

RESOLUTION NO. 11-900

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE AWARD OF A CONTRACT TO KVC CONSTRUCTORS, INC. FOR THE DESIGN AND CONSTRUCTION OF THE GOVERNMENT CENTER PROJECT; WAIVING OF COMPETITIVE BIDDING FOR THE IMPLEMENTATION OF AN OWNER DIRECT PURCHASE PROGRAM UNDER THE CONTRACT; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") issued a Request for Proposals ("RFP") No. 2011-03 for Design-Build Services For The Design And Construction Of A New Government Center on March 11, 2011, and five (5) firms submitted responses thereto; and

WHEREAS, the RFP provided that the selected firm be able to provide design-build services for the new Government Center Project ("the Project"); and

WHEREAS, the Selection Committee members ranked the most highly qualified firms to perform design-build services for the Project and the Evaluation Committee recommended D. Stephenson, Inc. as the highest ranked firm and KVC Constructor, Inc. as the second highest ranked firm; and

WHEREAS, the D. Stephenson, Inc. cost for the design and construction of the Project substantially exceeds the budget for the Project and is therefore not recommended to be awarded the Project; and

WHEREAS, the Town Manager recommends that the contract be awarded to KVC

Constructors, Inc.; and

WHEREAS, the Town Manager recommends the waiver of procurement procedures under section 2(H)(1) of the Town's Purchasing Code for the implementation of an Owner Direct Purchase Program.; and

WHEREAS, the Town Council finds that approval of a Contract between the Town and KVC Constructors; Inc. for the Project is in the best interests of the Town; and

WHEREAS, the Town Council approves the recommendation of the Town Manager and authorizes the Town Manager to enter into a Contract with KVC Constructors; Inc. in substantially the form attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. Approval of Contract. The contract between KVC Constructors, Inc. and the Town of Miami Lakes for the Project in substantially the form attached hereto as Exhibit "A", together with such changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney is approved.

Section 3. Waiver of Procurement Procedures. The Town Council hereby waives Procurement Procedures pursuant to Section 2(H)(1) of the Town's Purchasing Procedures and authorizes the Town Manager to implement an Owner Direct Purchase Program for this Project.

Section 4. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the

Contract.

Section 5. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract.

Section 6. Execution of Contract. The Town Manager is authorized to execute the Contract on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Contract and to execute any extensions and/or amendments to the Contract, subject to the approval as to form and legality by the Town Attorney.

Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 23rd day of May, 2011.

Motion to adopt by Vice Mayor Nick Perdomo, second by Councilmember Mary Collins.


FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	Yes
Vice Mayor Nick Perdomo	Yes
Councilmember Mary Collins	Yes
Councilmember Tim Daubert	No
Councilmember Nelson Hernandez	No
Councilmember Ceasar Mestre	Yes
Councilmember Richard Pulido	No




Michael Pizzi
MAYOR

ATTEST:


Marjorie Tejada
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:


TOWN ATTORNEY
Weiss, Serota, Helfman, Pastoriza,
Cole & Boniske, P.L.

**CONTRACT FOR DESIGN-BUILD SERVICES
FOR THE DESIGN & CONSTRUCTION
OF GOVERNMENT CENTER**



The Town of Miami Lakes Council:

**Mayor Michael Pizzi
Vice Mayor Nick Perdomo
Councilmember Mary Collins
Councilmember Timothy Daubert
Councilmember Nelson Hernandez
Councilmember Ceasar Mestre
Councilmember Richard Pulido**

Alex Rey, Town Manager
The Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016

[Handwritten signature]

TABLE OF CONTENTS

Section 1.....General Terms and Conditions	
1.1.....Definition of Terms.....	1
1.2.....Time is of the Essence	4
1.3.....Contract Term	4
1.4.....Notices	4
1.5.....Priority of Provisions.....	5
1.6.....Indemnification.....	5
1.7.....Insurance.....	6
1.8.....Performance and Payment Bond.....	9
1.9.....Qualification of Surety.....	10
1.10.....General Requirements.....	10
1.11.....Method of Performing the Work.....	11
1.12.....Work Staging and Phasing.....	12
1.13.....Site Investigation and Representation.....	12
1.14.....Design-Build Firm to Check Plans, Specifications and Data.....	13
1.15.....Design-Build Firm's Responsibility for Damages and Accidents.....	13
1.16.....Accidents.....	13
1.17.....Safety Precautions.....	13
1.18.....Occupational Health and Safety.....	14
1.19.....Labor and Materials.....	15
1.20.....Rules, Regulations, and Licenses.....	15
1.21.....Design Criteria Professional.....	15
1.22.....Project Management.....	15
1.23.....Superintendence and Supervision.....	16
1.24.....Authority of the Project Manager.....	17
1.25.....Subcontractors.....	18
1.26.....Inspection of Work.....	19
1.27.....Taxes.....	20
1.28.....Separate Contracts.....	20
1.29.....Lands of Work.....	21
1.30.....Coordination of Work.....	21
1.31.....Differing Site Conditions.....	21
1.32.....Existing Utilities.....	21
1.33.....Design-Build Firm's Responsibility for Utility Properties and Service.....	22
1.34.....Interfering Structures.....	22
1.35.....Field Relocation.....	23
1.36.....Design-Build Firm's Use of Project Site.....	23
1.37.....Materials and Equipment.....	23
1.38.....Material and Equipment Shipment, Handling,	23



Storage and Protection.....	23
1.39.....Manufacturer's Instructions.....	25
1.40.....Manufacturer's Warranty.....	26
1.41.....Warranty of Materials and Equipment.....	26
1.42.....Submittals.....	26
1.43.....Shop Drawings, Working Drawings and Samples.....	28
1.44.....Product Data.....	31
1.45.....Record Set.....	32
1.46.....Supplemental Drawings and Instructions.....	32
1.47.....Design-Build Firm Furnished Drawings.....	32
1.48.....Substitutions.....	33
1.49.....Town Furnished Drawings.....	34
1.50.....Interpretation of Drawings and Documents.....	34
1.51.....Product and Material Testing.....	34
1.52.....Field Directives.....	35
1.53.....Changes in the Work or Contract Documents.....	35
1.54.....Continuing the Work.....	35
1.55.....Change Orders.....	35
1.56.....Change Order Procedure.....	36
1.57.....No Oral Changes.....	37
1.58.....Value of Change Order Work.....	37
1.59.....Extra Work Directive.....	40
1.60.....As-Built Drawings.....	41
1.61.....Worker's Identification.....	42
1.62.....Removal of Unsatisfactory Personnel.....	42
1.63.....Substantial Completion and Punch List.....	42
1.64.....Acceptance and Final Payment.....	43
1.65.....NDPES Requirements.....	44
1.66.....Force Majeure.....	44
1.67.....Extension of Time.....	45
1.68.....Notification of Claim.....	46
1.69.....Extension of Time not Cumulative.....	46
1.70.....Design-Build Firm's Damages for Delay.....	46
1.71.....Excusable Delay, Non-Compensable.....	47
1.72.....Acceptance of Defective or Non-Conforming Work.....	47
1.73.....Uncovering Finished Work.....	48
1.74.....Correction of Work.....	48
1.75.....Maintenance of Traffic and Public Streets.....	49
1.76.....Location and Damage to Existing Facilities, Equipment or Utilities.....	50
1.77.....Loss & Damage to Property.....	51
1.78.....Stop Work Order.....	51
1.79.....Hurricane Preparedness.....	52
1.80.....Use of Completed Portions.....	52
1.81.....Cleaning Up; Town's Right to Clean Up.....	53

1.82.....	Removal of Equipment.....	53
1.83.....	Set-offs, Withholdings, and Deductions.....	53
1.84.....	Event of Default.....	53
1.85.....	Notice of Default-Opportunity to Cure.....	54
1.86.....	Termination for Default.....	55
1.87.....	Remedies in the Event of Termination for Default.....	55
1.88.....	Termination for Convenience.....	56
1.89.....	Resolution of Disputes.....	57
1.90.....	Mediation-Waiver of Jury Trial.....	58
1.91.....	Town May Avail Itself of All Remedies.....	58
1.92.....	Permits, Licenses and Impact Fees.....	58
1.93.....	Compliance with Applicable Laws.....	59
1.94.....	Independent Design-Build Firm.....	59
1.95.....	Third Party Beneficiaries.....	59
1.96.....	Successors and Assigns.....	60
1.97.....	Materiality and Waiver of Breach.....	60
1.98.....	Severability.....	60
1.99.....	Applicable Law and Venue of Litigation.....	60
1.100.....	Amendments.....	61
1.101.....	Entire Contract.....	61
1.102.....	Nondiscrimination, Equal Employment Opportunity, and Americans with Disabilities Act.....	61
1.103.....	Royalties and Patents.....	62
1.104.....	Continuation of the Work.....	62
1.105.....	Review of Records.....	62
1.106.....	No Interest.....	63
1.107.....	Payments Related to Guaranteed Obligations.....	63
1.108.....	Consent of Town Required for Subletting or Assignment.....	63
1.109.....	Agreement Limiting Time in Which to Bring Action Against the Town.....	63
1.110.....	Defense of Claims.....	64
1.111.....	Availability of Funding.....	64
1.112.....	Mutual Obligations.....	64
1.113.....	Nature of the Contract.....	64
1.114.....	Contract Documents Contains all Terms.....	65
1.115.....	Survival.....	65
1.116.....	Joint Preparation.....	65
1.117.....	Nondisclosure.....	65
Section 2.....	Supplemental Terms and Conditions	
2.1.....	Scope of Work	66
2.2.....	Design Criteria Package Review	66
2.3.....	LEED Certification	66
2.4.....	Contract Time	68
2.5.....	Contract Price	69

2.6.....	Progress Payments	69
2.7.....	Liquidated Damages	70
2.8.....	Schedule of Values	71
2.9.....	Project Schedules	71
2.10.....	Release of Liens/Subcontractor's Statement of Satisfaction	72
2.11.....	Progress Meetings	73
2.12.....	Request for Information	73
2.13.....	Project Site Facilities	73
2.14.....	Temporary Facilities, Utilities, and Construction	74
2.15.....	Project Laboratory Testing Services	75
2.16.....	Security	75
2.17.....	Construction Signage.....	75
2.18.....	Lines and Grades	76
2.19.....	Progress Photos	76
Section 3 Design Services		
3. 1.....	Design Responsibility.....	77
3. 2.....	Subconsultants.....	77
3. 3.....	Ownership of Documents.....	77
3.4.....	Delivery upon Request or Cancellation.....	77
3.5.....	Error and Omission Issues	78
3.6.....	Design-Build Firm's Key Staff	78
3.7.....	Truth-In-Negotiation Certificate	78
3.8.....	Re-Use by Town	78
3.9.....	Scope of Services	78
3.10.....	Basic Services	79
3.11.....	Basis of Design.....	85
3.12.....	Code Analysis Reports and Plans	86
3.13.....	Timeframes for Completion.....	86
3.14.....	Additional Design Services.....	86
Section 4.....Proposal Forms		
Section 5.....Attachments		
Section 6.....Contract Execution Form		



SECTION 1

GENERAL TERMS AND CONDITIONS

1.1 DEFINITION OF TERMS

Additional Services means any Work defined as such in a Work Order, secured in compliance with Florida Statutes and Town Code.

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

Base Fee means the amount of compensation mutually agreed upon for the completion of Basic Services.

Basic Services means those services designated as such in this Contract.

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

Commissioning means the employment of total building commissioning practices tailored to the size and complexity of the building site, building and its system components in order to verify performance of all components and systems and help ensure that design requirements are met. This includes a designated commissioning authority a commissioning plan, verification of the installation and performance of systems to be commissioned, and a commissioning report.

Consultant means the design firm who has entered into a Contract with the Design-Build Firm to be the Architect of Record and lead design firm under this Contract.

Construction Change Directive means a written directive to effect changes to the Work, issued by the Consultant or the Town that may affect the Contract Price or Contract Time.

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

Contract means the RFP, the Addenda, the Response to the RFP, and this document that has been executed by the Design-Build Firm and the Town subsequent to approval of award by the Town Council.

Contract Documents means the Contract, the plans and specifications developed by the Design-Build Firm, and any change orders, modifications, directives, and clarifications to the Contract.

Cure means the action taken by the Design-Build Firm promptly after receipt of written notice from the Town of a breach of the Contract Documents, which shall be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Contract Documents affected by such breach, or to otherwise make good and eliminate such breach, including, without limitation, repairing, replacing or correcting any portion of the Work or the Project site disturbed in performing such Cure.

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

Days mean calendar days.

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

Design Criteria Professional means the professional design firm contracted by the Town to prepare Design Criteria Package for the Project.

Design Criteria Package means a concise, performance-oriented guidelines and requirements that form the basis for the design and construction of the Project.

Design Documents means the construction plans and specifications prepared by the Design-Build Firm.

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

Field Directive means a written approval for the Design-Build Firm to proceed with Work requested by the Town, which is minor in nature and should not involve additional cost.

Final Completion means the date subsequent to the date of Substantial Completion at which time the Design-Build Firm has completed all the Work in accordance with the Contract, as certified by the architect or engineer of record, or the Town, and submitted all documentation required by the Contract Documents.

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

Integrated Design or IDP means the use of a collaborative, integrated planning and design process consistent with ASTM E 2348, Standard Guide for Framework for a Consensus-based Environmental Decision making Process that Initiates and maintains an integrated project team in all stages of a project's planning and delivery; Establishes performance goals for sighting, energy, water, materials, and indoor environmental quality along with other comprehensive design goals; and, ensures incorporation of these goals throughout the design and lifecycle of the building; and considers all stages of the building's lifecycle, including deconstruction.

Notice of Award means the written letter to the Design-Build Firm notify the Design-Build Firm that they have been awarded the Contract.

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

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

Professional Services means those services within the scope of the practice of architecture, professional engineering, or registered surveying and mapping, as applicable, as defined by

the laws of the State of Florida, or those performed by any architect, professional engineer, or registered surveyor or mapper in connection with his or her professional employment or practice. These services may be abbreviated herein as "architectural/ engineering services" or "professional services", as applicable, which are within this definition.

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

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

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

Scope of Services or Services means a comprehensive description of the activities, tasks, design features, objectives, deliverables and milestones required for the completion of Project or an assignment with sufficient detail to allow a reasonably accurate estimation of resources necessary for its completion.

Subconsultant means a person, firm or corporation having a direct contract with the Design-Build Firm or Consultant for the purposes of the design of this Project.

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

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

Substantial Completion means that point at which the Work is at a level of completion in substantial compliance with the Contract such that the Town can use, occupy and/or operate the facility in all respects to its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, which regulate or have jurisdiction over the Work, have inspected, and approved the Work. Beneficial use or occupancy shall not be the sole determining factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of occupancy has been issued.

Town means the Town of Miami Lakes. For the purposes of this Contract term "Town" shall mean the Town Manager.

Town Commission means the legislative body of the Town of Miami Lakes.

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

Wage Rates: means the effective direct expense to Consultant and/or Subconsultant, on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under this Contract that justify and form the basis for professional fees regardless of actual manner of compensation.

1.2 Time is of the Essence

Design-Build Firm will promptly perform its duties under the Contract and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with the Contract. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in the Contract.

All dates and periods of time set forth in the Contract, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the Town.

The Design-Build Firm acknowledges and recognizes that the Town is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time.

In agreeing to bear the risk of delays for completion of the Work except for extensions approved in accordance with Article 1.71, Excusable Delays, the Design-Build Firm understands that, except and only to the extent provided otherwise in the Contract, the occurrence of events of delay within the Design-Build Firm's, control of the Work shall not excuse the Design-Build Firm from its obligation to achieve Substantial and Final Completions of the Work within the Contract Time, and shall not entitle the Design-Build Firm to any adjustment. All parties under the control of, or contract with the Design-Build Firm shall include but are not limited to materialmen, Consultant, Subconsultants, Subcontractors, suppliers and laborers.

The Design-Build Firm acknowledges that the Town is purchasing the right to have the Design-Build Firm continuously working at the Project site for the full duration of the Project to ensure the timely completion of the Work.

1.3. Contract Term

The Contract shall commence upon issuance of the Notice of Proceed, which shall be issued subsequent to the execution of the Contract by the Town. The Contract shall terminate upon notice by the Town that the Contract has been closed-out after Final Completion or otherwise terminated by the Town pursuant to the terms and conditions herein set forth.

1.4. Notices

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



delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For the Town:

Mr. Alex Rey
Town Manager
Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016
reya@miamilakes-fl.gov

Mr. Gary Fabrikant
Procurement Manager
Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016
fabrikantg@miamilakes-fl.gov

For Design-Build Firm:

Vick Crespin
Vice President
KVC Constructors, Inc.
9499 NE 2nd Avenue, Suite 205
Miami Shores, Florida 33138
vick.crespin@kvconstrutors.com
(305) 757-7707

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

1.5. Priority of Provisions

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

In the event of conflicts in the Contract the order of precedence stated below shall govern;

- Revisions and Change Orders to the Contract
- Contract
- Design Criteria Package
- Plans & Specifications
- RFP Responses

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

1.6. Indemnification

The Design-Build Firm shall 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 Contract, caused by the negligence, recklessness or intentional misconduct, or any act or omission of Design-Build Firm and anyone directly or indirectly employed by Design-Build Firm or anyone for whose acts Design-Build Firm may be liable in the performance of this Contract. The Design-Build Firm expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Design-Build Firm shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

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

Design-Build Firm shall 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 Contract. This indemnity will be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of §725.06 and/or §725.08, Fla. Statute.

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

1.7. Insurance

Without limiting any of the other obligations or liabilities of Design-Build Firm, Design-Build Firm shall provide, pay for, and maintain in force until all of its Work to be performed under this Contract has been completed and accepted by Town (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth herein.

1.7.1 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

1.7.2 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.

1.7.3 Commercial General Liability (CGL) 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. Design-Build Firm shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.**
- **Personal and Advertising Injury with an aggregate limit of One Million Dollars (\$1,000,000).**
- **CGL Required Endorsements**
 - **Employees included as insured**
 - **Independent Design-Build Firms Coverage**
 - **Contractual Liability**
 - **Waver of Subrogation**
 - **Premises and/or Operations**
 - **Explosion, Collapse and Underground Hazards**
 - **Loading and Unloading**
 - **Mobile Equipment (Design-Build Firm's Equipment) whether owned, leased, borrowed or rented by Design-Build Firm or employees of the Design-Build Firm.**

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 Design-Build Firm or acts or omissions of Design-Build Firm in connection with general supervision of such operation.

1.7.4 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 shall be listed as an Additional Insured**

1.7.5 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 shall be listed as an additional insured.

1.7.6 Installation Floater

Required for the installation of machinery and/or equipment into an existing structure is required. The coverage shall be "All Risk" coverage including installation and transit for 100 percent of the "installed replacement cost value," covering Town as a named insured, with a deductible of not more than Five Thousand Dollars (\$5,000.00) each claim.

1.7.7 Cessation of Insurance

Coverage is not to cease and is to remain in force (subject to cancellation notice) until Final Acceptance by Town.

