

**RESOLUTION NO. 11-907**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE AWARD OF CONTRACTS FOR GENERAL ROADWAY REPAIRS AND MINOR CONSTRUCTION TO J.B. BUILDERS, INC. DBA BALLARENA CONSTRUCTION; MAGNA, INC.; METRO EXPRESS, INC.; HORIZON CONTRACTORS, INC.; AND MAGGOLIC, INC., IN THE CATEGORIES OF THE INVITATION TO BID (“ITB”) IDENTIFIED BELOW; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACTS; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACTS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Miami Lakes (the “Town”) issued an Invitation to Bid (“ITB”) No. 2011-05 on April 18, 2011, for General Roadway Repairs and Minor Construction, and ten (10) firms submitted a response thereto; and

**WHEREAS**, the lowest bidder, Maggolic, Inc. withdrew its bid for Category 1, Paving; and

**WHEREAS**, the Town Manager, after conducting the necessary due diligence in evaluating the bidders for each category of the ITB, has determined the two (2) lowest responsive and responsible bidders in each of the four (4) categories of the ITB, and has recommended awards as set forth in Attachment “A” hereto; and

**WHEREAS**, the Town Council approves the recommendations of the Town Manager and authorizes the Town Manager to enter into contracts with the Bidders identified in Attachment "A".

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

**Section 1. Recitals.** The foregoing Recitals are true and correct and incorporated herein by this reference.

**Section 2. Approval of the Contract.** The Town Council hereby approves the award of ITB No. 2011-05, for General Roadway Repairs and Minor Construction, to the Bidders identified in Attachment "A".

**Section 3. Authorization of Town Manager.** The Town Manager and/or his designee and the Town Attorney are authorized take all steps necessary to implement the terms and conditions of the Contracts with the Bidders identified in Attachment "A".

**Section 4. Authorization of Fund Expenditure.** The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contracts and to amend the Contracts to reflect the expenditure of said budgeted funds.

**Section 5. Execution of the Contract.** The Town Manager is authorized to execute the Contracts with the Bidders identified in Attachment "A" on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Contracts

and to execute any extensions and/or amendments to the Contracts, subject to the approval as to form and legality by the Town Attorney.

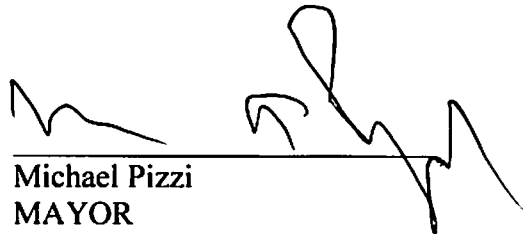
**Section 6. Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 14 day of June, 2011.

Motion to adopt by Councilmember Collins, and second by Mayor Pizzi.

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>Yes</u>
Vice Mayor Nick Perdomo	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Tim Daubert	<u>Yes</u>
Councilmember Nelson Hernandez	<u>Yes</u>
Councilmember Ceasar Mestre	<u>Yes</u>
Councilmember Richard Pulido	<u>Absent</u>



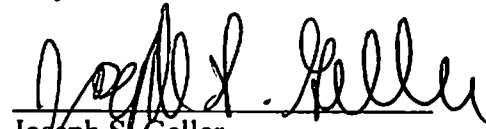
Michael Pizzi  
MAYOR

ATTEST:

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:



Marjorie Tejeda  
TOWN CLERK



Joseph S. Geller  
INTERIM TOWN ATTORNEY

**Attachment "A"**  
**Invitation to Bid 2011-05**  
**General Roadway Repairs and Minor Construction**  
**Recommendation of Award**

The following table identifies the lowest responsive and responsible Bidders for each category of the above referenced Bid.

