 2017-45 are hereby incorporated into and made part of the contract.

Section 3

Federal Provisions

1. 2 CFR Part 200

- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- c. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- d. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. **The Davis-Bacon Act requirements do not apply to this solicitation.**

- e. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the EPA.
- h. **Mandatory standards and policies relating to energy efficiency** which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- i. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- j. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member

of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

k. Procurement of recovered materials, see § 200.322.

l. Right to audit Contractor's books, documents, papers and records. see § 215.48(d),

2. Contract Provisions Federal-Aid Construction Contracts

Refer to Exhibit 1 for additional required federal provisions for federal-aid construction contracts.

3. Public Assistance Program and Policy Guide

The Contractor is bound by and must comply with the requirements of the April 2017 Public Assistance Program and Policy Guide is hereby incorporated by reference.

Section 4

Price Schedule

Position	Estimated Hours	Hourly Rates	Total
Project Manager	70	\$69.00	\$4,830.00
TDSR Monitors	220	\$35.00	\$7,700.00
Operations Manager	190	\$57.00	\$10,830.00
FEMA Reimbursement Manager	50	\$95.00	\$4,750.00
Scheduler/Expeditor	40	\$48.00	\$1,920.00
TDSR Security	75	\$32.00	\$2,400.00
Field Supervisor	800	\$50.00	\$40,000.00
Field Monitors	430	\$35.00	\$15,050.00
Environmental Specialist/Consultant	10	\$95.00	\$950.00
GIS Specialist/Computer Analyst	10	\$50.00	\$500.00
Data Entry Clerk (Paper ticket back-up if needed)	20	\$27.00	\$540.00
Data Manager	10	\$55.00	\$550.00
Administrative Support	20	\$28.00	\$560.00
Environmental Field Technician	10	\$55.00	\$550.00
Operations Specialist	10	\$48.00	\$480.00
Engineer/Scientist/Professional	10	\$110.00	\$1100.00
Data Support Personnel		\$28.00	\$

Item / Description – or equivalent	Price
1. Aerial Photo Package (Five (5) Photos per flight, different locations)	\$230.00
2. Photograph Copy Per Photo (Duplicate of Original Approved Photo)	\$17.25
3. Additional Photographs Per Photo (same flight, same location, different view)	\$17.25
4. Additional Location (One (1) photo, same flight, different location)	\$86.25

FORM B. – KEY STAFF

NAME	JOB CLASSIFICATION
Chuck Brannon	Project Principal
Kevan Parker	Project Manager
Ryan Booth	Project Manager
Stephen Powell	Field Supervisor
Chris Denney	Data Manager
Alexandra Hestilow	GIS Specialist
Curtis Johnson	Operations Manager
Charles Bryant	FEMA Reimbursement

Section 5

CONTRACT EXECUTION FORM

This Agreement 2017-45 made this 5th day of September in the year 2017 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Witt O'Brien's LLC.

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

Attest:

TOWN OF MIAMI LAKES

By: [Signature]
Gina Inguanzo, Town Clerk

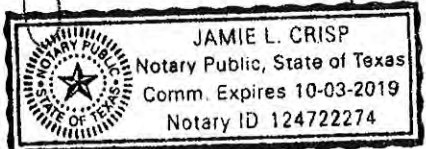
By: [Signature]
Alex Rey, Town Manager

By: [Signature]
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

Witt O'Brien's LLC

By: [Signature]


By: [Signature]
Name: Greg Fenton
Title: COB

(* In the event that the Contractor is a corporation, there will 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 Agreement to do so in its behalf.

CORPORATE RESOLUTION

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

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

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

_____, is hereby authorized
(type name of officer)

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

DATED this _____ day of _____, 20____.

Corporate Secretary

(Corporate Seal)

FORM OF PERFORMANCE BOND (Page 1 of 2)

BY THIS BOND, We _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of **One Million Dollars (\$1,000,000)** for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, No. **2017-45**, awarded the _____ day of _____, **2017**, with Town which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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

FORM OF PERFORMANCE BOND (Page 2 of 2)

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

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

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

Signed and sealed this _____ day of _____, 20_____.

Contractor

WITNESSES:

(Name of Corporation)

Secretary

By:

Signature)

(CORPORATE SEAL)

(Print Name and Title)

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:

Agent and Attorney-in-Fact

Address:

(Street)

(City/State/Zip Code)

E-Mail Address: _____

Telephone No.: _____

FORM OF PAYMENT BOND (Page 1 of 2)

BY THIS BOND, We _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of **One Million Dollars (\$1,000,000)** for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a **Contract No. 2017-45**, for the **Disaster Debris Monitoring Services**, awarded the _____ day of _____, 2017, with Town which Contract are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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

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

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

FORM OF PAYMENT BOND (Page 2 of 2)

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

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

Signed and sealed this _____ day of _____, 20____.

Contractor

ATTEST:

(Secretary)

(Corporate Seal)

IN THE PRESENCE OF:

(Name of Corporation)

By: _____
(Signature)

(Print Name and Title)

____ day of _____, 20____.

INSURANCE COMPANY:

By: _____
Agent and Attorney-in-Fact

Address: _____
(Street)

(City/State/Zip Code)

E-Mail Address: _____

Telephone No.: _____