1.7.8 Protection & Indemnity Coverage - \$1,000,000

1.7.9 Owners & Design-Build Firm's Protective

- Each Occurrence \$1,000,000
- General Aggregate \$1,000,000

1.7.10 Builder's Risk (required prior to commencement of construction)

Causes of loss: All Risk-Specific Coverage Project Location

Valuation: Replacement Cost Deductible: \$10,000, All other Perils 5% maximum on Wind, Town shall be included as an Additional Insured.

- Limit/Value at Location or Site in the amount of \$3,848,204
- Coverage Extensions:
 - Materials, supplies and similar property owned by others for which you are responsible.
 - Full coverage up to policy limits for equipment breakdown.
 - Temporary storage/transit coverage.
 - Full coverage up to policy limits for site preparation, re-excavation, re-preparation and re-grade in the event of a loss.
 - Fences, scaffolding, construction forms coverage and signs
 - Valuable papers coverage for blueprints, site plans and similar documents.
 - Trees, shrubs, sod, plants while at premises.
 - Flood, including inundation, rain, seepage and water damage.
 - Earthquake
 - New ordinance or law; reimbursement for any resulting loss of value to the undamaged portion, and required demolition

expenses, including construction necessary to repair, rebuild or re-construct damaged parts.

- o Temporary structures, cribbing and false work built or erected at construction site.
- o Debris Removal.

1.7.11 Professional Liability Insurance

The Consultant shall maintain Professional Liability Insurance including Errors and Omissions coverage in the minimum amount of \$1,000,000 per claim, combined single limits, providing for all sums which the Consultant shall be legally obligated to pay as damages for claims arising out the services performed by the Consultant or any person employed by the Consultant in connection with this Contract. This insurance shall be maintained for at least one year after completion of the construction and acceptance of the Project covered by this Contract.

The above policies shall 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 shall be furnished at least thirty (30) days prior to the date of their expiration.

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

Design-Build Firm shall 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 Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract.

The official title of the owner is the Town of Miami Lakes, Florida. This official title shall be used in all insurance documentation.

Companies authorized to do business in the State of Florida, with the following qualifications, shall 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.

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 Design-Build Firm in accordance with Section 1, General Conditions, Article 1.4, Notices. Design-Build Firm shall 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.

1.8 Performance and Payment Bond

The Design-Build Firm shall within fifteen (15) calendar days of being notified by the Project Manager and prior to commencement of physical construction, furnish a Performance/Payment containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to Town the completion and performance of the Work covered in the Contract Documents as well as full payment of all suppliers, laborers, or Subcontractor, and Subconsultant employed pursuant to this Project. Each Bond shall be with a Surety, which is qualified pursuant to Article 1.9, Qualification of Surety. The Surety shall automatically adjust the Bond value to account for and additive or deductive change orders to preclude the requirement for revised Bonds to be submitted to the Town.

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

The Bond(s) shall not contain a provision allowing the Surety(ies) to cancel the Bonds prior to the completion of the Contract, inclusive of the Warranty provision.

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, Design-Build Firm shall ensure that the bond(s) referenced above shall be recorded in the public records and provide Town with evidence of such recording.

Adjustments to the Value of the Bond

The Design-Build Firm shall not be required to provide a separate Bond for increases or deductions in the value of the Contract. The Surety shall adjust the Bond value to accurately reflect any changes in the value of the Bond. Prior to of the Final Payment and close-out of the Project the Design-Build Firm shall provide the to the Town Manager documentation from the Surety documenting any adjustments to the Bond and the final cost of the Bond.

Alternate Form of Security:

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

1.9. Qualification of Surety

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

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

1.10. General Requirements

The employee(s) of the Design-Build Firm shall 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 Design-Build Firm agrees that the Design-Build Firm will at all times employ, maintain and assign to the performance of a Project a sufficient number of competent and qualified professionals and other personnel to meet the requirements of the Work to be performed.

The Design-Build Firm 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 Design-Build Firm 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 Design-Build Firm shall perform the Work complete, in place, and ready for continuous service, and shall include repairs, testing, permits, clean-up, replacements, and restoration required as a result of damages caused during this construction.

The Design-Build Firm shall provide temporary facilities and controls necessary to perform the Work and to ensure safe and proper access and use of the site by the Project Manager.

The Design-Build Firm shall at all times cooperate with the Town and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

The Town, the Design Criteria Professional and other agencies authorized by the Town, shall have full access to the Project site at all times.

The Design-Build Firm shall be responsible for the good condition of the Work or materials until formal release from his obligations under the terms of the Contract Documents.

Design-Build Firm shall bear all losses resulting to it on account of the amount or character of the Work, or the character of the ground, being different from what it anticipated.

All newly constructed Work shall be carefully protected from injury in any way. No wheeling or walking or placing of heavy loads on it shall be allowed and the Design-Build Firm at its own expense shall reconstruct all damaged portions.

The Design-Build Firm shall at all times conduct the Work in such manner and in such sequence as will ensure the least practicable local interference. Design-Build Firm shall not

open up Work to the prejudice of Work already started, and the Project Manager may require the Design-Build Firm to finish a section on which Work is in progress before Work is started on any additional section.

1.11. Method of Performing the Work

When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Design-Build Firm's responsibility to verify all such dimensions at the site and the actual job dimensions shall take precedence.

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of the Contract Documents shall 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 Design-Build Firm 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 shall have the right to order the Design-Build Firm to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Design-Build Firm shall immediately comply with such orders at no additional cost to the Town and/or (3) the Town at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Design-Build Firm.

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

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

1.12. Work Staging and Phasing

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

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

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

1.13. Site Investigation and Representation

The Design-Build Firm acknowledges that it has satisfied itself as to the nature and location(s) of the Work under the Contract Documents that impact the planning, zoning, land development and entitlement requirement for the Project. The Design-Build Firm shall 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, and roads, the conformation and conditions at the ground based on Town provided reports, 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 or the cost thereof under the Contract Documents.

The Design-Build Firm further acknowledges that it has satisfied itself based on any geotechnical reports the Town may provide and inspection of the Project site as to the character, quality, and quantity of surface and subsurface materials to be encountered from inspecting the site and from evaluating information derived from exploratory work that may have been done by the Town or included in this Contract Documents.

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

1.14. Design-Build Firm to Check Plans, Specifications and Data

Design-Build Firm shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Project Manager, and the Design Criteria Professional, as part of the Contract Documents, and shall notify the Project Manager, and the Design Criteria Professional, of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Design-Build Firm will not be allowed to take advantage of any error, omission or discrepancy in the plans or specifications as the Design-Build Firm has sole responsibility for design and construction. Design-Build Firm is also liable for damages and/or re-work resulting from errors, omissions or discrepancies in the plans and/or specifications

1.15. Design-Build Firm's Responsibility for Damages and Accidents

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

1.16. Accidents

The Design-Build Firm shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project duration. The Design-Build Firm shall also comply with the OSHA requirements as defined in the United States Labor Code 29 CFR 1926.50. In addition, the Design-Build Firm must report immediately to the Project Manager every accident to persons or damage to property, and shall furnish in writing full information, including testimony of witnesses regarding any and all accidents.

1.17. Safety Precautions

Design-Build Firm shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-Build Firm shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

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

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

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

Design-Build Firm 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 Design-Build Firm shall 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.

The Design-Build Firm shall take the responsibility to ensure that all Work is performed using adequate safeguards, including but not limited to: proper safe rigging, safety nets,

fencing, scaffolding, barricades, chain link fencing, railings, barricades, steel plates, safety lights, and ladders that are necessary for the protection of its employees, as well as the public and Town employees. All riggings and scaffolding shall be constructed with good sound materials, of adequate dimensions for their intended use, and substantially braced, tied or secured to ensure absolute safety for those required to use it, as well as those in the vicinity. All riggings, scaffolding, platforms, equipment guards, trenching, shoring, ladders and similar actions or equipment shall be OSHA approved, as applicable, and in accordance with all federal, state and local regulations.

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

1.18. Occupational Health and Safety

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of a Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

- The chemical name and the common name of the substance.
- The hazards or other risks in the use of the substance, including:
 - The potential for fire, explosion, corrosion, and reaction;
 - The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the substance; and
 - The primary routes of entry and symptoms of overexposure.
- The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the substances, including appropriate emergency treatment in case of overexposure.
- The emergency procedure for spills, fire, disposal, and first aid.
- A description in lay terms of the known specific potential health risks posed by the substance intended to alert any person reading this information.
- The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

1.19. Labor and Materials

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

Design-Build Firm shall at all times enforce strict discipline and good order among its employees, Subcontractor, Consultant, and Subconsultant at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the Work to which they are assigned.

1.20. Rules, Regulations, and Licenses

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

1.21. Design Criteria Professional

The Town has entered into a separate agreement with MC Harry & Associates to act as the Design Criteria Professional for this Project and shall be referred to in the Contract as the "Design Criteria Professional". MC Harry & Associates has completed the attached Design Criteria Package, entitled; "Government Center Design Criteria Manual", dated March 9, 2011.

1.22. Project Management

Where a Design-Build Firm is awarded Work, the Design-Build Firm shall be responsible for all Project management, including any and all subcontracts necessary to ensure that the Work is performed in accordance with the Contract Documents. Project Management shall include, but is not limited to: designing the Project, obtaining bids from Subcontractors and suppliers; coordinating the securing of all permits; obtaining licenses and inspections; ensuring that Subcontractors, and Subconsultants comply with all Town requirements; performing the Work in accordance with the Contract Documents to the satisfaction of the Project Manager; paying all Subcontractors and Subconsultants; obtaining release of liens/claims fees; and obtaining temporary and final Certificates of Occupancy or Completion.

1.23. Superintendence and Supervision

The Design-Build Firm shall keep the Contract under his own control and it shall 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. Design-Build Firm shall keep on the Project during its progress, a full-time competent English speaking construction manager and/or superintendent, and who shall have full authority by the Design-Build Firm 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 Project Manager. The construction manager and/or superintendent shall not be changed except with the written consent of Project Manager, unless the superintendent proves to be unsatisfactory to Design-Build Firm and ceases to be in its employ. The construction manager and/or superintendent shall represent Design-Build Firm and all directions given to the construction manager and/or superintendent shall be as binding as if given to Design-Build Firm and will be confirmed in writing by Project Manager upon the written request of Design-Build Firm. Design-Build Firm shall give efficient supervision to the Work, using its best skill and attention. The Project Manager shall be provided telephone number(s) for the construction manager and/or superintendent where the construction manager and/or superintendent can be contacted during normal working hours as well as after hours for emergencies.

The Design-Build Firm's construction manager and/or superintendent shall record, at a minimum, the following information in a bound log: the day; date; weather conditions and

how any weather condition affected progress of the Work; time of commencement of Work for the day; the Work being performed; materials, labor, personnel, equipment and Subcontractors and Subconsultants at the Project site; visitors to the Project site, including representatives of the Town, Design Criteria Professional, regulatory representatives; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. All information shall be recorded in the daily log in indelible ink. The daily log shall be kept on the Project site and shall be available at all times for inspection and copying by Project Manager.

The Project Manager, and Design-Build Firm shall meet at least every two (2) weeks or as otherwise determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and any outstanding issues. The Design-Build Firm shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

If Design-Build Firm, in the course of performing the Work, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors, omissions, or discrepancies in the Plans, it shall be Design-Build Firm's duty to immediately inform Project Manager, in writing, and Project Manager will promptly review the same. All Work performed as a result of such discovery, will be done at Design-Build Firm's sole risk.

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

1.24. Authority of the Project Manager

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

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

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

The Project Manager shall have access to the Project Site at all times. The Design-Build Firm shall provide safe facilities for such access so the Project Manager may perform their functions under the Contract. 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 Contract Documents.



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

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

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

The Design Criteria Professional shall inspect the Work to determine it compliance with the DCP. The Project Manager shall notify the Design-Build Firm in writing where the Work does not comply with the DCP.

The Project Manager will not be responsible for the acts or omissions of the Design-Build Firm, any Subcontractor, Subconsultant, Consultant, or any of their agents or employees, or any other persons performing any of the Work.

1.25. 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 Design-Build Firm. Design-Build Firm shall be solely responsible for and have control over the Subcontractors.

All subcontracts shall:

- require each Subcontractor to be bound to the Design-Build Firm to the same extent Design-Build Firm is bound to the Town by the terms of the Contract 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 Contract.
- provide that the Town will be an additional indemnified party of the subcontract;
- a provision requiring Subcontractor to maintain insurance in accordance with the Contract Documents;
- provide that the Town will be an additional insured on all insurance policies required to be provided by the Subcontractor except workman's' compensation;
- a provision that such Subcontract shall be terminable for default or convenience upon ten (10) days' prior written notice by Design-Build Firm;

- a provision that neither Design-Build Firm nor such Subcontractor shall 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 shall promptly notify the Town (with a copy to Design-Build Firm) of any default of Design-Build Firm under the Subcontract, whether as to payment or otherwise;
- a provision that Design-Build Firm and Subcontractor acknowledge that (i) it is entering into a contract for the construction of a public building as contemplated in Chapter 255, Florida Statutes, and (ii) it has no right to file a construction lien against the Work or the Project and agrees to include a similar requirement in any purchase order or subcontract entered into by Subcontractor;
- provisions that Subcontractor shall comply with all applicable laws (including prompt payment) and the Town requirements as set forth in the Contract and maintain all files, records, accounts of expenditures for Subcontractor's portion of the Work to the standards set forth in the Contract.
- a provision that the Town may, at reasonable times, contact Subcontractor, after notice to Design-Build Firm, to discuss, or obtain a written report of, Subcontractor's services, with Design-Build Firm entitled to be present during any such discussions; provided that in no event shall Subcontractor take instructions directly from the Town;
- a requirement that Subcontractor promptly disclose to the Town and Design-Build Firm any defect, omission, error or deficiency in the Contract Documents or the Work about which it has knowledge;

Subcontractor(s) must agree to provide field (on-site) supervision through a named superintendent for each trade (e.g., general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the Subcontractor(s) shall assign and name a qualified employee for scheduling direction for its Work.

Design-Build Firm shall 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 Design-Build Firm is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall 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 Design-Build Firm on account of specific work performed.

Design-Build Firm shall be required to comply with all Town requirements for Subcontractor utilization reports.

Design-Build Firm agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Town.

If Design-Build Firm requires a Subcontractor to obtain performance and payment bonds, then such bonds shall name the Design-Build Firm and the Town as co-obligees, shall cover

all warranties and guarantees of the Subcontractor, and shall comply with all bond requirements under this Contract.

Construction Manager shall 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

1.26. Inspection of Work

Design Criteria Professional, Inspectors, and Town shall at all times have access to the Work during normal work hours, and Design-Build Firm shall provide proper facilities for such access and for inspecting, measuring and testing.

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

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

The Design-Build Firm shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, caused by the Design-Build Firm's correction or removal of Work, which is not in accordance with the requirements of the Contract Documents.

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

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

1.27. Taxes

Design-Build Firm shall pay all applicable sales, consumer, use and other taxes required by law except for materials purchased under an Owner Controlled Direct Purchase Program. Design-Build Firm is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

1.28. Separate Contracts

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

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

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

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

1.29. Lands of Work

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

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

1.30. Coordination of Work

Design-Build Firm shall ensure that the performance of the Work does not impact any ongoing operations at Project(s) site(s), which also includes the delivery of any materials and equipment. Access to and egress from the Project Site shall be coordinated with the Project Manager to minimize interference to neighboring businesses and roadways.

During progress of Work under this Contract, it may be necessary for other contractor's and persons employed by the Town to Work in or about the Project. The Town reserves the right to put such other contractors to work and to afford such access to the Project site of the Work to be performed hereunder at such times as the Town deems proper.

If this Contract requires a portion of the Work to be tied into work done under other Contract(s), it will be necessary for Design-build Firm to plan its Work and cooperate with other contractors insofar as possible to prevent any interference and delay.

The Design-build Firm shall not impede or interfere with the work of other contractors engaged in or about the Work and shall so arrange and conduct its Work that such other contractors may complete their work at the earliest date possible.

1.31. Differing Site Conditions

No adjustments to the Contract Time or Contract Price shall be approved due to differing site conditions as the Design-Build Firm is solely responsible for all aspects of design and construction.

1.32. Existing Utilities

Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Design-Build Firm only, and no responsibility is assumed by either the Town for their accuracy or completeness. No request for additional compensation or contract time resulting from encountering utilities not shown will be considered. The Design-Build Firm is responsible for locating all underground utilities. The Design-Build Firm shall explore sufficiently ahead of the Work to allow time for any necessary adjustments. The Design-Build Firm must coordinate all underground utility locations through "Sunshine State One Call of Florida, Inc", who shall be contacted a minimum of 48 hours before the Design-Build Firm commences any digging.

1.33. Design-Build Firm's Responsibility for Utility Properties and Service

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

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

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

Neither the Town nor its officers or agents shall be responsible to the Design-Build Firm for damages as a result of the Design-Build Firm's failure to protect utilities encountered in the Work.

In the event of interruption to domestic water, sewer, storm drain, or other utility services as a result of accidental breakage due to construction operations, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility.

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

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

Replace with material approved by the Project Manager, at Design-Build Firm's expense, any existing utilities damaged during the Work

1.34. Interfering Structures

An attempt has been made to show major structures on the furnished Drawings. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and is presented as a guide. The Design-Build Firm shall field verify all locations. Design-Build Firm shall coordinate with any affected companies, including utility companies and take necessary precautions to prevent damage to existing structures whether on the surface, above ground, or underground, including have the owner of the interfering structures place temporary supports.

1.35. Field Relocation

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

1.36. Design-Build Firm's Use of Project Site

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

The Design-Build Firm shall limit its use of the Project site, so as to allow for the Town's continuous operation.

- The Design-Build Firm shall:
 - Keep existing driveways and entrances serving surrounding facilities clear and available to the Town, its employees and the public at all times; not use areas for parking and/or storage of materials except as authorized by the Project Manager.
 - Assume all responsibility for its tools, equipment and materials, including any materials purchased for the Work and not accepted by the Town, and its vehicles while performing Work for the Town and/or while parked or stored at a

Town facility. The Town assumes no liability for damage or loss to the items specified in this paragraph.

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

1.37 Materials and Equipment

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

1.38. Material and Equipment Shipment, Handling, Storage and Protection

Preparation for Shipment

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

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

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

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

Packaging and Delivery of Spare Parts and Special Tools

Properly mark to identify the associated equipment by name, equipment, and part number. Parts shall be packaged in a manner for protection against damage from the elements during shipping, handling, and storage. Ship in boxes that are marked to indicate the contents. Delivery of spare parts and special tools shall be made prior to the time associated equipment is scheduled for the initial test run.

Shipment

All equipment and material shall be shipped with freight and shipping paid, FOB job site.

The Design-Build Firm shall request a 7-day advance notice of shipment from manufacturers, and, upon receipt of such notice, provide the Project Manager with a copy of the current delivery information concerning equipment items and material items of critical importance to the Project schedule.