<b>Category</b>	<b>Bidder</b>
<b>Paving</b>	J.B. Builders, Inc. dba Ballarena Construction
	Horizon Contractors, Inc.
<b>Drainage</b>	Magna, Inc.
	Metro Express, Inc.
<b>Sidewalk, Curb &amp; Gutter</b>	Metro Express, Inc.
	Maggolic, Inc.
<b>All</b>	Magna, Inc.
	Horizon Contractors, Inc.

**INVITATION TO BID**

**GENERAL ROADWAY AND DRAINAGE  
REPAIRS AND MINOR CONSTRUCTION**

**ITB No. 2011-05**



**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 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

**DATE ISSUED:       APRIL 18, 2011**  
**CLOSING DATE:     MAY 17, 2011**

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**SECTION 1**  
**NOTICE TO BIDDERS**  
**TOWN OF MIAMI LAKES**  
**GENERAL ROADWAY AND DRAINAGE REPAIRS AND MINOR CONSTRUCTION**

**ITB 2011-05**

The Town of Miami Lakes (the "Town") will be accepting sealed Bids for the Town's General Roadway and Drainage Repairs and Minor Construction ("Projects"). Bidders are to submit three (3) Bids, with original signatures together with a copy of the Bid on a CD-ROM. **Sealed Bids, including the CD-ROM must be received by the Town of Miami Lakes, Town Clerk at 15150 NW 79<sup>th</sup> Court, Miami Lakes, Florida by 2:00 P.M. on May 17, 2011. Please take note of the address as Town Hall has recently relocated to this address.**

**Scope of Work:**

The Work consists of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment, and services necessary for the repair, maintenance, and installation of roadway systems, and components on an as-needed basis, including but not limited to various types of horizontal construction, including but not limited to; paving, milling, resurfacing, drainage, sidewalks, curbs and gutters.

This Solicitation is for Projects that have an estimated construction cost should range up to \$20,000. However, the Town at its sole discretion may utilize these Contracts for Projects in excess of this threshold.

**Pre-Bid Conference:**

A non-mandatory pre-bid conference will be held on April 25, 2011 at 10:00 am, which will take place at Miami Lakes Town Hall, 15150 NW 79<sup>th</sup> Court, Miami Lakes, FL 33016, in the large conference room.

**Minimum Qualification Requirements:**

Prospective Bidder shall hold a current certified license as a General Contractor or General Engineering Contractor from the State of Florida, a Certificate of Competency from the Miami-Dade County's Construction Trades Qualifying Board as a General Engineering Contractor or as a Specialty Engineering Contractor, commensurate to the requirements of the Scope of Work. Bidder must also possess a minimum of five (5) years experience in the items being bid on by the Bidder. The Town may consider other Certifications or Licenses from the State of Florida or Miami-Dade County at its sole discretion. The Bidder must self-perform all single trade work and thirty percent (30%) of multiple trade work.

The Town will consider a Bid as responsive where a Bidder has less than the stipulated minimum number of years of experience solely where the Bidder has undergone a name change and such change of name has been filed with the State of Florida.

**SECTION 2**  
**INSTRUCTIONS TO BIDDERS**

**2.1 DEFINITION OF TERMS**

**Bid** means the Submittal tendered by a Bidder in response to this solicitation, which includes the price, authorized signature and all other information or documentation required by the Invitation to Bid ("ITB") at the time of submittal.

**Bid Form** means the form that contains the goods or services to be purchased and that must be completed and submitted with the Bid.

**Bidder** means any person, firm or corporation, or its duly authorized representative tendering a Submittal in response to this solicitation.

**Change Order** means a written document ordering a change in the Contract price or Contract time or a material change in the Work.

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

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

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

**Contract** means the ITB and the Bid documents that have been executed by the Bidder and the Town subsequent to approval of award by the Town.

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

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

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

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

**Days** mean calendar days.

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



**Work** as used herein refers to all reasonably necessary and inferable labor, material, equipment, and services, whether or not specifically stated, required by the Contract Documents for the Contractor to fulfill its obligations, under the Contract Documents.