Receiving

The Design-Build Firm shall unload and record the receipt of all equipment and materials at the jobsite.

All costs for receiving, inspection, handling, storage, insurance, inventory control, and equipment maintenance for the Design-Build Firm-supplied and Town-supplied materials and equipment shall be included in the prices Bid and no extra compensation will be allowed.

Inspection

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

Handling

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

Storage

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

Insurance

The Design-Build Firm's insurance shall adequately cover the value of materials delivered but not yet incorporated into the Work.

Inventory Control

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

Equipment's Maintenance Prior to Acceptance by the Town

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

Salvage Equipment

Any salvageable, as determined by the Project Manager, pipe, fittings, or other miscellaneous material or equipment removed during construction and not reused in the Work shall be cleaned, hauled, and stored by the Design-Build Firm at his own expense,

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

1.42. Submittals

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

Design-Build Firm, by approving and submitting any submittals, represents that they have verified the accuracy of the submittals, and they have verified all of the submittal information and documentation with the requirements of the Contract Documents. At time of submission the Design-Build Firm shall advise the Project Manager and/or the Design Criteria Professional, as applicable, in writing of any deviations from the Contract Documents. Failure of the Design-Build Firm to advise the Project Manager and/or the Design Criteria Professional of any deviations shall make the Design-Build Firm solely responsible for any costs incurred to correct, add or modify any portion of the Work to comply with the Contract Documents.

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

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

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

Town shall not be liable for any materials, fabrication of products or Work commenced that requires submittals until the Project Manager has returned approved submittals to the Design-Build Firm.



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

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

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

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

The Design-Build Firm shall also provide copies of all plans approved and permitted by the required governing authorities.

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

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

1.43. Shop Drawings, Working Drawings and Samples

The Design-Build Firm shall submit to the Project Manager for acceptance, if any, such working drawings, shop drawings, test reports and data on materials and equipment, and material samples as are included in the Design Documents prepared by the Design-Build Firm, or in the Design Criteria Package.

SHOP DRAWINGS: The term "Shop Drawings" shall be construed to mean Design-Build Firm's plans for material and equipment, which becomes an integral part of the Project. Shop drawings shall consist of fabrication, erection and setting drawings and schedule drawings, manufacturer's scale drawings, wiring and control diagrams, material and equipment lists, catalog data sheets, cuts, performance curves, diagrams, materials of construction and similar descriptive material.

Shop drawings shall be prepared in a manner and sufficient detail to enable the Town and the Design Criteria Professional to determine compliance with all stated Design Criteria requirements or design documents.

Drawings and schedules shall be checked and coordinated with the Work of all trades involved before they are submitted for review by the Town and/or the Design Criteria



Professional and shall bear the Design-Build Firm's stamp of review and acceptance as evidence of such checking and coordination.

If drawings show variation from Contract requirements because of standard shop practice or for other reasons, the Design-Build Firm shall describe such variations in his letter of transmittal. If acceptable, proper adjustment in the Contract shall be implemented where appropriate. If the Design-Build Firm fails to describe such variations, he shall not be relieved of the responsibility for executing the Work in accordance with the Contract, even though such drawings have been reviewed.

WORKING DRAWINGS: The term "Working Drawings" shall be construed to mean the Design-Build Firm's plan for temporary structures such as temporary bulkheads, support of open cut excavation, support of utilities, groundwater control systems, forming and false work for underpinning, and for such other work as may be required for construction but does not become an integral permanent part of the Project.

Working Drawings shall be submitted to the Project Manager where required by the Design Criteria, the Design Documents, or requested by the Project Manager, and shall be submitted at least thirty (30) calendar days (unless otherwise specified) in advance of their being required for the Work.

Working Drawings, where required, shall be prepared, signed and sealed by a registered professional engineer currently licensed to practice in the State of Florida. Working Drawing submittals are required to verify compliance with this provision. The Design-Build Firm and the Design-Build Firm's engineer assume all risks of error; the Town shall have no responsibility therefore.

SAMPLES: The Design-Build Firm shall furnish, for the inspection of the Town and the Design Criteria Professional, samples required by the Design Criteria Package, the Design Documents, or requested by the Town.

1. Samples shall be delivered to the Project Manager as specified or directed. The Design-Build Firm shall prepay all shipping charges on samples.
2. Review and acceptance of a sample shall be only for the characteristics or use named in such acceptance and shall not be construed to change or modify any Contract requirements. Materials or equipment for which samples are required shall not be used in Work until accepted by the Town. Materials and equipment incorporated in Work shall match the accepted samples.
3. Accepted samples, not destroyed in testing, shall be sent to the site of the Work. Accepted samples of the hardware in good condition will be marked for identification and may be used in the Work. Samples which failed testing or were not accepted will be returned to the Design-Build Firm at his expense, if so requested at the time of submission.

DESIGN-BUILD FIRM 'S RESPONSIBILITY - The DESIGN-BUILD FIRM shall:

1. Check all drawings, data and samples prepared by or for it before submitting them to the Project Manager for review;
2. Stamp each data Submittal with "Design-Build Firm's Stamp" indicating that they have been checked. Shop drawings submitted to the Project Manager without the



"Design-Build Firm's Stamp" will be returned for nonconformance with this requirement;

3. Determine and verify field measurements and construction criteria;
4. Determine and verify specific catalog numbers and similar data (other catalog or manufacturer's data not pertinent to the Submittal shall be crossed or marked out).
5. Determine and verify general conformance with Design Criteria.
6. Not begin any Work covered by a shop drawing returned for correction until a revision or correction thereof has been reviewed, accepted and returned to the Design-Build Firm by the Project Manager or Design Criteria Professional. The Design-Build Firm shall be responsible for and bear all costs for damages which may result from the ordering of any material or from proceeding with any part of the Work prior to the review and acceptance by the Town of the necessary shop drawings;
1. Carry out the construction in accordance with shop drawings as returned by the Town with no exceptions or as noted and shall make no further changes therein except upon written instruction from the Project Manager;
2. Submit to the Project Manager all shop drawings, samples and schedules sufficiently in advance of construction requirements to provide no less than thirty (30) calendar days for checking, and appropriate action;
9. List exceptions to the Design Criteria taken by the Design-Build Firm in the letter of Shop Drawing Transmittal to the Project Manager.

TOWN'S RESPONSIBILITY - the Town will:

1. Review shop drawings, data, and samples submitted by the Design-Build Firm to interpret the Work depicted on such Submittal, to be in general conformance with the design concept and in general compliance with the Contract requirements. The Town and Design Criteria Professional's review and comments, if any, constitutes a limited, conditional or qualified permission to use such materials, equipment or methods and does not constitute an acceptance of dimensions, quantities, details of the material, equipment, device or item submitted.
2. Review and return shop drawing submittals within 30 calendar days of receipt.
3. Reject and return shop drawings to the Design-Build Firm without action (Stamped "REJECTED") or review with the following applicable notation:
 - a. "Design-Build Firm's Stamp required - Incomplete Review by Design-Build Firm ", or
 - b. "Submittal Not Required by Design Criteria", or
 - c. "Submittal Incomplete - See Section _____", or
 - d. "Contract Variation Not Noted in Transmittal".

SUBMITTAL PROCEDURES:

Preliminary Shop Drawing Data: Within 20 days after the Award of the Contract the Design-Build Firm shall submit to the Project Manager a complete listing of manufacturers for all items for which shop drawings are to be submitted.

Shop Drawing Submittal Schedule: Within 30 days after the Notice to Proceed, the Design-Build Firm shall submit to the Project Manager a complete schedule of shop drawing submittals fixing the respective dates for submission, the beginning of manufacture, testing, and installation of materials, supplies and equipment, noting those submittals critical to the progress schedule.

Submittal Log: An accurate updated log of submittals maintained by the Design-Build Firm and subject to review by the Project Manager at each scheduled progress meeting.

When reviewed by the Project Manager, each of the shop drawings will be identified as having received such review, being so stamped and dated. Shop drawings stamped "REJECTED" will be returned to the Design-Build Firm for correction and re-submittal with the required correction indicated on the shop drawing or listed on a "Shop Drawing Review sheet".

If submitted drawings or schedules show a departure or variation from the Contract Requirements which are in the interest of the Town and to be so minor as not to involve a change in Contract Price or time for performance, the Town and Design Criteria Professional may return the reviewed drawings without noting an exception.

If the Design-Build Firm considers any correction indicated on the drawings to constitute a change to the Design Criteria, the Design-Build Firm shall give written notice thereof to the Project Manager. This does not constitute a change order until accepted by the Town.

Re-submittals will be handled in the same manner as first submittals. On re-submittals, the Design-Build Firm shall direct specific attention on the transmittal and on re-submitted shop drawings to revisions other than the corrections requested by the Project Manager and/or Design Criteria Professional on previous submissions. The Design-Build Firm shall make any corrections required by the Project Manager and/or Design Criteria Professional.

The Project Manager and Design Criteria Professional, if applicable, will review a Submittal/re-submittal a maximum of two (2) times after which the cost of review will be borne by the Design-Build Firm at the Project Manager and Design Criteria Professional's standard hourly rate. No partial submittals will be reviewed. Submittals not complete will be returned to the Design-Build Firm, and will be considered "Rejected" until properly resubmitted.

Design-Build Firm shall submit a minimum of four (4) sets, plus additional sets as required by his Subcontractors, of each shop drawing Submittal for review.

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

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

Where professional calculations and/or certification of performance criteria of materials, systems, and or equipment are required, the Project Manager is entitled to rely upon the accuracy and completeness of such calculations and certifications submitted by the Design-Build Firm. Calculations, when required, shall be submitted in a neat clear and easy format to follow.

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

1.44. Product Data

Design-Build Firm shall submit four (4) copies of product data, warranty information and operating and maintenance manuals in the same manner as shop drawing submittals. Each copy must be marked to identify applicable products, models, options and other data. Design-Build Firm shall supplement manufacturer's standard data to provide information unique to the Work.

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

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

1.45. Record Set

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

1.46. Supplemental Drawings and Instructions

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

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

1.47. Design-Build Firm Furnished Drawings

The Contract Documents require the Design-Build Firm to furnish design, shop and/or as-built drawings depending on the nature and scope of the Work to be performed. The following applies to the different types of drawings.

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

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

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

Acceptance by the Town shall not relieve the Design-Build Firm from responsibility for errors and omissions in the drawings.

1.48. Substitutions

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

If Design-Build Firm wishes to furnish or use a substitute item of material or equipment, Design-Build Firm shall make application to the Project Manager for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve

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

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Drawings, Design-Build Firm may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Architect or Engineer of Record, if the Design-Build Firm submits sufficient information to allow Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager shall be the same as those provided herein for substitute materials and equipment.

The Project Manager and the Town shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Project Manager's prior written acceptance which shall be evidenced by either a Change Order or an approved submittal. The Project Manager or the Town may require the Design-Build Firm to furnish at Design-Build Firm's expense a special performance guarantee or other surety with respect to any substitute. If the Project Manager or Town rejects the proposed substitute, at their discretion, the Project Manager or Town may require the Design-Build Firm to reimburse the Town for the charges for evaluating the proposed substitute.

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

1.49. Town Furnished Drawings

The Design Criteria Package ("DCP") as required by Florida Statute §287.55 has been prepared by MC Harry & Associates, Inc. and is entitled; "Government Center Design Criteria Manual". The DCP establishes the design criteria necessary for the Design-Build Firm to perform the Work under this Project.

1.50. Interpretation of Drawings and Documents

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Work, should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Design Criteria Professional will clarify in

writing the intent of the drawings and/or specifications and the Design-Build Firm agrees to abide by the Project Manager's or Design Criteria Professional's interpretation and perform the Work in accordance with the decision of the Project Manager or the Design Criteria Professional. In such event, the Design-Build Firm will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

1.51. Product and Material Testing

All tests required by the Contract Documents will be performed by the Design-Build Firm at their sole expense, except where otherwise specifically stated in the specifications or drawings. The Town may, at its sole discretion conduct additional testing. All costs for testing performed by the Town shall be at the Town's expense, except where the product or material does not pass the testing. In such instances the Design-Build Firm shall reimburse the Town for each re-test conducted by the Town. The original test reports shall be forwarded directly to the Project Manager from the testing lab, with either a second original or copy being sent to the Design-Build Firm.

1.52. Field Directives

The Project Manager may at times issue field based on visits to the Project Site. Such Field Directives shall be issued in writing and the Design-Build Firm shall be required to comply with the directive. Where the Design-Build Firm believes that the directive is outside the scope of the Work, the Design-Build Firm shall, within 48 hours, notify the Project Manager that the work covered by the Field Directive is outside the scope of the Work. At that time the Field Directive may be rescinded or the Design-Build Firm may be required to submit a request for a change to the Contract. Where the Design-Build Firm is notified of the Town's position that the Work is within the scope and the Design-Build Firm disagrees, the Design-Build Firm shall notify the Project Manager that the Design-Build Firm reserves the right to make a claim for the time and monies based on the Field Directive. At no time shall the Design-Build Firm refuse to comply with the directive. Failure to comply with the directive may result in a determination that the Design-Build Firm is in default of the Contract. Field Directives shall not be permitted where such directive would result in a change order.

1.53. Changes in the Work or Contract Documents

Without invalidating the Contract Documents and without notice to any Surety, the Town reserves and shall have the right, from time to time to make such increases, decreases or other changes in the character or quantity of the Work under the Contract Documents as may be considered necessary or desirable to complete fully and acceptably the proposed construction of the Project in a satisfactory manner. Any extra or additional Work within the scope of the Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions or Change Orders.

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

1.54. Continuing the Work

Design-Build Firm shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Town, including disputes or disagreements concerning a

request for a Change Order, a request for a change in the Contract Price or Contract Time for completion. The Work shall not be delayed or postponed pending resolution of any dispute(s) or disagreement(s).

1.55. Change Orders

Any change in the Work that results in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved in advance, and issued in accordance with the provisions of the Contract Documents.

In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, the Town reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to the Town Manager as set forth in Article 1.89, Resolution of Disputes. During the pendency of the dispute, and upon receipt of a Change Order approved by Town, Design-Build Firm shall promptly proceed with the change in the Work involved and advise the Project Manager, and Procurement Manager, in writing, within seven (7) days of Design-Build Firm's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

On approval of any Contract change increasing the Contract Price, Design-Build Firm shall ensure that the performance bond and Payment Bond (if applicable) are increased so that each reflects the total Contract Price as increased.

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

The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract Documents. Any such changes will be known as Extra Work.

No Extra Work shall be performed except pursuant to written orders of the Project Manager, or the Town Manager, expressly and unmistakably indicating his/her intention to treat the Work described therein as Extra Work. In the absence of such an order, the Project Manager or Town Manager, may direct, order or require the Design-Build Firm to perform any Work including that which the Design-Build Firm deems to be Extra Work. The Design-Build Firm shall nevertheless comply and shall promptly and in no event after, begin the performance thereof or incur cost attributable thereto and give written notice to the Project Manager stating why 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.

1.56. Change Order Procedure

Extra Work may result in an equitable adjustment (increase or decrease) to the Contract representing the reasonable cost or the reasonable financial savings related to the change

in Work. Extra Work may also result in an equitable adjustment in the Contract schedule for performance for both the Extra Work and any other Work affected by the Extra Work.

Typically The Town shall initiate the Extra Work procedure by a notice to Design-Build Firm outlining the proposed Extra Work. Upon receipt of the notice to proceed with the Extra Work, the Design-Build Firm is required to immediately start the Extra Work, or in the timeframe stipulated in the Notice to Proceed. The Design-Build Firm is required to obtain permission for an extension to start the Extra Work if it is beyond the Design-Build Firm's ability to start within the allotted timeframe.

The Design-Build Firm is required to provide the Project Manager with a detailed Change Proposal Request ("CPR"), utilizing the Town's standard form, which shall include requested revisions to the Contract, including but not limited to adjustments in this Contract Price and Contract Time. The Design-Build Firm is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the Town may require that the Design-Build Firm submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by trade, and Work classification and overhead rates in support of Design-Build Firm's Change Proposal Request. The Design-Build Firm's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the Extra Work on the Project. If the Design-Build Firm fails to notify the Project Manager of the schedule changes associated with the Extra Work, it will be deemed to be an acknowledgment by Design-Build Firm that the proposed Extra Work will not have any scheduling consequences. The Design-Build Firm agrees the Change Proposal Request will in no event include a combined profit and overhead rate in excess of ten (10%) percent of the direct labor and material costs, unless the Project Manager determines that the complexity and risk of the Extra Work is such that an additional factor is appropriate. The Change Proposal Request may be accepted or modified by negotiations between the Design-Build Firm and the Town. If an agreement on the Extra Work is reached, both parties shall execute the Extra Work order in writing via a Change Order. The execution by the Design-Build Firm of the Change Order shall serve as a release of the Town from all claims and liability to the Design-Build Firm relating to, or in connection with, the Extra Work, including any impact, and any prior acts, neglect or default of the Town relating to the Extra Work.

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

1.57. No Oral Changes

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

1.58. Value of Change Order Work

The value of any Work covered by a Change Proposal Request or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- Where the Work involved is covered by unit prices contained in the Contract, by application of unit prices to the quantities of items involved.

- By mutual acceptance of a lump sum which Design-Build Firm and Project Manager acknowledge contains a component for overhead and profit.
- On the basis of the "cost of Work," determined as provided in this, plus a Design-Build Firm's fee for overhead and profit which is determined as provided in this Article.
- The term "cost of Work" means the sum of all direct costs necessarily incurred and paid by Design-Build Firm in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in herein.

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

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to Design-Build Firm unless Town deposits funds with Design-Build Firm with which to make payments, in which case the cash discounts shall accrue to Town. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Town and Design-Build Firm shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof, whether rented by the Design-Build Firm or others, in accordance with rental agreements approved by Town, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

If required by the Town, Design-Build Firm shall obtain competitive bids for the Change Order Work. Design-Build Firm shall award the work to the lowest responsive and responsible bidder, unless authorized, in writing, by the Project Manager, in advance of the award. If the Subcontractor is to be paid on the basis of cost of the Work plus a fee, the Subcontractor's cost of the Work shall be determined in the same manner as Design-Build Firm's cost of the Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

The term "cost of the Work" shall include any of the following:

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

- Supplemental costs including the following:
- The proportion of necessary transportation, travel and subsistence expenses of Design-Build Firm's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.
- Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and less market value of such items used but not consumed which remains the property of Design-Build Firm.
- Sales, use, or similar taxes related to the Work, and for which Design-Build Firm is liable, imposed by any governmental authority.
- Deposits lost for causes other than Design-Build Firm's negligence; royalty payments and fees for permits and licenses.
- The cost of utilities, fuel and sanitary facilities at the site.
- Receipted minor expenses such as courier service, long distance telephone calls, telephone service at the site, and similar petty cash items in connection with the Work.
- Cost of premiums for additional bonds and insurance required because of changes in the Work.

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

- Payroll costs and other compensation of Design-Build Firm's officers, executives, principals (of partnership and sole proprietorships), general managers, consultants, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design-Build Firm whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications., all of which are to be considered administrative costs covered by Design-Build Firm's fee.
- Expenses of Design-Build Firm's principal and branch offices other than Design-Build Firm's office at the site.
- Any part of Design-Build Firm's capital expenses, including interest on Design-Build Firm's capital employed for the Work and charges against Design-Build Firm for delinquent payments.
- Cost of premiums for all bonds and for all insurance whether or not Design-Build Firm is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
- Costs due to the negligence or neglect of Design-Build Firm, Consultant, any Subcontractor, Subconsultant, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Article

Design-Build Firm's fee allowed to Design-Build Firm for overhead and profit shall be determined as follows:

- A mutually acceptable fixed fee or if none can be agreed upon,
- A fee based on the following percentages of the various portions of the cost of the Work:
- Where the Design-Build Firm self-performs the Work, Design-Build Firm's fee shall not exceed ten percent (10%).
- Where a Subcontractor performs the Work, Design-Build Firm's fee shall not exceed seven and one half percent (7.5%); and if a subcontract is on the basis of cost of the Work plus a fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed ten percent (10%); and
- No fee shall be payable for special consultants or supplemental costs.

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

Whenever the cost of any Work is to be determined pursuant to this Article, Design-Build Firm will submit in a form acceptable to Project Manager an itemized cost breakdown together with the supporting data.

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

- Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
- Whenever a change involves Design-Build Firm and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Design-Build Firm and each Subcontractor shall be itemized separately.
- Each Change Order must state within the body of the Change Proposal Request whether it is based upon unit price, negotiated lump sum, or "cost of the Work."

1.59. Extra Work Directive

If the parties fail to reach agreement with respect to the proposed Extra Work, or in case or extenuating circumstances, the Town Manager may nevertheless issue a written directive to the Design-Build Firm to do the proposed Extra Work. Immediately upon receipt of the Extra Work Directive, the Design-Build Firm shall be obligated to proceed with the Work set forth in that directive.

Except as provided below, the Design-Build Firm shall be entitled to initiate a dispute pursuant to the Article 1.89, Resolution of Disputes, by furnishing a written statement to the Project Manager, with copies submitted in accordance with Article 1.4, Notices, within five (5) days of the Extra Work Directive, based upon any aspect, of such Extra Work which the Design-Build Firm disputes. Such dispute must relate to specific matters raised or specific matters reserved by the Design-Build Firm in its proposal and have not been resolved prior to the issuance of the Extra Work Directive. The written statement must set forth all details of the Design-Build Firm's claim including the manner that the disputed item was specified in the Design-Build Firm's proposal. During the pendency of any dispute

hereunder, the Design-Build Firm must proceed with Work as set forth in the Extra Work Directive unless otherwise advised by the Project Manager's written instructions. In the event there is a dispute as to price, the Design-Build Firm will be paid in accordance with the following paragraph. This payment(s) will be in full satisfaction of the Design-Build Firm's claim for an adjustment to the value of the Contract.

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

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

"Actual and Necessary Net Cost" shall be deemed to include the actual and necessary cost of the Extra Work for (i) labor, which includes wages, payroll deductions, if any, made by the Design-Build Firm as employer pursuant to bona fide collective bargaining labor agreements applicable to the Work; (ii) contributions to the State Unemployment Insurance Law, (iii) excise taxes pursuant to Federal Social Security Act; (iv) any increases in public liability and property damage insurance or performance and payment bonds occasioned solely by the Extra Work, (v) the actual and necessary operating expenses (except the expense of supplies and small tools not operated by mechanical or electrical power), power for such plant and a reasonable rental for the same (including small power tools), as determined by the Project Manager; and (vi) any additional materials necessary for the performance of the Extra Work.

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

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

1.60. As-Built Drawings

During the Work, Design-Build Firm shall maintain records of all deviations from the Drawings and Specifications as approved by the Project Manager and prepare As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Design-Build Firm to check the As-Built Drawings for errors and omissions prior to

submittal to the Town and certify in writing that the As-Built Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth and voltage in each conduit.

Legibly mark to record actual construction: On-site structures and site Work as follows:

- Depths of various elements of foundation in relation to finish first floor datum.
- All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements. Actual installed pipe material, class, etc.
- Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure. Air conditioning ducts with locations of dampers, access doors, fans and other items needing periodic maintenance.
- Field changes in dimensions and details.
- Changes made by Project Manager's written instructions or by Change Order.
- Details not on original Contract Drawings.
- Equipment, conduit, electrical panel locations.
- Project Manager's schedule changes according to Design-Build Firm's records and shop drawings.

Specifications and Addenda: Legibly mark each section to record:

- Manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
- Changes made by Project Manager's written instructions or by Change Order.

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

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

The As-Built Drawings must be signed and sealed by a Florida licensed Registered Land Surveyor.

1.61. Worker's Identification

The Design-Build Firm's employees, who include Consultant, any Subcontractor, and/or Subconsultant, shall wear an identification card or similar identification provided by the Design-Build Firm. The identification shall bear the employee's picture, name, title and name of the employer. Failure by a Design-Build Firm'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 shall not act as a basis for the Design-Build Firm to submit a claim for an extension of time due to any resulting delay.

1.62. Removal of Unsatisfactory Personnel

The Project Manager may make written request to the Design-Build Firm for the prompt removal and replacement of any personnel employed or retained by the Design-Build Firm, Consultant, or any or Subconsultant or Subcontractor engaged by the Design-Build Firm to provide and perform services or Work pursuant to the requirements of the Contract Documents. The Design-Build Firm shall 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 shall make the final determination as to the removal of unsatisfactory personnel from Work assigned by Town. The Design-Build Firm agrees that the removal of any of its employees does not require the termination or demotion of said employee(s).

1.63. Substantial Completion and Punch List

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

When the Design-Build Firm believes that the Work is substantially complete, the Design-Build Firm shall request, in writing, that the Project Manager inspect the Work to determine if Substantial Completion has been achieved. No request for Substantial Completion inspection is to be submitted until the Design-Build Firm has obtained a Certificate(s) of Occupancy, a Certificate of Completion, or a Temporary Certificate of Occupancy, or any other approvals from agencies having jurisdiction over the Work.

The request for Substantial Completion Inspection shall include a written certification that:

- Design Criteria Package has been reviewed.
- Work has been inspected by the Design-Build Firm for compliance with the Design Criteria Package and that the Work has been completed in accordance with the Design Criteria Package.
- Equipment and systems have been tested in the presence of the Project Manager and/or other Town representatives and are operational.
- Work is completed and ready for Substantial Completion inspection.

The Project Manager shall schedule the date and time for any inspection and notify the Design-Build Firm and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The inadvertent omission or failure to list any Work or any item from the Punch List shall not relieve the Design-Build Firm from its obligations as detailed in the Design Criteria Package and the Contract Documents. The Punch List shall be signed by the Project Manager, and the Design-Build Firm confirming that the Punch List contains the item(s) necessary to complete the Work to obtain Substantial Completion. The failure or refusal of the Design-Build Firm to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Design-Build Firm from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Town

Where the Punch List is limited to minor omissions and defects, the Project Manager may indicate that the Work is substantially complete subject to completion of the Punch List. Where the Project Manager determines, on the appropriate form that the Work is not substantially complete, the Project Manager shall provide a list of all open items necessary

to achieve Substantial Completion. Upon completion of such Work, the Design-Build Firm shall request another Substantial Completion inspection.

The Project Manager and the Design-Build Firm shall agree on the time reasonably required to complete all remaining Work included in the Punch List.

The Town will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion. Once substantial completion is achieved the Town shall be responsible for security, maintenance, heat, utilities, and insurance.

1.64. Acceptance and Final Payment

Prior to the Project Manager issuance of a Final Certificate for Payment, authorizing the Design-Build Firm to submit their final payment application, the Design-Build Firm shall deliver to the Project Manager shall deliver all documents required by the Contract Document for Final Acceptance. This includes, but is not limited to; a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers, Subconsultants, and Subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, all warranties, and the final bill of materials, if required

The Project Manager shall issue a Final Certificate for Payment, authorize submission of the final payment application subsequent to Substantial Completion, and determining that all of the requirements of the Contract Documents have been fully satisfied, and all conditions of the permits and regulatory agencies have been met.

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

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

Upon the receipt of all documentation, resolution of any outstanding issues and issuance of final payment, the Project Manager shall notify the Design-Build Firm in writing of the closeout of the Project.

1.65. NDPES Requirements

Design-Build Firm shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the Contract price. For further information on compliance requirements for NPDES and SWPPP contact the Town of Miami Lakes Public Works Department or visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Design-Build Firm is responsible for

obtaining, completing and paying for any required NPDES application or permits that may be required.

1.66. Force Majeure

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

If the Design-Build Firm is delayed in performing any obligation under the Contract Documents, due to a force majeure condition, the Design-Build Firm shall request a time extension from the Town within two (2) working days of said force majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Design-Build Firm for extra compensation unless additional services are required. Force Majeure **does not include** inclement weather except as permitted by Florida law and may not include the acts or omissions of anyone under contract with the Design-Build Firm or its Subcontractors or Subconsultants to perform any Work.

1.67. Extension of Time

Any reference in this section to the Design-Build Firm shall be deemed to include materialmen, suppliers, laborers, Subconsultants and Subcontractors, whether or not in privity of contract with the Design-Build Firm for the purpose of this article.

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

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Design-Build Firm by reasonable investigation before proceeding with the Work;
- The Design-Build Firm demonstrates that the completion of the Work will be actually and necessarily delayed;
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

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

The Town reserves the right to rescind or shorten any extension previously granted if subsequently, the Project Manager determines that any information provided by the Design-Build Firm in support of a request for an extension of time was erroneous and would have resulted in a denial of the request or an approval of a lesser period of time for an Excusable Delay. Notwithstanding the above, the Project Manager will not rescind or shorten any extension previously granted, if the Design-Build Firm 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 Design-Build Firm.

The request for an Excusable Delay shall be made within ten (10) days after the time when the Design-Build Firm knows or should have known of any cause for which it may claim an extension of time and shall provide any actual or potential basis for an extension of time, identifying such causes and describing, as fully as practicable at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the request. The Project Manager may require the Design-Build Firm to furnish such additional information or documentation, as the Project Manager shall reasonably deem necessary or helpful in considering the requested extension.

The Design-Build Firm shall not be entitled to an extension of time unless the Design-Build Firm affirmatively demonstrates that it is entitled to such extension.

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

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

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

1.68. Notification of Claim

Any claim for a change in the Contract Time or Contract Price shall be made by written notice by Design-Build Firm to the Project Manager within ten (10) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Project Manager allows an additional period of time, in writing, to ascertain more accurate data in support of the claim and such notice shall be accompanied by the Design-Build Firm's written notarized statement that the adjustment claimed is the entire adjustment to which the Design-Build Firm has reason to believe it is entitled as a result of the occurrence of said event. All claims for changes in the Contract Time or Contract Price shall be determined by the Project Manager in accordance with Article 1.70, Design-Build Firm's Damages for Delay hereof, if Town and Design-Build Firm cannot otherwise agree. It is expressly and specifically agreed that any and all claims for changes to the Contract time or Contract Price shall be waived if not submitted in strict accordance with the requirements of this Article.



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

1.69. Extension of Time not Cumulative

In case the Design-Build Firm shall be delayed for any period of time by two or more of the causes mentioned in Article 1.71, Excusable, Delays, the Design-Build Firm shall not be entitled to a separate extension for each one of the causes; only one period of extension shall be granted for the delay.

1.70. Design-Build Firm's Damages for Delay

No claim for damages or any claim, other than for an extension of time, shall be made or asserted against Town by reason of any delays except as provided herein. Design-Build Firm shall not be entitled to an increase in the Contract Price 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 shall not preclude recovery of damages by Design-Build Firm for actual delays due solely to fraud, bad faith or active interference on the part of Town. Otherwise, Design-Build Firm shall be entitled only to extensions of the Contract Time for completion of the Work as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Except as may be otherwise specifically provided for in the Contract Documents, the Design-Build Firm 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 (whether it is an Excusable Delay or otherwise) and the Design-Build Firm agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work. In this regard, the Design-Build Firm alone hereby specifically assumes the risk of such delays, including without limitation: delays in processing or approving shop drawings, samples or other submittals or the failure to render determinations, approvals, replies, inspections or tests of the Work, in a timely manner. Design-Build Firm shall not receive monetary compensation for Town delay. Time extensions may be authorized by the Town in certain situations.

1.71. Excusable Delay, Non-Compensable

Excusable Delay is (i) caused by circumstances beyond the control of Design-Build Firm, its Subcontractors, Subconsultants, suppliers and vendors, and is also caused by circumstances beyond the control of the Town, or (ii) is caused jointly or concurrently by Design-Build Firm or its Subcontractors, Subconsultants, suppliers or vendors and by the Town or Design Criteria Professional. Delays directly attributable to permitting entities actions or lack thereof, and are not attributable to the actions or lack thereof by the Contractor shall be considered excusable delays. Then Design-Build Firm shall be entitled only to a time extension and no compensation for the delay.

Design-Build Firm is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Design-Build Firm shall document its claim for any time extension as provided in Article 1.68, Notification of Claim.

Failure of Design-Build Firm to comply with Article 1.68, Notification of Claim hereof as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

1.72. Acceptance of Defective or Non-Conforming Work

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

1.73. Uncovering Finished Work

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

1.74. Correction of Work

The Project Manager shall have the authority to reject or disapprove Work which the Project Manager finds to be defective. If required the Design-Build Firm shall promptly correct all Work rejected by the Project Manager as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design-Build Firm shall bear all direct, indirect and consequential cost of removing and/or correcting such rejected Work, including the cost of the Town's additional services thereby made necessary.

The Design-Build Firm further agrees that after being notified in writing by the Project Manager of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work, the Design-Build Firm will commence and prosecute with due diligence all Work necessary to fulfill the terms of the Contract Documents and to complete the Work within a reasonable period of time, as determined by the Project Manager, and in the event of failure to so comply, the Design-Build Firm does hereby authorize the Town to proceed to have such Work done at the Design-Build Firm's expense and that the Design-Build Firm will pay the cost thereof upon demand. The Town shall be entitled to all costs, including reasonable attorneys' fees, necessarily incurred upon the Design-Build Firm's refusal to pay the above costs. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to the health or safety of personnel,

property, or licensees, the Town may undertake, at the Design-Build Firm's expense, without prior notice, all Work necessary to correct such hazardous condition when it was caused by Work of the Design-Build Firm not being in accordance with the requirements of the Contract.

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

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

1.75. Maintenance of Traffic and Public Streets

Scope of Work

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

Regulations

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

Maintenance of Traffic (MOT)

- The Design-Build Firm shall be fully responsible for the MOT on public streets, detour of traffic (including furnishing and maintaining regulatory and informative signs along the detour route), traffic control, and other provisions, throughout the Project, as required by the Manual of Uniform Traffic Control Devices (MUTCD), and FDOT Roadway and Bridge Standard Index drawing Book. Traffic shall be maintained according to corresponding typical traffic control details as outlined in the previous noted standards. No street shall be completely blocked, nor blocked more than one-half at any time, keeping the other one-half open for traffic, without specific approval.
- If required by the Project Manager, Traffic Division or FDOT or as otherwise authorized by the Project Manager, the Design-Build Firm shall make arrangements for the employment of uniformed off-duty policemen to maintain and regulate the flow of traffic through the work area. The number of men required and the number of hours on duty necessary for the maintenance and regulation of traffic flow shall be provided by the Town of Miami Lakes Police Department.

- The Design-Build Firm shall provide all barricades with warning lights, necessary arrow boards and signs, to warn motorists of the Work throughout the Project. Adequate approved devices shall be erected and maintained by the Design-Build Firm to detour traffic.
- Excavated or other material stored adjacent to or partially upon a roadway pavement shall be adequately marked for traffic safety at all times. The Design-Build Firm shall provide necessary access to all adjacent property during construction.
- The Design-Build Firm shall be responsible for the provision, installation and maintenance of all MOT and safety devices, in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Roadway and Bridge Standards index drawing book. In addition, the Design-Build Firm shall be responsible for providing the Project Manager with MOT plans for lane closures and/or detours for approval. These plans (sketches) shall be produced, signed and sealed by a professional Engineer registered in the State of Florida, employed by the Design-Build Firm and certified under FDOT Procedure NPIL No. 625-010-010.
- Where excavations are to be made in the vicinity of signalized intersections, attention is directed to the fact that vehicle loop detectors may have been embedded in the pavement. Verify these locations by inspecting the site of the Work and by contacting the Sunshine State One-Call Center (1-800-432-4770), 48 hours prior to any excavation. Any loop detector which is damaged, whether shown on the Plans or not, shall be repaired or replaced to the satisfaction of the Miami Dade County Signs and Signal Division (Phone No. 305-592-3470).
- Where applicable, the Design-Build Firm shall notify the Traffic Division 24 hours in advance of the construction date or 48 hours in advance of construction within any signalized intersection.
- Temporary pavement will be required over all cuts in pavement areas, and also where traffic is to be routed over swale or median areas. When the temporary pavement for routing traffic is no longer necessary, it shall be removed and the swale or median areas restored to their previous condition.
- Pavement markings damaged during construction shall be remarked, as required by the Traffic Division.

Maintenance of Traffic for Bypass Pumping

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

Lane Closures

- Where construction of the Project shall involve lane closures public streets, the following shall apply:
- Lane closures require a Lane Closure Permit, obtained two weeks prior to planned construction, with a minimum 48-hour prior notice to local police and emergency departments (some police jurisdictions may require considerably more notice). Lane closures of a one day or less duration will generally not be approved for major

collector streets or for arterial streets during the hours of 7am to 9am and 4pm to 6pm weekdays.

1.76. Location and Damage to Existing Facilities, Equipment or Utilities

As far as possible, all existing utility lines in the Project area have been identified. However, Town does not guarantee that all lines are identified, or that the ones indicated are in their true location. It shall be the Design-Build Firm's responsibility to field verify all underground and overhead utility lines, or equipment affecting or affected by the Project. No additional payment will be made to the Design-Build Firm because of discrepancies with the actual location of utilities, and damages suffered as a result thereof.

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

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

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

1.77. Loss & Damage to Property

Design-Build Firm shall accept full responsibility for Work against all losses or damages of whatever nature sustained until Final Acceptance by Town, and shall promptly repair or replace, at no additional cost to the Town, to the satisfaction of the Town's Project Manager, any Work, materials, equipment, or supplies damaged, lost, stolen, or destroyed from any cause whatsoever.

Where fencing, walls, shrubbery, grass strips or area must be removed or destroyed incident to the construction operation, the Construction Manager shall, after completion of the work, replace or restore to the original condition all such destroyed or damaged landscaping and improvements.