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

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

## **2.2 GENERAL REQUIREMENTS**

The ITB and any addendum that may be issued constitute the complete set of specification requirements and Bid forms. The Bid Form page(s), and all forms contained in the ITB shall be completed, signed, and submitted in accordance with the requirements of Section 1. All bids must be typewritten or filled in with pen and ink, and must be signed in blue ink by an officer or employee having authority to bind the company or firm. Errors, corrections, or changes on any document must be initialed by the signatory of the Bid. Bidders shall not be allowed to modify their bids after the opening time and date.

## **2.3 PREPARATION OF BID**

The Bid Form contains multiple line items and the Bidder must provide prices for all line items and must provide the price for the total annual bid amount. Failure to include pricing on all line items as well as the total annual bid amount shall result in the Bid being found non-responsive.

**Bidder must use the blank Town forms provided herein.** The Bid must be signed and acknowledged by the Bidder in accordance with the directions on the ITB. Failure to utilize the Town's forms, or fully complete said forms will result in a determination that the Bid is non-responsive.

A Bid will be considered non-responsive if it is conditioned on modifications, changes, or revisions to the terms and conditions of the ITB.

The Bid is to include the furnishing of all labor, materials, equipment, all overhead/indirect expenses and profit, necessary for the completion of the Work, except as may be otherwise expressly provided in the Contract Documents.

Joint venture firms must complete and submit with their Bid the Form JV titled "Information for Determining Joint Venture Eligibility", (Form JV) and submit a copy of the signed formal agreement between all joint-venture parties. This joint venture agreement must indicate each of the party's respective roles, responsibilities and levels of participation for the Contract. Failure to timely submit Form JV, along with an attached written copy of the joint venture agreement may result in disqualification of the Bid. All joint venture firms must meet the requirements stipulated in the Florida Statutes.

## **2.4 BID PREPARATION AND RELATED COSTS**

All cost involved with the preparation and submission of Bid to the Town or any work performed in connection therewith, shall be the sole responsibility of the Bidder(s). No payment shall be made for any Bid received, or for any other effort required of or made by the Bidder prior to commencement of Work as defined by a contract duly approved by the

these requirements. As part of the Bid the Bidder are to include the form entitled "Questionnaire". Failure to complete and submit this form or to meet this requirement shall result in the Bid being deemed non-responsive. Where the Contractor is deemed to not meeting this requirement during the performance of the Work the Contractor shall be in default of the Contract Documents.

## **2.8 EXAMINATION OF CONTRACT DOCUMENTS**

It is the responsibility of each Bidder, before submitting a Bid in response to this ITB to:

- Carefully review the ITB, including any Addendum and notify the Town of all conflicts, errors or discrepancies.
- Take into account federal, state and local (Town and Miami-Dade County) including, without limitation the Town's Code, and Miami-Dade County and the State of Florida's statutes laws, rules, regulations, and ordinances that may affect a Bidder's ability to perform the Work.
- Study and carefully correlate Contractor's observations with the requirements of the ITB.

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

## **2.9 INTERPRETATIONS AND CLARIFICATIONS**

All questions about the meaning or intent of the ITB and specifications shall be directed in writing to Gary Fabrikant, Procurement Manager, at 15150 NW 79th Court; Miami Lakes, FL 33016, Email: [fabrikantg@miamilakes-fl.gov](mailto:fabrikantg@miamilakes-fl.gov), Fax: 305-558-8511. Interpretation or Clarifications considered necessary by the Town in response to such questions will be issued by means of addenda. All addenda will be posted on the Town's website, [www.miamilakes-fl.gov](http://www.miamilakes-fl.gov) and it is the sole responsibility of the Bidder to obtain all addenda. Written questions must be received no less than ten (10) days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.