1.78. Stop Work Order

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

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 1.88, 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 Design-Build Firm shall resume the Work without compensation to the Design-Build Firm for such suspension other than extending the time for Substantial Completion to the extent that, in the opinion of the Project Manger, the Design-Build Firm may have been delayed by such suspension. In the event the Project Manger determines that the suspension of Work was necessary due to Design-Build Firm's defective or incorrect Work, unsafe Work conditions caused by the Design-Build Firm or any other reason caused by Design-Build Firm's fault or omission, the Design-Build Firm shall not be entitled to an extension of time as a result of the issuance of a Stop Work Order.

1.79. Hurricane Preparedness

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Design-Build Firm, at no cost to the Town, shall take all precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Project Manager has given notice of same.

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

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

1.80. Use of Completed Portions

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

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



- Town shall give notice to Design-Build Firm in writing at least thirty (30) calendar days prior to Town's intended occupancy of a designated area.
- Design-Build Firm shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from Project Manager.
- Upon Project Manager's issuance of a Certificate of Substantial Completion, Town will assume full responsibility for maintenance, utilities, subsequent damages of Town and public, adjustment of insurance coverage's and start of warranty for the occupied area.
- Design-Build Firm shall complete all items noted on the Certificate of Substantial Completion within the time specified by Project Manager on the Certificate of Substantial Completion, as specified in the Punch List and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Project Manager shall issue a Certificate of Final Payment relative to the occupied area.
- If Town finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by Town and Design-Build Firm and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Design-Build Firm and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

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

Design-Build Firm shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. During construction, the Design-Build Firm shall sprinkle with water, sweep and use other means to eliminate dust annoyance to adjacent properties. At the completion of the Project, Design-Build Firm shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Design-Build Firm 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 shall be charged to Design-Build Firm. If a dispute arises between Design-Build Firm and separate contractor as to their responsibility for cleaning up, Town may clean up and charge the cost thereof to the Design-Build Firms responsible therefore as the Project Manager shall determine to be just. All combustible waste materials shall be removed from the Project at the end of each day. Cleaning operations should be controlled to limit dust and other particles adhering to existing surfaces.

1.82. Removal of Equipment

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



1.83. Set-offs, Withholdings, and Deductions

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

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

The Town shall notify the Design-Build Firm in writing of any such withholdings.

Any withholding, which is ultimately held to have been wrongful, shall be paid to the Design-Build Firm in accordance with the Local Government Prompt Payment Act

1.84. Event of Default

An event of default shall mean a breach of the Contract or by the Design-Build Firm. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include but not limited to, the following:

- The Design-Build Firm has not performed the Work in a timely manner;
- The Design-Build Firm 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 Design-Build Firm has failed to make prompt payment to Consultant, Subcontractor, Subconsultant or suppliers for any services or materials they have provided;
- The Design-Build Firm has become insolvent or has assigned the proceeds received for the benefit of the Design-Build Firm's creditors, or the Design-Build Firm has taken advantage of any insolvency statute or debtor/creditor law or if the Design-Build Firm's affairs have been put in the hands of a receiver;
- The Design-Build Firm has failed to obtain the approval of the Town where required by the Contract;
- The Design-Build Firm 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 Design-Build Firm's ability to perform the Work, the Town shall notify the Design-Build Firm 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 Design-Build Firm's ability to perform in accordance with the terms of the Contract Documents. In the event that the Design-Build Firm 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 Contract and/or;
 - Resort to any remedy for breach provided herein or by law, including but not limited to, taking over the performance of the Work or any part thereof either by itself or through others.
- In the event the Town may, at its sole discretion terminate the Contract for default, the Town or its designated representatives may immediately take possession of all applicable documentation and data.



- Where the Town erroneously terminates the Contract or for default, the terminations shall be converted to a Termination for Convenience, and the Design-Build Firm shall have no further recourse of any nature for wrongful termination.

1.85. Notice of Default-Opportunity to Cure

In the event that the Town determines that the Design-Build Firm is in default of their obligations under the Contract, the Town may at its sole discretion notify the Design-Build Firm, specifying the basis for such default, and advising the Design-Build Firm that such default must be cured within a specified time frame or the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another Design-Build Firm and any such costs incurred will be deducted from any sums due the Design-Build Firm under any contract with the Town.

1.86. Termination for Default

If Design-Build Firm fails to comply with any term or condition of the Contract Documents, or fails to perform any of its obligations hereunder, then Design-Build Firm shall be in default. Upon the occurrence of a default hereunder which is not cured within the time specified to cure the default if one has been granted by the Town, the Town Manager in addition to all remedies available to it by law, may immediately, upon written notice to Design-Build Firm, terminate this Contract whereupon any advances for which Work has not been performed, paid by the Town to Design-Build Firm while Design-Build Firm was in default shall 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. Design-Build Firm understands and agrees that termination of this Contract under this Article shall not release Design-Build Firm 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 Contract the Town shall 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:

- Design-Build Firm fails to obtain the insurance or bonding herein required by the Contract.
- Design-Build Firm fails to comply with any of its duties under the Contract Documents, with any terms or conditions set forth in this Contract, beyond any specified period allowed to cure such default.
- Design-Build Firm fails to commence the Work within the timeframes provided or contemplated herein, or fails to complete the Work in a timely manner as required by the Contract.

Where it has been determined that the Design-Build Firm has been erroneously terminated under this Article, such termination shall be deemed to have been occurred under Article



1.88, Termination for Convenience. The Town in its sole discretion may terminate the Contract without providing the Design-Build Firm a written notice to cure.

1.87. Remedies in the Event of Termination for Default

If a Termination for Default occurs, the Design-Build Firm and the bond provider shall be notified of the effective date of the termination and shall be liable for all damages resulting from the default, including but not limited to re-procurement costs and other direct damages

The Design-Build Firm shall stop Work as of the date of notification of the termination and immediately remove all labor, equipment and materials (not owned or paid for by the Town) from the Work Site. The Town assumes no liability for the Design-Build Firm's failure to remove such items from the Project(s) site(s) as required.

The Design-Build Firm shall also remain liable for any liabilities and claims related to the Design-Build Firm's default.

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

1.88. Termination for Convenience

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

The Design-Build Firm shall, 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 Contract and have been specifically fabricated for the sole purpose of the Work and not incorporated in the Work;
- Take no action that shall increase the amounts payable by the Town under the Contract Documents; and
- Take reasonable measures to mitigate the Town's liability under the Contract Documents.
- All charts, sketches, studies, drawings, reports and other documents, including electronic documents, related to Work authorized under the Contract, whether finished or not, must be turned over to the Town. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Design-Build Firm until all documentation is delivered to the Town.



In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Design-Build Firm:

- 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 Contract 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 Contract, and has been specifically fabricated for the sole purpose of the Contract but not incorporated in the Work; and
- To the extent practical, the fair and reasonable value shall be based on the price established as a result of the Contract. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Contract.
- The amount due hereunder may be offset by all payments made to the Design-Build Firm.
- All payments pursuant to this Article shall be accepted by the Design-Build Firm 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 Design-Build Firm.
- Design-Build Firm shall not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.
- All payments made under the Contract are subject to audit

Upon the Town's payment in full of the amounts due the Design-Build Firm under this Article, the Design-Build Firm grants the Town full use of the Work and any Work Product to complete the Project and subsequently occupy the Project.

1.89. Resolution of Disputes

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

The initial step shall be for the Design-Build Firm 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 1.4, Notices.

Should the Design-Build Firm and the Project Manager fail to resolve the dispute the Design-Build Firm shall submit their dispute in writing, with all supporting documentation, to the Town's Procurement Manager, as identified in Article 1.4, Notices. Upon receipt of said notification the Town's Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

Should the Design-Build Firm and the Town's Procurement Manager fail to resolve the dispute, the Design-Build Firm shall 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 shall constitute acceptance of the finding by the Design-Build Firm. Upon receipt of said notification the Town Manager shall review the issues relative to the claim or dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Design-Build Firm 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 Design-Build Firm shall 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 14, 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 Contract Price or Contract Time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) days after Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

1.90. 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 Contract agree all unresolved disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will share the costs of a certified Mediator on a 50/50 basis. The Design-Build Firm agrees to include such similar contract provisions with all Sub-Design-Build Firms retained for the Work, thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

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

1.91. 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 shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Town. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of

the right to exercise, at the same time or thereafter, of any other remedy. The Town's rights and remedies as set forth in the Contract Documents are not exclusive and are in addition to any other rights and remedies in law or in equity.

1.92. 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 Contract will be paid as follows:

Town's permit fees shall be paid by the Design-Build Firm 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 Design-Build Firm. The Town will reimburse the Design-Build Firm 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 Contract Documents, all permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by Design-Build Firm pursuant to the Contract Documents shall be secured and paid for by Design-Build Firm. It is Design-Build Firm'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 shall be waived and Miami-Dade County shall be paid by Design-Build Firm and reimbursed by the Town. Design-Build Firm shall be reimbursed only for the actual amount of the impact fee levied by the municipality as evidenced by an invoice or other acceptable documentation issued by the municipality. Reimbursement to Design-Build Firm in no event shall include profit or overhead of Design-Build Firm.

1.93. Compliance with Applicable Laws

The Design-Build Firm shall comply with all applicable laws, regulations, building and construction codes of the Federal government, the State of Florida, the County, and the Town.

The attention of the Design-Build Firm is directed to the requirements of the Florida Building Code and the Codes of Miami-Dade County and the Town, governing the qualifications for Design-Build Firm and doing business in the Town.

1.94. Independent Design-Build Firm

The Design-Build Firm is engaged as an independent business and agrees to perform Work as an independent Design-Build Firm. In accordance with the status of an independent Design-Build Firm, the Design-Build Firm covenants and agrees that the Design-Build Firm will conduct business in a manner consistent with that status, that the Design-Build Firm 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 Design-Build Firm's staff shall not be employees of the Town, and the Design-Build Firm alone shall be responsible for their Work, the direction thereof, and their



compensation and benefits of any kind. Nothing in the Contract shall impose any liability or duty on the Town on account of the Design-Build Firm's acts, omissions, liabilities or obligations of those of any person, firm, company, agency association, corporation, or organization engaged by the Design-Build Firm as a Subcontractors, Subconsultants, expert, consultant, independent Design-Build Firms, 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 Design-Build Firm 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.

1.95. Third Party Beneficiaries

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

1.96. Successors and Assigns

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

Any transference without Town approval shall be cause for the Town to nullify this Contract. Any assignment without the Town's consent shall be null and void. The Design-Build Firm shall 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 Design-Build Firm and the Town each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Contract and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Contract.

1.97. Materiality and Waiver of Breach

Town and Design-Build Firm agree that each requirement, duty, and obligation set forth in this Contract Documents is substantial and important to the formation of the Contract Documents and, therefore, is a material term hereof.

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

1.98. Severability



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

1.99. Applicable Law and Venue of Litigation

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

1.100. Amendments

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

1.101. Entire Contract

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

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

Design-Build Firm shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract. Design-Build Firm shall 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, Design-Build Firm shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

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

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

Design-Build Firm has an EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The Design-Build Firm shall 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 shall 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."

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

Design-Build Firm will have a designated EEO Officer who has the responsibility and authority to administer the Design-Build Firm's EEO program.

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

The Design-Build Firm shall not discriminate in his recruitment practices and should make an effort to identify sources of potential minority and women employees.

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

Design-Build Firm 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 Design-Build Firm's selection of subcontractors, including material suppliers and equipment leasing companies..

1.103. Royalties and Patents

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

1.104. Continuation of the Work

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

1.105. Review of Records

Town and its representatives shall have the right to audit, inspect and copy, at Town's expense, the books and records and accounts of Design-Build Firm which relate in any way

to the Project and to any claim for additional compensation made by Design-Build Firm, and to conduct an audit of the financial and accounting records of Design-Build Firm which relate to a Project and to any claim for additional compensation made by Design-Build Firm including but not limited to all payroll records, invoices for materials, and books of accounts. Such records shall conform to Generally Accepted Accounting Principles requirements (GAAP), and shall only address those transactions related to the Contract.

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with such statute. Otherwise Design-Build Firm shall 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 Design-Build Firm's to the Town, the actual cost of the Town's audit shall be paid by the Design-Build Firm's. If the audit discloses contract billing or charges to which Design-Build Firm's is not contractually entitled Design-Build Firm's shall 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.

1.106. No Interest

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

1.107. Payments Related to Guaranteed Obligations

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

The Town may deduct from any payment due the Design-Build Firm an amount equal to its cost incurred on account of the Design-Build Firm's failure to fully perform its obligations under the Contract.

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

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

1.108. Consent of Town Required for Subletting or Assignment

If the Design-Build Firm assigns, transfers, sublets or otherwise disposes of the Contract or its right, title or interest in or to the same or any part thereof without the previous consent in writing of the Town, such action shall be an Event of Default. Nothing herein shall either restrict the right of the Design-Build Firm to assign monies due to, or to become due or be

construed to hinder, prevent or affect any assignment by the Design-Build Firm for the benefit of its creditors, made pursuant to applicable law.

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

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

1.110. 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 Design-Build Firm shall diligently render to the Town, after additional compensation is mutually agreed upon, any and all assistance which the Town may require of the Design-Build Firm.

1.111. Availability of Funding

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

1.112. Mutual Obligations

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

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

In those situations where the Contract Documents imposes an indemnity obligation on the Design-Build Firm, 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 Design-Build Firm fails to diligently defend such claim, and thereafter seek indemnity for such cost from the Design-Build Firm.

1.113. Nature of the Contract

The Design-Build Firm shall provide the services set forth in the Contract Documents. The Design-Build Firm shall provide full and prompt cooperation with the Town in all aspects of the Work to be performed.

The Design-Build Firm acknowledges that the Contract 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 Contract Documents, but necessary to carrying out its intent are required by the Contract Documents, and the Design-Build Firm shall perform the same as though they were specifically mentioned, described and delineated.

The Design-Build Firm shall furnish all labor, materials, tools, supplies and other items required for the completion of the Contract. All Work shall be accomplished at the direction of and to the satisfaction of the Project Manager.

1.114. Contract Documents Contains all Terms

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

1.115. Survival

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

1.116 Joint Preparation

Preparation of this Contract has been a joint effort of the Town and Design-Build Firm and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

1.117 Nondisclosure

To the extent allowed by law, Design-Build Firm 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 Design-Build Firm'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 Design-Build Firm hereunder, and Design-Build Firm shall require all of its employees, agents, Subconsultants and Subcontractors to comply with the provisions of this paragraph.



SECTION 2

SUPPLEMENTAL TERMS AND CONDITIONS

2.1. Scope of Work

The Scope of Work includes, but is not limited to the Design-Build Firm providing design and construction services for the construction of a new Government Center in accordance with the Design Criteria Package. Exhibit G is a map, which provides the location of the new Government Center building.

The Design-Build Firm is responsible for all Work to comply with all planning, zoning, land development and entitlement requirements necessary for the design and construction of the Project.

Design-Build Firm shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Build Firm, or procured from qualified, independent licensed design consultants, the necessary design services, including architectural, engineering and other professional services, for the preparation of the required drawings, specifications and other submittals to permit Design-Build Firm to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Town and any design or other consultants under contract to the Design-Build Firm.

2.2. Design Criteria Package Review

The Work shall be performed in accordance with the Design Criteria Package (DCP). The Design-Build Firm shall verify and review the DCP and shall notify the Project Manager and the Design Criteria Professional, in writing, of all errors, omissions, conflicts and discrepancies found therein. Failure to discover or correct errors, conflicts or discrepancies shall not relieve the Design-Build Firm of full responsibility for unsatisfactory Work, faulty construction or improper operation resulting therefrom, or from rectifying such conditions at his own expense.

All schedules are given for the convenience of the Design-Build Firm and are not guaranteed to be complete. The Design-Build Firm shall assume all responsibility for the making of estimates of the size, kind, and quantity of materials and equipment included in the Work to be done under this Contract as well as all time estimates for sequencing and completing the Work.

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

2.3. LEED Certification

The intent is to design and construct a Project that promotes environmental quality, economic vitality and creates an environment that provides the highest level possible of operational efficiency. This should be accomplished through energy, water, and materials efficiency that provides a healthy, productive and comfortable park environment with long-



term benefits. The Design Build Firm will incorporate in both the design and construction the requirements for the Project to obtain a LEED Certified rating. The requirements are to be based on the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding's five Guiding Principles, which are:

- I. Employing integrated design;
- II. Optimizing energy performance;
- III. Protecting and conserving water;
- IV. Enhancing indoor environmental quality; and
- V. Reducing the environmental impact of materials.

Design and construction must be to the most current LEEDS Certified rating requirements in effect at time of design of the Project.

Work included as part of the LEEDS certification includes, but is not limited to;

1. Design-Build Firm must use the IDP during the entire design process, which includes the use a collaborative, integrated planning and design process consistent with ASTM E 2348, Standard Guide for Framework for a Consensus-based Environmental Decision making Process.
2. An individual must be selected to lead the commissioning efforts for the Project. For this prerequisite, this person may be a third party or a qualified person from the Design-Build Firm. If a member of the Design-Build Firm is chosen, he or she must not be directly involved in the design or construction management, and must report directly to the Town. The Town will not directly engage an independent commissioning authority for the purpose of obtaining additional commissioning points.
3. Identify priority areas for obtaining rating
4. Establish a Energy Efficiency Measures Checklist
5. Track, collect, assemble, and submit documentation to LEED certification entity to obtain LEED rating approval. Responsible for obtaining all information and documentation to substantiate the rating. For example; obtain all information on recycled materials disposed of and recycled content used in construction to determine the overall percentage of recycled content used on the Project.
6. Responsible for commissioning (verify the commissioning" plan to confirm that the building system is designed, installed and tested to perform in conformance with the design intent, the Town's operational needs, and the Contract Documents), Fees for registration (reimbursable expense), and managing the certification review process.
7. Delays or changes in design and construction required to meet the LEED Silver rating will not be considered Excusable Delays nor will the costs be compensable.
8. Create a LEED checklist to be used during construction.
9. Identify trades off, including but not limited to'
 - a. Cost benefits of different approaches to obtaining rating
 - b. Construction costs versus savings projected on an annual basis

c. LCC analysis to determine when breakeven point occurs

10. A LEED Analysis Report (Report) shall be generated by the Design-Build, (at intervals indicated below), and shall include the following:

- a. Version of LEED being used for the analysis.
- b. Explanation of each LEED point attained by the Project design.
- c. Total LEED numerical score and equivalent rating level for the Project.
- d. Statement signed by a Florida licensed architect or engineer that in their professional opinion the above three items provide an accurate estimate of the LEED score and rating that could be attained by the Project.

Design-Build Firm shall submit the Report as follows:

- a. The initial Report as part of the Schematic Design phase submittals
- b. An updated Report as part of the Design Development submittals:
- c. Final LEEDS Analysis Report with 100% Construction Document submittals
- d. Monthly report during construction identifying all LEED related Work performed during the month. Report will correspond to the LEED checklist. Said report is to be submitted with the monthly payment application.

11. Create a re-commissioning management manual – In addition to the traditional O&M manual, the Additional Commissioning credit requires the commissioning authority to create a re-commissioning management manual. The LEED™ Reference Guide Version 2.0 lists the components that must be included in this manual, such as as-built sequences of operation for all equipment, descriptions of energy and water saving features.

Design-Build Firm shall conduct a post occupancy review ten (10) months after the completion of the construction of the Project to review and inspect the Project for warranty issues. This task includes, but is not limited to; both a review of current operation to identify any potential warranty related problems before the typical 12 month warranty expiration, and an interview with building and facility operating staff to identify their concerns.

Design-Build Firm or Commissioning Authority shall create a re-commissioning management manual ("Manual") in addition to the traditional O&M manuals LEED™ Reference Guide Version 2.0, or latest update, lists the components that must be included in this manual, such as as-built sequences of operation for all equipment, descriptions of energy and water saving features, seasonal start-up and shut down procedures, a list of diagnostic tools, etc. This Manual is intended to provide the Town with in-depth tools and strategies for keeping the building running in optimal condition.

2.4. Contract Time

The Design-Build Firm shall furnish all labor, materials, equipment, tools, services, and incidentals to complete all Work required by the Design Criteria at a rate of progress that will ensure completion of the Work within the Contract Time.

Design-Build Firm shall have eighteen (18) months to achieve Substantial Completion from the date the Notice to Proceed is issued. Design-Build Firm have committed to work together in an effort to further reduce the timeframe for Substantial Completion. Design-Build Firm shall have an additional (60) calendar days for Final Completion of the Contract.

The Work shall commence within ten (10) calendar days of Design-Build Firm's receipt of the Notice to Proceed unless the parties mutually agree otherwise in writing.

2.5. Contract Price

The Town shall pay the Design-Build Firm in accordance with Article 2.6 of the Contract a GMP of \$4,088,204 plus a maximum of \$145,000 for the Not-To-Exceed-Components for a total maximum cost of four million two hundred thirty three thousand two hundred and four dollars (\$4,233,204.00), subject to any adjustments in accordance with the Contract, including the stipulated Reimbursable Expenses stated in Article 2.6. Said sum shall cover all costs and fees incurred or required for the completion of the Project. Upon final completion of the Project should the Project not be able to obtain a LEED Certified rating, and the deficiencies cannot be correct to obtain said rating the Town shall deduct 10% of the cost of the Project.

The Design-Build Firm shall be solely responsible for completing the Project within the Contract Price and shall be solely responsible for all additional costs incurred except as stipulated in this Agreement, specifically as it applies to Article 1.55 and Article 2.6.

2.6 Reimbursable Expenses

The Town will only reimburse the Design-Build Firm for the following expenses, which are not included in the GMP:

- Town Impact Fees
- Town Permit Fees
- Police Officers for MOT, where such services cannot be provided by the Town at no cost to the Design-Build Firm
- County Impact Fees, if any
- Miami-Dade WASD connection fees

2.7. Progress Payments

Design-Build Firm may make application for payment for Work completed during the Project(s) at intervals of not more than once a month or upon completion and Final Acceptance of the Work. All applications shall be submitted in triplicate and the Design-Build Firm shall only use the Town's Design-Build Firm Payment Application Form. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated progress schedule as required by Article 2.9 of the Contract and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the Project Manager. Each application for payment shall be submitted in triplicate for approval. Town shall make payment to Design-Build Firm within thirty (30) days after approval of Design-Build Firm's application for payment.

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

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



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

The Town will pay, and the Design-Build Firm shall accept as full compensation for the Work, the sums specified in the Design-Build Firm's submittal to the Contract Documents, as accepted by the Town.

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

Design-Build Firm retains sole liability to replace such stored materials or equipment as a result of damage or loss for any reason

Requests for payment that do not include the updated Project Schedule and required LEED submittals and/or reports will not be processed for payment.

2.7. Liquidated Damages

The Design-Build Firm is obligated and guarantees to complete the Project in the time set forth in the Contract Documents or any approved extension of time the Design-Build Firm shall pay to the Town liquidated damages as follows. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Substantial Completion the Design-Build Firm shall pay to the Town for each and every calendar day of unexcused delay, the sum of one thousand dollars (\$1,000.00) per calendar day, which is hereby agreed upon not as a penalty but as liquidated damages. In the event of a delay in completion beyond the timeframe set forth in the Contract Documents for Final Completion the Design-Build Firm shall pay to the Town for each and every calendar day of unexcused delay, the sum of five hundred dollars (\$500.00) per calendar day, which is hereby agreed upon not as a penalty but as liquidated damages. The Design-Build Firm will be notified of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the applicable Contract Documents.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Design-Build Firm under any contract the Design-Build Firm has with the Town. In case the amount, which may become



due hereunder, shall be less than the amount of liquidated damages due the Town, the Design-Build Firm shall pay the difference upon demand by the Town. Should the Design-Build Firm fail to compensate the Town for any liquidated damages, the Town shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

Upon final completion of the Project should the Project not be able to obtain a LEED Silver rating, and the deficiencies cannot be corrected to obtain said rating, the Town shall deduct as Liquidated Damages 3% of the cost of the Project to offset the increased cost of materials used in the effort to meet the LEED Silver rating.

The Town shall notify the Design-Build Firm that it is incurring liquidated damages.

2.8. Schedule of Values

The Design-Build Firm must submit three copies of a Schedule of Values, which must be submitted within ten (10) calendar days of the issuance of the Notice of Award. The Schedule of Values shall indicate a complete breakdown of labor and material of all categories of Work on the Project. Design-Build Firm's overhead and profit should be as separate line items. Each line item shall be identified with the number and title of the major specification section or major components of the items. The Project Manager may require further breakdown after review of the Design-Build Firm's submittal. The Town reserves the right to require such information from the Design-Build Firm as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under the Schedules of Values shall not exceed 5% of the value of the Contract.

The approved schedule of values shall be updated through the submittal of the Town's Design-Build Firm Payment Application Form.

2.9. Project Schedules

Design-Build Firm shall submit a proposed design-build Project schedule, with any sub-schedules of related activities that are essential to its progress, within ten (10) working days of the Notice of Award and such submittal shall be subject to the Project Manager and Consultant's review, comment, and acceptance. Subsequent to such review of said schedule the Design-Build Firm shall establish said schedule as the baseline schedule.

All Project Schedules shall be prepared in Microsoft Project 2007 unless otherwise approved by the Town Manager in advance. At the time of submission of schedules Design-Build Firm shall submit a hard copy as well as an electronic version. Such electronic version shall not be submitted in a .pdf format and shall be capable of being incorporated in to the Town's baseline schedules. Maximum sheet size shall be 24 x 36-inches.

The design build schedule shall be prepared in the form of a horizontal bar chart with separate horizontal bars for each design task, construction task in the critical path in chronological order. Provide horizontal time scale in weeks from the start of construction and identify the first work day of each month. Identify listings of any major equipment installation milestones.

A. Content of Schedules; show or indicate the following:

1. Complete sequence of design by activity reflecting the Consultant, and Subconsultant responsible for the activity.



2. Complete sequence of construction by activity reflecting the Design-Build Firm or Subcontractor responsible for each activity
3. Dates for the beginning and completion of each major element of design and construction in no more than a two-week incremental scale.
4. Items of work that must be accomplished to achieve substantial completion.
 - a. Major disciplines or trades of work
 - b. Filter downtime
 - c. Time required for Design-Build Firm's submittals, fabrication and deliveries.
 - d. Time required by Design-Build Firm and the Town to review all submittals.
 - e. Time required by Town to support any pre-operational and start-up testing.
 - f. Time required for the relocation of utilities, if required.
 - g. Activities performed by Design-Build Firm.
5. Percentage of completion for each item as of the date the schedule was prepared.
6. Dates for Design-Build Firm's submittals.
7. Dates for any required Town-furnished materials or equipment.
8. Dates accepted submittals will be required from the Town.

In addition the Design-Build Firm shall provide:

1. Provide a list of all long lead items and their anticipated dates of delivery (equipment, materials, etc.) Monthly updates shall reflect actual versus projected, and any revised projections
2. Provide a projected dollar cash flow spend down for each month of construction. Monthly updates shall reflect any change orders as well as actual versus projected, and any revised projections.

All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application together with any updates to the long lead items list and the dollar cash flow spend down.. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.

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

2.10. Release of Liens/Subcontractor's Statement of Satisfaction

The Design-Build Firm warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project(s) or not, will pass to the Town upon the receipt of such payment by the Design-Build Firm, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Design-Build Firm or by any other person performing Work at the site or furnishing materials and equipment for the Project(s), subject to an agreement under which an interest therein or an encumbrance



thereon is retained by the seller or otherwise imposed by the Design-Build Firm or such other person.

The Design-Build Firm shall, beginning with the second request for payment, attach a Partial Release of Lien/Subcontractor, Subconsultant Statement of Satisfaction for each application for payment utilizing the Town's form. Failure to submit such documentation may delay payments. The Town may, in its sole discretion withhold payments for Work performed by Subcontractor, Subconsultant or Consultant where no release of lien has been submitted. The Design-Build Firm shall submit with the final payment request, for the Project where Consultant, Subcontractor, and/or Subconsultant have performed Work, a Final Release of Lien/Subcontractor, Subconsultant Statement of Satisfaction for each Subcontractor, Subconsultant marked as a final. Failure to submit such documentation will result in delay in payment or the Town withholding from the final payment such funds as necessary to satisfy any Subcontractor, and/or Subconsultant claims.

Where the Design-Build Firm has submitted a Performance/Payment Bond the Design-Build Firm may, in lieu of the Release of Lien/Subcontractor, Subconsultant Statement of Satisfaction, submit Consent of Surety to Requisition Payment.

2.11. Progress Meetings

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

Design-Build Firm shall arrange and conduct regular bi-weekly job site Project status meetings with the Project Manager and other appropriate Town representatives. Design-Build Firm shall use the job site meetings as a tool for the pre-planning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for all parties to clearly understand. During these meetings, Design-Build Firm shall identify the party or parties responsible for following up on any problems, delay items or questions, and Design-Build Firm shall note the action to be taken by such party or parties. Design-Build Firm shall revisit each pending item, including RFIs and Shop Drawing, at each subsequent meeting until resolution is achieved. Design-Build Firm shall attempt to obtain from all present any potential problems or delaying event known to them for appropriate attention and resolution. Design-Build Firm shall be responsible for keeping minutes of the meeting and distribution of the minutes to all parties in attendance.

The Design-Build Firm shall arrange for the participation of its Subcontractors, Subconsultants, and/or vendors when the Project Manager requires their presence.

The Design-Build Firm shall maintain minutes of the meeting and distribute copies of the minutes to all parties in attendance. The Design-Build Firm shall prepare and distribute to Project Manager an updated two-week look-ahead schedule of construction activities and submittals.

2.12. Request for Information

The Design-Build Firm shall submit a Request for Information (RFI) where the Design-Build Firm believes that the Contract Document's specifications or drawings are unclear or conflict. All requests must be submitted in a manner that clearly identifies the drawing

and/or specification section where clarification or interpretation is being requested. As part of the RFI, Design-Build Firm shall include its recommendation for resolution.

2.13. Project Site Facilities

The Design-Build Firm shall arrange for the Project site facilities as maybe necessary to enable the Project Manager to perform their respective duties and to accommodate any representatives of the Town which the Town may choose to have present at the Project.

The Design-Build Firm shall provide and maintain at his own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Design-Build Firm, his employees or his Subcontractors or Subconsultants shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Design-Build Firm.

The Design-Build Firm shall furnish an adequate supply of drinking water for its and its Subcontractors, and Subconsultants.

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

2.14. Temporary Facilities, Utilities, and Construction

Design-Build Firm is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The Design-Build Firm shall make all arrangements with the local utility companies. The Design-Build Firm shall also be responsible for furnishing all materials and equipment necessary for the installation and maintenance of any temporary utilities.

Design-Build Firm shall furnish, install and maintain temporary facilities required for construction, and shall remove them upon completion of the Work. All facilities shall comply with the respective federal, state and local codes and regulations and with utility company requirements. Materials for temporary facilities may be new or used, but must be adequate in capacity for the required usage, must not create unsafe conditions, and must not violate requirements of applicable codes and standards.

The Design-Build Firm shall be required to obtain all necessary permits required for any Project site facilities and utilities. Design-Build Firm shall also be responsible to maintain such facilities in a safe and working condition. Design-Build firm shall be responsible for payment for all fees and charges for the installation and use of all temporary facilities and utilities.

All such facilities and utilities remain the property of the Design-Build Firm and the Design-Build Firm shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

Temporary fences: If, during the course of the Work, it is necessary to remove or disturb any fencing, the Design-Build Firm shall, at his own expense, provide a suitable temporary fence which shall be maintained until the permanent fence is replaced. The Project

Manager will be solely responsible for the determination of the necessity for providing a temporary fence and the type of temporary fence to be used.

Responsibility for Temporary Structures: In accepting this Contract, the Design-Build Firm assumes full responsibility for the sufficiency and safety of all temporary structures or work and for any damage which may result from their failure or their improper construction, maintenance or operation and will indemnify and save harmless the Town from all claims, suits or actions and damages or costs of every description arising by reason of failure to comply with the above provisions.

2.15. Project Laboratory Testing Services

The Design-Build Firm shall provide and pay for all Project Laboratory Testing Services to perform regulatory required testing, quality assurance, and quality control testing. The Design-Build Firm is also responsible for all re-testing where the Work or materials fail a test. The Town at its sole discretion may conduct separate independent testing for verification purposes. In instances where the Town's testing does not verify the testing provided by the Design-Build Firm, the Design-Build Firm shall arrange for re-testing of the Work or replacement of the Work at its own cost. Where the Design-Build Firm has re-testing performed the Town's Project Manager shall be notified in advance of such testing. Should such testing confirm the Town's findings the Design-Build Firm shall replace or correct all Work necessary to ensure compliance with the Contract Documents. In such instances all re-testing, re-work, and delays are the sole responsibility of the Design-Build Firm. Any delays or costs to the Design-Build Firm for testing or re-work that may result shall not form the basis for any claim by the Design-Build Firm. Design-Build Firm shall be responsible for the costs associated with all testing by the Town where the Work is found to not be in compliance with the Contract Documents. Costs for such retests shall be deducted from pending invoices.

2.16. Security

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

2.17. Construction Signage

Where required by the Contract Documents the Design-Build Firm shall provide construction signage.

The Town shall provide the Design-Build Firm the wording and layout for the signs at the pre-construction conference. The Design-Build Firm shall furnish the two Town signs at the Project(s) Site(s) as follows:

- The sign shall reflect the title of the project, the Mayor, Town Council members, the Town Manager's names, and the funding sources for the Project and shall reflect the Project information and any additional information provided by the Town Manager. The sign shall be 4 feet wide by 8 feet high by ¾ inch (thick) exterior plywood, suitably mounted and readable at eye level. The colors shall be

blue and white, with the blue matching the Town's blue. The background shall be white and all lettering shall be blue Helvetica. All paint shall be rated outdoor enamel. The Town will provide the Town Seal in decal form. The sign shall be mounted on 4" square treated wood or perforated "U" channel metal posts painted white or black. Design-Build Firm shall provide drawings for the signage, which shall be subject to approval by the Town Manager.

- All signage posted reflecting the Design-Build Firm's name or any other Consultant, Subconsultant or Subcontractor shall be subject to the prior approval of the Town Manager. Design-Build Firm shall provide drawings for the signage, which shall be subject to approval by the Town Manager.
- The Design-Build Firm shall also post appropriate construction site warning signs at the Work Site. Such signs shall be posted to warn pedestrian and vehicle traffic. Design-Build Firm shall provide drawings for the signage, which shall be subject to approval by the Town Manager.
- The Project Manager and the Town shall approve the location(s) for all signage.

2.18. Lines and Grades

The Design-Build Firm shall, at its own expense, establish all working and construction lines and grades as required for the Project and shall be solely responsible for the accuracy thereof.

2.19. Progress Photos

Prior to commencement of the Work the Design-Build Firm will take digital photographs to document existing conditions. Design-Build Firm shall submit these photos on CD-ROM and printed copy with its first payment application Design-Build Firm shall periodically take digital construction record photographs to document the progress, including final completion, of the Work and shall be submitted on CD-ROM and printed copy with each application for payment. All pictures must be digitally date and time stamped. Printed photo must be on 8"X10" high resolution glossy single weight color print paper.



SECTION 3
DESIGN SERVICES

3.1 Design Responsibility

All Professional Services shall be provided by firms licensed to perform such services in accordance with all applicable Florida Statute and the requirements of the State of Florida Department of Professional Regulation. Design-Build firm shall be solely responsible for all aspects of the design of this Project and shall also be responsible for supervision and management of the firm(s) providing Professional Services under this Contract. Nothing contained in this Contract shall create any contractual or business relationship between the Town and the Consultant. The Design-Build Firm acknowledges that Subconsultants are entirely under its or the Consultants direction, control, supervision, retention and/or discharge.

3.2. Subconsultants

All services provided by the Subconsultants shall be performed pursuant to appropriate written agreements between the Consultant and the Subconsultants, which shall contain provisions that preserve and protect the rights of the Town under this Contract. Nothing contained in this Contract shall create any contractual or business relationship between the Town and the Subconsultants. The Consultant acknowledges that Subconsultants are entirely under its direction, control, supervision, retention and/or discharge

The Design-Build Firm shall not add, modify, or change the Consultant or any Subconsultant listed in Form A without prior written approval by the Director or designee, in response to a written request from the Design-Build Firm stating the reasons for any proposed substitution.

3.3 Ownership of Documents

All tracings, plans, drawings, specifications, maps, computer files, and/or reports prepared or obtained under this Contract, as well as all data collected, together with summaries and charts derived therefrom, including all electronic digital copies will be considered works made for hire and will, based on incremental transfer wherein the above shall become the property of the Town upon payments made to the Design-Build Firm or termination of this Contract without restriction or limitation on their use, and will be made available, on request, to Town at any time during the performance of such services and/or upon completion or termination of this Contract. Consultant and/or the Design-Build Firm shall not copyright any material and products or patent any invention developed under this Contract. The Town shall have the right to visit the site for inspection of the Work and the products of Consultant at any time. The Consultant shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the Town's use and occupancy of the Project.

3.4 Delivery upon Request or Cancellation

Failure of the Consultant to promptly deliver all such documents, both hard copy and digital, to the Director or designee within ten (10) days of cancellation, or within ten (10)



days of request by the Town, shall be just cause for the Town to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant shall have no recourse from these requirements.

3.5. Error and Omission Issues

Design-Build Firm is solely responsible for the coordination of the drawings and specifications and is solely responsible for all costs resulting from any errors and/or omissions in the drawings and specifications.

3.6 Design-Build Firm's Key Staff

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

3.7 Truth-In-Negotiation Certificate

By executing the Contract the Design-Build Firm certifies that wage rates and other factual unit costs supporting the cost of the Project are accurate, complete, and current at the time of Notice to Proceed. The original Project price and any addition thereto will be adjusted to exclude any significant sums by which the Town determines the Contract Price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such price adjustments will be made within 1 year following the end of the Project.