## **2.10 POSTPONEMENT OF BID OPENING DATE**

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

## **2.11 ACCEPTANCE OR REJECTION OF BIDS**

The Town reserves the right to reject any and all Bids, with or without cause, to waive technical errors and informalities, or to cancel or re-issue this solicitation. The Town also reserves the right to reject the Bid of any Bidder who has failed to previously perform under a contract or who is in arrears to the Town.

**Multi-Trade Category (5):** Bidders who is the lowest responsive and responsible bidder in this category may also be awarded one or more Single Trade Category for which they are the lowest responsive and responsible Bidder. Should the Bidder be the lowest responsive and responsible Bidder on more than one Single Trade Category the Town may select the Single Trade Category on the order of precedence contained below.

**Order of Precedence- Single Trade Categories**

- Paving (Category 2)
- Sidewalk, Curbs, & Gutters (Category 4)
- Drainage (Category 3)

Category 1 will not be awarded as a separate Category. The items listed in Category 1 are general in nature and depending on the Project may be used to perform the Work in Categories 2-5.

The Town will award a Contract to the lowest responsive and responsible bidder for each Category with the determination being based on the following:

Category 2 – Paving will be determined by adding together Category 1 with the total for Category 2, Total Paving Bid Items.

Category 3 – Drainage will be determined by adding together total for Category 1 with the Category 3, Total Drainage Bid Items.

Category 4 – Sidewalk, Curbs, & Gutters will be determined by adding together the total for Category 1 with the Category 4, Total Sidewalk, Curbs, & Gutters Bid Items.

Category 5 will be determined by adding together the total for Category 1 with the Total Bid Items for Categories 1, 2, 3, and 4.

Town Ordinance 115, Section 2G provides for a local preference, which shall be applicable to this ITB, in determining the lowest responsive and responsible Bidder.

Any Bidder who, at the time of submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Bidder under federal bankruptcy law or any state insolvency, the Bid may be declared non-responsive. Any Bidder who has filed a lawsuit against the Town or where the Town has filed a lawsuit or won a court judgment against a Bidder, such Bidder may be declared non-responsible.

If the Town accepts a Bid, the Town will notify the Bidder that it is the apparent awardee and that award is conditioned upon executing the Contract, and submission and approval of the required insurance certificates. The Town will provide a written notice of award upon the Bidder meeting these requirements.

If the successful Bidder to whom a contract is proposed to be awarded forfeits the Award by failing to meet the conditions as stated above, the Town may, at the Town's sole option, award the Contract to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise the ITB.

**SECTION 3**  
**GENERAL TERMS AND CONDITIONS**

**3.1 TIME IS OF THE ESSENCE**

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

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

**3.2 NOTICES**

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

For Town:

Mr. Alex Rey  
Town Manager  
Town of Miami Lakes  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

Mr. Gary Fabrikant  
Procurement Manager  
Town of Miami Lakes  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

For Contractor:

Mr. Jorge Ballarena  
President  
J.B. Builders, Inc. dba Ballarena Construction  
3727 SW 8<sup>th</sup> Street  
Suite 105  
Coral Gables, Fl 33134  
jballarena@jb-contractors.com

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

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

### 3.5 **INSURANCE**

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

- a. **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law" and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident and a waiver of subrogation.
- b. **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$500,000.00 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 endorsement, as filed by the Insurance Services Office.
- c. **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a

The Town, the Consultant (if any) and other agencies authorized by the Town, shall have full access to the Project site at all times.

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 best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

### **3.7 RULES AND REGULATIONS**

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

### **3.8 SITE INVESTIGATION AND REPRESENTATION**

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

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. It shall be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., by hand excavation or other appropriate measures before performing any Work. The Contractor shall call Sunshine State One Call and other appropriate agencies, as applicable, to determine the locations of existing utilities prior to the commencement of any Work. The Contractor is responsible for any and all claims resulting from the damage caused to any utilities, identified or not.