3.8 Re-Use by Town

It is understood that all Design-Build contract and/or Work Orders for new design Work will include the provision for the re-use of plans and specifications, including construction drawings, at the Town's sole option, and by virtue of signing this Contract the Design-build Firm and the Consultant agrees to such re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use. The Design-Build Firm and Consultant will not be liable for re-use by the Town of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Contract.

3.9 Scope of Services

The Design-Build Firm agrees to provide comprehensive professional services in accordance with all applicable law and building and environmental regulations, including the Florida Building Code and the Town of Miami, Florida, Code of Ordinances, and as set forth in the Contract Documents. Design-Build Firm shall furnish, as Basic Services, comprehensive professional services for the Projects including, but not limited to those described in Article 10, Basic Services.



The Design-Build Firm shall design and construct the Project based on the Sketches submitted with the RFP and approved by the Town Council.

3.10. Basic Services

Design-Build Firm agrees to provide complete Professional Services as set forth in the tasks enumerated hereinafter, in accordance with the Florida Building Code, latest edition, all federal, state, county and Town of Miami, Florida, Laws, Codes and Ordinances. Design-Build Firm shall maintain an adequate staff of qualified personnel on the Work at all times to ensure its performance as specified in the Contract.

Design-Build Firm shall submit at least one (1) electronic set of all documents and five (5) copies of documents required under this Article, without additional charge, for review and approval by Town. Design-Build Firm shall not proceed with the next task of the design Work until the documents have been approved, in writing, by Town, and an Authorization to Proceed with the next task has been issued by Town.

These services, hereinafter referred to as "Basic Services" are summarized as follows:

3.10.1 DEVELOPMENT OF OBJECTIVES

Design-Build Firm shall confer with representatives of Town, the Project Manager, and other jurisdictional agencies to develop several options for how the various elements of the project will be designed and constructed based on the DCP.

Design-Build Firm shall, utilizing the DCP, confer with representatives of Town, the Project Manager, and other jurisdictional agencies in order to comprehensively identify aspects of the completed facility program that may require further refinement to attain the requisite detail of design development required to begin the creation of Construction Documents. For clarity of scope, the items that need further development will be called Conceptuals and the remaining items will be called Designs.

Design-Build Firm shall prepare written descriptions of the various options and shall participate in presentations to multiple groups explaining alternative options. Sufficient detail shall be provided to support the presentation materials. The acceptance of any option shall be at the sole discretion of the Town.

Design-Build Firm shall hire the appropriate subconsultant to provide utility coordination services, which are not in-house. Such services shall include the location of all site structures including all utility structures and facilities as well as all underground utilities.

3.10.2 SCHEMATIC DESIGN- Design Concept and Schematics Report

Based on the approved development option the Design-Build Firm shall prepare and present four (4) copies, in writing and at an oral presentation if requested, for approval by Town, a Design Concept and Schematics Report, comprising Schematic Design Studies, including an identification of any special requirement affecting the Project, a Statement of Probable Construction Cost, Project Development Schedule and review of Constructability Review reports. At Project commencement the Town shall provide Design-Build Firm with the construction budget for the Project that will be utilized by the Design-Build Firm for purposes in completion of the Scope of Services.



1. Schematic Design Studies consist of site plan(s), floor plans (where applicable), elevations, sections, and all other elements required by Design Criteria Professional or Project Manager to show the scale and relationship of the components and design concepts of the whole. The floor plans may be single-line diagrams. A simple perspective rendering or sketch, model or photograph thereof may be provided to further show the design concept.
2. A Statement of Probable Construction Cost, prepared in Construction Standard Index (CSI) format, to include a summary of the estimated project cost and an evaluation of funding allocation. Such summary shall be in sufficient detail to identify the costs of each element and include a breakdown of the fees, general conditions and construction contingency. Such evaluation shall comprise a brief description of the basis for estimated costs per each element and similar project unit costs. Recommendations for reducing the scope of the Project in order to bring the estimated costs within allocated funds, in the event that the statement of Probable Construction Costs exceeds allocated funds by more than ten (10%) percent, the Design-Build Firm shall update its documentation, at no additional cost to the Town, to reflect this reduced scope. Any "Statement of Probable Construction Costs" prepared by Design-Build Firm represents a reasonable estimate of cost in Consultant's best judgment as a professional familiar with the local construction industry.
3. The Project Development Schedule shall show the proposed completion date of each task of the Project through design, bidding, construction, and post construction services.
4. Constructability Review reports shall be conducted by the Town and/or its consultants at design stages deemed necessary by the Project Manager or Design Criteria Professional. Design-Build Firm shall provide five additional deliverable plan sets for distribution, by Town, to others for this purpose. There shall be an established deadline for review report submission back to Town. Design-Build Firm shall provide written responses to all comments within two weeks and shall maintain files of all related review reports and response reports. If necessary, Town may coordinate Constructability Review meetings with some or all of the reviewers with Design-Build Firm present to discuss specific issues. In addition to the Constructability Review process mentioned above, Town reserves the right to conduct a Peer Review of the project documents at any design stage. Cost of such a Peer Review would be borne by Town. Any findings as a result of said Peer Review would be addressed by Design-Build Firm, and if requested by Town, would be incorporated into the design documents, at no additional cost to Town and no extension of time to the schedule.
5. Design-Build Firm shall identify any deviation(s) from the DCP, the basis for such deviation(s), and the cost and time impact to the Project. Where any specific equipment and materials are required by the DCP the Design-Build Firm must provide life-cycle calculations to demonstrate the long-term benefit(s) to the Town for any proposed substitution of specified equipment.

3.10.3 DESIGN DEVELOPMENT

From the approved Schematic Design documents, Design-Build Firm shall prepare and present four (4) copies in writing, and at oral presentations, if requested, for approval by Town and the Design Criteria Professional, separate Design Development Documents, updated Project Development Schedules, updated Statements of Probable Construction Costs and a review of Constructability Review reports.

1. The Design Development Documents shall consist of drawings (site plans, floor plans, elevations, and sections, 3-D representation in the form of renderings or model), outline specifications, and other documents.
2. Design Development consists of continued development and expansion of architectural and/or civil Schematic Design Documents to establish the final scope, relationships, forms, size, and appearance of each element through:
 - Plan sections and elevations
 - Typical construction details
 - Final materials selection
 - Construction phasing plan
3. The updated Development Schedules shall show the proposed completion dates of each milestone of the Project through design, bidding, construction and proposed date of occupancy. Design-Build Firm will also detail all long lead procurement items and architecturally significant equipment that will need to be purchased prior to the completion of Construction Documents.
4. Provide updated Statements of Probable Construction Cost. If either statement of Probable Construction Cost exceeds allocated funds by more than ten (10%) percent, Design-Build Firm shall prepare recommendations for reducing the scope of that particular Project in order to bring the estimated costs within allocated funds. Design-Build Firm shall update its documentation, at no additional cost to the Town, to reflect this reduced scope.
5. Constructability Review reports as defined in Section 10.2.4.
6. Design-Build Firm shall identify any deviation(s) from the DCP, the basis for such deviation(s), and the cost and time impact to the Project. Where any specific equipment and materials are required by the DCP the Design-Build Firm must provide life-cycle calculations to demonstrate the long-term benefit(s) to the Town for any proposed substitution of specified equipment.

3.10.4 CONSTRUCTION DOCUMENTS

Design-Build Firm shall produce 30%, 60%, 90% and Final Construction Documents for review and approval by Town, which shall include the following:

1. A Drawing Cover Sheet listing an index of all number of drawings by each discipline. Drawings not included in the 30%, 60%, 90% shall be noted. Design-Build Firm shall attach an index of all anticipated drawing sheets necessary to fully define the Project.



2. The updated Project Development Schedule to include an outline of major construction milestone activities and the recommended construction duration period in calendar days.
3. An updated Statement of Probable Construction Cost in CSI format.
4. A Project Specifications index and Project Manual with at least 30%, 60%, 90% and Final of the Specifications completed.
5. Design-Build Firm shall submit the special conditions separate from the technical specifications.
6. Design-Build Firm shall not proceed with further construction document development until approval of the previously submitted documents is received in writing from Town. Approval by Town shall be for progress only and does not relieve Design-Build Firm of its responsibilities and liabilities relative to code compliance and to other covenants contained in this Contract. Design-Build Firm shall resolve all questions indicated on the documents and make all changes to the documents necessary in response to the review commentary. The previously submitted documents review (check) set shall be returned to Town upon submission of subsequent submittal and Design-Build Firm shall provide an appropriate response to all review comments noted on these previously submitted documents.

Design-Build Firm shall submit four (4) full size copies of the drawings and specifications, and one digital copy in .pdf format, plot, and .dwg formats.

From the approved Design Development Documents, Design-Build Firm shall identify any deviation(s) from the DCP, the basis for such deviation(s), and the cost and time impact to the Project. Where any specific equipment and materials are required by the DCP the Design-Build Firm must provide life-cycle calculations to demonstrate the long-term benefit(s) to the Town for any proposed substitution of specified equipment. Design-Build Firm shall prepare for written approval by Town, Final Construction Documents setting forth all design drawings and specifications needed to comprise a fully biddable, permissible, constructible Project.

3.10.5 Dry Run Permitting

The Design-Build Firm shall file and follow-up for building permits at the earliest practicable time during the performance of the Work, the necessary portions of the Construction Documents for approval by Town, County, State and/or Federal authorities having jurisdiction over the Project by law or contract with the Town, and must coordinate in obtaining any such applicable certifications of permit approval by such authorities prior to approval by Town Manager of the final set and printing of the Construction Documents for the applicable portion of the Work. The Design-Build Firm shall promptly, at any time during the performance of the Work hereunder, advise the Town of any substantial increases in costs set forth in the Statement of Probable Construction Cost that in the opinion of the Design-Build Firm is caused by the requirement(s) of such reviews by the permitting entities.

Upon completion of dry run permitting by the permitting entities shall provide five (5) full size sealed copies of the drawings and specifications. by the permitting entities shall also

provide digital versions of the drawings in .dwg, and .pdf formats. The specification additional terms and conditions shall be provided in both .pdf and .doc formats.

3.10.6 ADMINISTRATION OF THE CONSTRUCTION CONTRACT

The Construction Phase will begin upon commencement of construction and will end when the Design-Build Firm has provided to the Town all post construction services, including documents, As-Built drawings, Design-Build Firm's record drawings, warranties, guarantees, operational manuals, and Certificate(s) of Occupancy have been delivered to the Town and the Town approves the final payment to the Design-Build Firm. During this period, the Design-Build Firm shall provide administration of the construction contract as provided by this Contract, and as provided by law.

The Design Criteria Professional, as the representative of the Town during the Construction Phase, shall advise and consult with the Town and shall have the authority to act on behalf of the Town to the extent provided in the General Conditions and the Supplementary Conditions of the construction contract and their agreement with the Town.

The Town or its, respective representatives shall visit the site to conduct field observations, at a minimum on a weekly basis, and at all key construction events; to ascertain the progress of the Project and shall visit the site as appropriate to conduct field inspections to ascertain the progress of the Project and determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Consultant shall provide any site visits necessary for certification if required by the authorities having jurisdiction. Threshold inspection shall be provided by the Design-Build Firm at no additional cost to the Town. The Town or its representatives shall report on the progress the Work, including any defects and deficiencies that may be observed in the Work. The Consultant will be responsible for writing minutes of all meetings and field inspections report, as well as the distribution of the minutes. Consultant and Subconsultants will not be held responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work.

The Consultant shall furnish the Town, Design Criteria Professional, and the Design-Build Firm with a written report of all observations of the Work made by Consultant and require all Subconsultants to do same during each visit to the Project. The Consultant shall also note the general status and progress of the Work on forms furnished or approved by the Town. The Consultant shall submit the reports in a timely manner. The Consultant and the Subconsultants shall ascertain that the Work is acceptable to the Town. The Design Criteria Professional will determine if the Work is being performed in accordance with the DCP. Consultant shall assist the Town in ensuring that the Design-Build Firm is making timely, accurate, and complete notations on the "as-built" drawings. Copies of the field reports shall be submitted on a monthly basis. The Consultant's failure to provide written reports of all site visits or minutes of meeting shall result in the rejection of payment requests by the Design-Build Firm and may result in a proportional reduction in Construction Administration fees paid to the Design-Build Firm.

1. Based on observations at the site and consultation with the Town, the Consultant shall determine the amount due the Design-Build Firm based on the approved schedule of values and shall recommend approval of such amount as appropriate. This recommendation shall constitute a representation by the Consultant to the Town that, to the best of the Consultant's knowledge, information and belief, the



Work has progressed to the point indicated and that, the quality of the Work is in accordance with the Contract and the Design-Build Firm is entitled to amount stated on the requisition subject to: a detailed evaluation of the Work for conformance with the contract upon substantial completion;

2. the results of any subsequent tests required by the contract;
3. minor deviations from the contract correctable prior to completion;
4. any specific qualifications stated in the payment certificate and further that the Design-Build Firm is entitled to payment in the amount agreed upon at a requisition site meeting or as stated on the requisition.

Prior to recommending payment to the Design-Build Firm, the Consultant will prepare a written statement to the Town on the status of the Work relative to the Construction Schedule, which shall be attached to the Design-Build Firm's payment application. Such statement shall be prepared immediately following the requisition field meeting. By recommending approval of a Payment Certificate, the Consultant shall not be deemed to represent that the Consultant has made any examination to ascertain how and for what purpose the Design-Build Firm has used money paid on account of the Construction Contract Price.

The Consultant shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder. The Consultant shall render interpretations necessary for the proper execution or progress of the Work upon written request of either the Town or the Design-Build Firm, and shall render written decisions, within maximum of ten (10) calendar days, on all claims, disputes and other matters in question between the Town and the Design-Build Firm relating to the execution or progress of the Work. Interpretations and decisions of the Consultant shall be consistent with the intent of and reasonably inferable from, the Contract Documents and shall be in written or graphic form.

The Consultant shall have the authority to recommend rejection of Work, which does not conform to the Contract Documents. The Design Criteria Professional has the authority to reject Work where such Work does not comply with the DCP. Whenever, in his/her reasonable opinion, the Consultant considers it necessary or advisable to insure compliance with the Contract Documents, the Consultant will have the authority to recommend special inspection or testing of any Work deemed to be not in accordance with the Contract, whether or not such Work has been fabricated and/or delivered to the Project, or installed and completed.

The Consultant shall promptly review and approve, reject or take action on shop drawings, samples, RFIs and other submissions of the Design-Build Firm. Changes or substitutions to the construction documents shall not be authorized without concurrence of the Town's Project Manager and/or Director of Capital Improvements. The Consultant shall upon receipt of shop drawings, samples, RFI's or other submittals by the Design-Build Firm, timely review and return the shop drawings or submittals to the Design-Build Firm with comments indicating either approval or disapproval, with a copy to the Project Manager. Consultant shall provide the Design-Build Firm and the Project Manager with a detailed written explanation as to the basis for rejection.

The Consultant shall initiate and prepare required documentation for changes as required by the Consultant's own observations or as requested by the Town, and shall review and recommend action on proposed changes. Where the Design-Build Firm submits a request



for Change Order or Change Proposal request, the Consultant shall, within ten (10) calendar days, review and submit to the Town, his/her recommendation or proposed action along with an analysis and/or study supporting such recommendation.

The Consultant in conjunction with the Design Criteria Professional shall examine the Work upon receipt of the Design-Build Firm's request for substantial completion inspection of the Project and shall, prior to occupancy by the Town, recommend execution of a "Certificate of Acceptance for Substantial Completion after first ascertaining that the Project is substantially complete in accordance with the contract requirements. The Consultant shall in conjunction with representatives of the Town, Design Criteria Professional, and the Design-Build Firm prepare a punch list of any defects and discrepancies in the Work required to be corrected by the Design-Build Firm in accordance with Florida Statute 218.735. Upon satisfactory completion of the punch list the Consultant in conjunction with the Design Criteria Professional shall recommend execution of a "Certificate of Final Acceptance" and final payment to the Design-Build Firm. Upon satisfactory completion of all items on the punch list all necessary closeout documentation shall be submitted by the Design-Build Firm, including but not limited to all guarantees, operating and maintenance manuals for equipment, releases of liens/claims and such other documents and certificates as may be required by applicable codes, law, and the Contract before final acceptance shall be issued to the Design-Build Firm.

The Consultant shall review the Design-Build Firm's "as built" drawings and submit them to the Town upon approval by the Consultant. The Design-Build Firm is responsible for preparing the "as built" drawings.

The Design-Build Firm shall furnish to the Town the original documents, including drawings, revised to "as-built" conditions. In preparing the "Record Set" documents any certification required under this Contract including the contents of "as-built" documents is conditioned upon the accuracy of the information and documents provided by the Design-Build Firm. The original documents as well as the "Record Set" shall become the property of the Town. A reproducible set of all other final documents will be furnished to the Town free of charge by the Design-Build Firm. The Design-Build Firm shall furnish to the Town one complete set of "Record Set Drawings", in Auto CADD Version 2000 or such other format acceptable to the Town.

The Design-Build Firm shall furnish to the Town a simplified site plan and floor plan(s) reflecting "as-built" conditions with graphic scale and north arrow. Plans must show room names, room numbers, overall dimensions, square footage of each floor and all fonts used in the drawings. Two sets of drawings shall be furnished on 24" x 36" sheets and one electronic copy.

3.11 Basis of Design

It is imperative that the Town understands the implications of design decisions made during the design process. Especially in the early stages of design, it is important that the Design-Build Firm provide insights into the implications of a given choice, e.g. materials, building skin, mechanical systems, etc. To achieve this Design-Build Firm shall develop basis of design reports for key building systems. These reports are first due during the initial stages of design and provide the basis for the Town's acceptance of design submittals.

A Basis of Design Report shall be prepared for each of the following systems:

1. Building envelope
2. HVAC
3. Lighting

Each report shall contain a narrative discussion covering the following points. Some systems may require additional information.

1. Applicable codes and standards
2. Performance characteristics
3. Life cycle cost analysis spreadsheet (available online), must include, but may not be limited to:
 - a. Energy costs
 - b. Maintenance and custodial costs
 - c. Life expectancy (may require life expectancy of subsystems)
 - d. Replacement costs (if applicable)
 - e. Total cost of ownership over 50 (fifty) years

Basis of Design Reports are required at the following design milestones:

1. Initial proposal submittal
2. 50% Preliminary Design
3. 100% Preliminary Design
4. 50% Construction Documents

3.12. Code Analysis Reports and Plans

Provide a narrative discussion and summary of building code issues, impacts and restrictions particular to this Project. The outline shall include a written report and diagrammatic plan drawings delineating design criteria (e.g. exit paths, travel distances, required exits, rated walls, rated corridors, building occupancy, construction type, and fire zones). The analysis shall be updated for each design phase.

3.13 Timeframes for Completion (to be added based on negotiations)

Design-Build Firm shall have eighteen (18) months, as stipulated in Article 2.4 to achieve Substantial Completion in accordance with the Contract Documents. The Design-Build Firm and the Town have committed to work together to further reduce the timeframe for achieving Substantial Completion.

3.14 Additional Design Services

Additional design services shall be handled as a Change Order to the Contract. Additional Design Services shall be for the provision of Professional Services requested by the Town that were not included in the approved design documents or within the Basic Services contained in the Contract. Upon request of the Town the Design-Build Firm will prepare and submit a Change Order Proposal, which shall include the deliverables and costs. The breakdown of the costs shall be provided on the Town' Work Order Form spreadsheet.

**SECTION 4 –
PROPOSAL FORM**

Bid submittal of KVC Constructors, Inc.

(Name of Proposer)

9499 NE 2nd Avenue, Suite 205, Miami Shores, Florida 33138

(Address)

Submitted on: April 11, 2011

(Date)

to furnish all Work as stated in the RFP and Contract Documents for the

**Design-Build Services for the Design
And Construction of Government Center
RFP No: 2011-03**

To: Town of Miami Lakes, Florida

Attn: Town Clerk

Town Hall

15150 NW 79th Court

Miami Lakes, Florida 33016

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

The Proposer further declares that it has examined the geographic location(s) of the Work, performed sufficient investigations, and informed itself fully of the suitability of the Work and all conditions pertaining to the place where the Work is to be done; that it has examined the RFP and all of the Contract Documents and all addenda thereto issued prior to Response Due Date, as acknowledged in its Response; and that it has satisfied itself about the Work to be performed; and that it has submitted the Proposal Guaranty, if required; and all other required information with the RFP; and that this RFP is submitted voluntarily and willingly.

The Proposer had determined based on its business and profession expertise that the Work can be performed and completed in accordance with the Contract Documents.



The Proposer agrees, if this Response is accepted, to timely execute a contract with the Town, , pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to complete the Wok

The Proposer also agrees to furnish the required Certificate(s) of Insurance.

In the event of arithmetical errors, the Proposer agrees that these errors are errors which may be corrected by the Town. In the event of a discrepancy between the Price Proposal in figures and the Price Proposal in words, the price in words shall govern. Proposer agrees that any unit price listed in the Response is to be multiplied by the stated quantity requirements in order to arrive at the extended value and the unit price shall prevail over the extended value.

Intentionally Left Blank



Note: Price Proposal is on a Guaranteed Maximum Price basis.

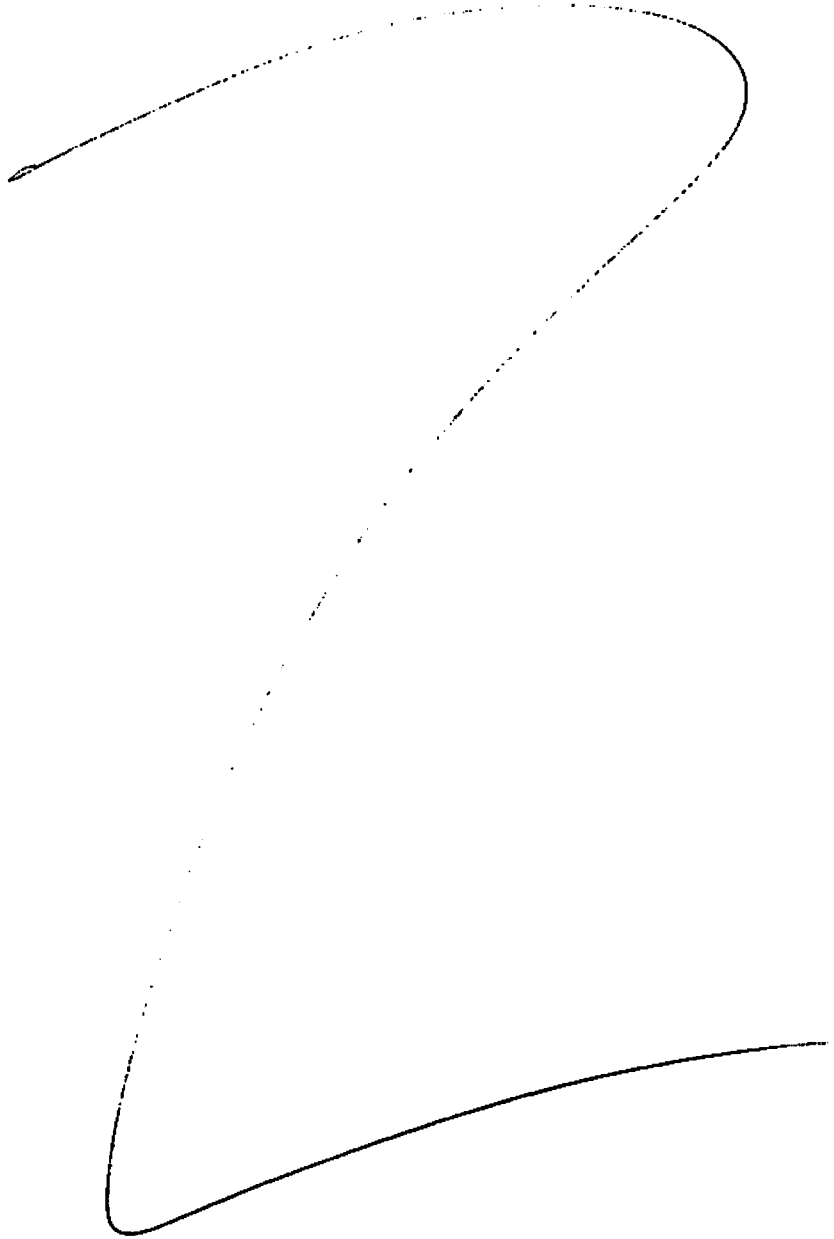
Design Fees

Phase	Fee %	Fee
Pre-Design Phase	5%	\$12,000
Schematic Design	10%	\$24,000
Design Development	15%	\$36,000
30% Construction Documents	10%	\$24,000
60% Construction Documents	15%	\$36,000
100% Construction Documents	15%	\$36,000
Permitting	5%	\$12,000
Construction Administration	14%	\$33,600
Substantial Completion Deliverables	3%	\$7,200
Final Completion Deliverables	3%	\$7,200
Post Occupancy Inspection & Report	3%	\$7,200
Not to Exceed Allowance for Reimbursable Expenses	2%	\$4,800
Total Design Fees (Not to Exceed)	100%	\$240,000

Note: Fee % indicates proportion of lump sum of Total Design Fees

Intentionally Left Blank





Handwritten initials or mark, possibly 'JL', located in the bottom right corner of the page.

Construction Costs

Phase	Item Amount	Sub-Total/Total Fee
New Government Center Building	██████	██████
Guaranteed Maximum Cost of the Work	\$3,362,610	82.25%
Guaranteed Maximum Staffing Costs	\$150,000	3.66%
Guaranteed Maximum General Conditions	\$183,564	4.49%
SUB-TOTAL	\$3,696,174	90.40%
Overhead & Profit	\$152,030	3.72%
SUB-TOTAL	\$3,848,204	94.12%
Bond & Insurance this is part of the General Conditions	\$135,420	%3.31
Guaranteed Maximum Construction Price	\$3,848,204	94.12%

Guaranteed Maximum Price (GMP) (Note: This is the combined GMP Prices for design & construction)	\$4,088,204	100%
--	-------------	------

Our **GUARANTEED MAXIMUM PRICE** includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, supervision, mobilization, overhead & profit required, in accordance with the Bid Specifications.

Lump Sum: \$ 4,088,204

Four Million Eighty Eight Thousand Two Hundred Four Dollars and no Cents

Written Amount

Intentionally Left Blank

Not to Exceed Cost Components

The Not to Exceed Cost Components are to be priced below and all costs of construction, inclusive of all labor, materials, equipment, staffing costs, general conditions, overhead, profit, bonds and insurance are to be included in the Price. The cost for design for these components shall be included in the GMP. Design-Build Firm must provide pricing on all of the Not to Exceed Cost Components.

Item	Not to Exceed Price
Additive	
Town Council Dais	\$100,000
Town Council Fixed Seating	\$45,000
Total	\$145,000

Intentionally Left Blank



Options

Design-Build Firm must provide pricing on all additive and deductive options. Should there be no cost for an option the number "0" must be entered. The Town, at its sole discretion may elect to any, all, or none of the Options at the time of award or during design or construction of the Project. The fees for Staffing Costs, General Conditions, Overhead, Profit, Bonds and Insurance shall equal those used for the GMP and are identified as "indirect Costs" for the purposes of the Price Proposal. The cost for the design of the Sally Port shall be included in the GMP.

Item	Item Amount	Total Fee
Additive		
1. Build Out of the Jail Cells		
Guaranteed Maximum Cost of the Work	\$45,000	82.8%
Guaranteed Maximum Design Cost	\$3,600	6.6%
Guaranteed Maximum Indirect Cost	\$5,769	10.6%
TOTAL	\$54,369	100%
2. Sally Port		
Guaranteed Maximum Cost of the Work	\$72,000	89.4%
Guaranteed Maximum Design Cost	\$included w/GMP	0%
Guaranteed Maximum Indirect Cost	\$8,546	10.6%
TOTAL	\$80,546	100%
2. Hardening of Building		
Guaranteed Maximum Cost of the Work	\$360,000	84.3%
Guaranteed Maximum Design Cost	\$21,600	5%
Guaranteed Maximum Indirect Cost	\$45,296	10.7%
TOTAL	\$426,896	100%
Deductive		
1. Reduced Design deliverables	\$0	0%
2. Reduction in Warranty Bond	\$0	0%



Trench Safety Act

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

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

Proposer acknowledges that included in the various items of the Proposal and in the total Bid price are costs for complying with the Florida Trench Safety Act. These items are a breakout of the respective items involving trenching and will not be paid separately.

The Proposer further identifies the costs and methods summarized below:

Description	Unit	Quantity Price	Unit Price	Extended	Method
<u>Trench Excavation</u>	<u>LF</u>	<u>100</u>	<u>\$20.00</u>	<u>\$2,000.00</u>	<u>Sloped</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Total				\$ <u>2,000.00</u>	

Section 5
Attachments

FORM OF PERFORMANCE BOND (Page 1 of 2)

BY THIS BOND, We KVC Constructors, Inc., as Principal, hereinafter called Design-Build Firm, and Western Surety Company, as Surety, are bound to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of ~~Four Million Two Hundred Thirty~~ Three Thousand Two Hundred Four Dollars (\$ 4,233,204.00) for the payment whereof Design-Build Firm and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Design-Build Firm has by written agreement entered into a Contract, RFP No: 2011-03, awarded the 23rd day of May, 2011, 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 Design-Build Firm:

1. Performs the Contract between Design-Build Firm and Town for construction of Government Center, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and
2. Pays Town all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Town sustains as a result of default by Design-Build Firm 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 Design-Build Firm shall be, and declared by Town to be, in default under the Contract, Town having performed Town obligations hereunder, the Surety may promptly remedy the default, or shall promptly:
 - 4.1. Complete the Project in accordance with the terms and conditions of the Contract Documents; or

FORM OF PERFORMANCE BOND (Page 2 of 2)

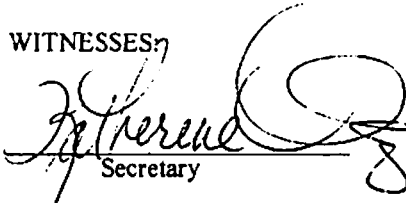
- 4.2. Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if Town elects, upon determination by Town and Surety jointly of the lowest responsible Bidder, arrange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

No right of action shall accrue on this bond to or for the use of any person or corporation other than Town 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 8th day of June, 2011.

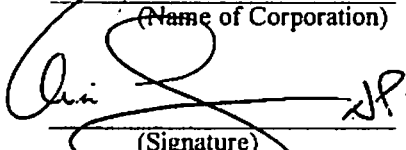
WITNESSES:


Secretary
(CORPORATE SEAL)

KVC Constructors, Inc.

(Name of Corporation)

By:


(Signature)

Nick Crespi, Vice President.
(Print Name and Title)

IN THE PRESENCE OF:

Marion F. Markus
Julie A. Wood
A. Davis

INSURANCE COMPANY: Western Surety Company

By:


Agent and Attorney-in-Fact

Address: 333 South Wabash Avenue
(Street)

Chicago, Illinois 60604
(City/State/Zip Code)

Telephone No.: 312-822-5333



FORM OF PAYMENT BOND (Page 1 of 2)

BY THIS BOND, We KVC Constructors, Inc., as Principal, hereinafter called Design-Build Firm, and Western Surety Company, as Surety, are bound to the Town of Miami Lakes, Florida, as Obligee, hereinafter called Town, in the amount of ~~Four Million Two Hundred Thirty Three Thousand Two Hundred Four~~ Dollars (~~\$4,233,204.00~~) for the payment whereof Design-Build Firm and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Design-Build Firm has by written agreement entered into a Contract, RFP No. 2011-03, awarded the 23rd day of May, 2011, 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 Design-Build Firm:

1. Pays Town all losses, liquidated damages, expenses, costs and attorney's fees including appellate proceedings, that Town sustains because of default by Design-Build Firm 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 Design-Build Firm in the performance of the Contract;

THEN DESIGN-BUILD FIRM'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- 2.1. A claimant, except a laborer, who is not in privity with Design-Build Firm and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to Design-Build Firm a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Design-Build Firm and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Design-Build Firm 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 Design-Build Firm or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

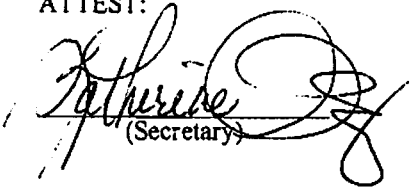
FORM OF PAYMENT BOND (Page 2 of 2)

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

Signed and sealed this 8th day of June, 20 11.

Design-Build Firm

ATTEST:

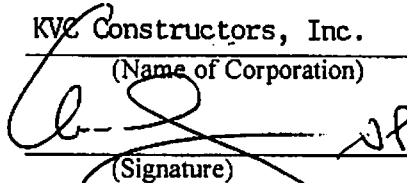

(Secretary)

(Corporate Seal)

KVC Constructors, Inc.

(Name of Corporation)

By:


(Signature)

Jon Krespin, Vice President.
(Print Name and Title)

8th day of June, 20 11.

IN THE PRESENCE OF:

Marion J. Kachas

By:

INSURANCE COMPANY: Western Surety Company


Agent and Attorney-in-Fact

Julie A. Wood

Address: 333 South Wabash
(Street)

L. Davis

Chicago, Illinois 60604
(City/State/Zip Code)

Telephone No.: 312-822-5333



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**J Spencer Miller, Marion Narkus, Robert I Schwartz, Kim Hansen, Mark P Nahin,
Individually**

of Chicago, IL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 20th day of August, 2008.

WESTERN SURETY COMPANY

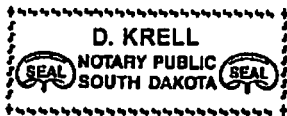


Paul T. Bruflat
Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 20th day of August, 2008, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012



D. Krell
D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 8th day of June, 2011.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

[Handwritten mark]

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Katherine Crespin, certify that I am the Secretary of the corporation named as Principal in the foregoing Performance and Payment Bond (Performance Bond and Payment Bond); that Vick Crespin, who signed the Bond(s) on behalf of the Principal, was then Vice President of said corporation; that I know his/her signature; and his/her signature thereto is genuine; and that said Bond(s) was (were) duly signed, sealed and attested to ~~on behalf of~~ said corporation by authority of its governing body.

Katherine Crespin
Secretary (on behalf of)
KVC Constructors, Inc.
Corporation

(SEAL)

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

Before me, a Notary Public duly commissioned, qualified and acting personally, appeared Vick Crespin, Vice President of KVC Constructors, Inc., to me well known, who being by me first duly sworn upon oath says that he/she has been authorized to execute the foregoing Performance and Payment Bond (Performance Bond and Payment Bond) on behalf of Design-Build Firm named therein in favor of Town.

Subscribed and Sworn to before me this 8th day of June, 2011.
My commission expires: Lisa R. Kimbrey
Notary Public, State of Florida at Large

October 18, 2013

Bonded by Troy Fair Insurance.



FORM A. - SUBCONSULTANTS

FIRM NAME	CONSULTING FIELD
Wolfberg Alvarez	Architecture & MEP Engineering
Hershell Gill Consulting Engineers	Structural Engineering
Rosenberg Gardner Design Group	Landscape Engineering
Schwebke-Shiskin & Associates	Civil Engineering
TWR Engineers	LEED Commissioning



FORM B. – KEY STAFF

NAME	JOB CLASSIFICATION
Andres del Toro, KVC Constructors, Inc.	Project Manager
Steve Naiman, KVC Constructors, Inc.	Construction Superintendent
Marcel Morlote, Wolfberg Alvarez	Architect
Arias Garcia, Wolfberg Alvarez	Architect
Jorge Fleitas, Wolfberg Alvarez	Electrical Engineer
Roberto Hernandez, Hershell Gill	Structural Engineer
Ken Gardner, Rosenberg Gardner	Landscaping Engineer
Luis Leon, Schwebke-Shiskin	Civil Engineer
Ed Ramos, TWR Engineers	LEED Commission



Section 6

CONTRACT EXECUTION FORM

This Contract 2011-03 made this 23rd day of May in the year 2011 in the amount of \$4,233,204 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and KVC Constructors, Inc.

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

Attest:

TOWN OF MIAMI LAKES

By: M. Tejada
Marjorie Tejada, Town Clerk

By: Alex Rey
Alex Rey, Town Manager

By: _____
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Design-Build Firm:

KVC Constructors, Inc.

By: [Signature]

By: [Signature]
Name: Victor Casaplan
Title: Vice President

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

[Handwritten mark]

Section 6
CONTRACT EXECUTION FORM

This Contract 2011-03 made this 23rd day of May in the year 2011 in the amount of \$4,233,204 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and KVC Constructors, Inc.

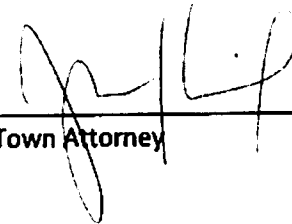
IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By: _____
Marjorie Tejeda, Town Clerk

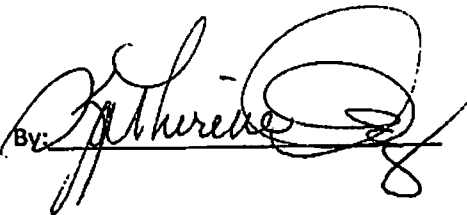
By: _____
Alex Rey, Town Manager


By:  _____
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Design-Build Firm:

KVC Constructors, Inc.

By:  _____

By:  _____
Name: Juan Crespin
Title: Vice President

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



CORPORATE RESOLUTION

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

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

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

Vick Crespin, 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 9 day of June, 2011.


Katherine Crespin, Corporate Secretary

(Corporate Seal)