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

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

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

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

### **3.9 METHOD OF PERFORMING THE WORK**

reflect clearly identify any deviation from what is required by the Contract Documents. It is the responsibility of the Contractor to submit sufficient information to allow the Project Manager to properly evaluate and approve the submittal or shop drawing.

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

Contractor is solely responsible for the accuracy of all shop drawings and submittals and any approval by Project Manager shall in no way relieve the Contractor from said responsibility for full compliance with the Contract Documents.

### **3.12 SUBSTITUTIONS**

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

### **3.13 DIFFERING SITE CONDITIONS**

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

No request by Contractor for an equitable adjustment to the Contract Documents under this provision shall be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the

- Flagmen shall be posted at the edge of the travel lane at least five hundred (500) feet prior to start of transition.
- There shall be a minimum of two hundred (200) feet transition with traffic cones, prior to lane closure. It is recommended that vehicle-blocking lane have a flashing arrow board.

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

### **3.16 COORDINATION OF THE WORK**

Prior to the commencement of the Work the Project Manager or the Consultant will make every effort, based on available information, to notify the Contractor of any ongoing project(s) or project(s) scheduled to commence during the Work on a Project that may require coordination. The Contractor shall be solely responsible for coordinating the Work with any other project(s) to minimize any potential adverse impact. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Consultant and the Project Manager may assist the Contractor in coordinating the Work. However, any such assistance, or lack thereof shall form the basis for any claim for delay or increased cost.

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

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

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

### **3.17. ACCESS TO THE PROJECT SITE(S)**

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

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

### **3.18 CONTRACTOR'S RESPONSIBILITY FOR DAMAGES AND ACCIDENTS**

Contractor shall accept full responsibility for Work against all losses or damages of whatever nature sustained until acceptance by Town Manager or designee, and shall promptly repair or



### **3.23 SUBCONTRACTORS**

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

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

Contractor shall utilize the Subcontractors identified in its Bid submission. The replacement, addition, or deletion of any Subcontractor(s) shall be subject to the prior written approval of the Town Manager or designee.

### **3.24 CONSULTANT SERVICES**

The Town, at its sole discretion may hire a Consultant who shall serve as the Town's Representative for the Project to be performed under the Contract Documents. A Work Order will state that a Town representative has been contracted with for the management of the Work under the Work Order and the Work Order will also state if the Project Manager or the Consultant will be the lead point of contact. Where a Consultant has been identified, the Consultant and the Project Manager will both have authority to act on behalf of the City to the extent provided in the Contract Documents and as outlined in Article 3.25, Authority of the Project Manager, of the General Terms and Conditions.

Where the Consultant has been identified in a Work Order as the lead point of contact in a Work Order the Consultant will keep the Project Manager informed of the progress of the Work

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

### **3.25 AUTHORITY OF THE PROJECT MANAGER**

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

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

Town shall make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

### **3.29 INSPECTION OF THE WORK**

The Town Manager or designee, other Town representatives, and inspectors representing the Town and other public entities having jurisdiction over the Work shall at all times have access to the Work

Should the Contract Documents, or any laws, ordinances, or any public authority require any of the Work to be tested, Contractor shall provide timely notice of readiness of the Work for testing and timely notice shall be given of the date fixed for such testing so that the appropriate representatives of the Town, DERM, or other entities can be present for such testing. Contractor shall be responsible for all costs for all required testing required. All testing reports are to be sent directly to the Town Manager or designee by the testing firm, with a copy to the Contractor.

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

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

### **3.30 DEFECTIVE OR NON-COMPLIANT WORK**

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

Re-examination of any of the Work may be ordered by the Project Manager or Consultant, and if so ordered, the Work must be uncovered by Contractor. If such Work is found to be in accordance with the Contract 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, Contractor shall pay such cost.

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

subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law and may not include the acts or omissions of Subcontractors.

### **3.33 EXTENSION OF TIME**

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

If the Contractor is delayed at any time during the progress of the Work beyond the Contract Time and/or Notice to Proceed (NTP) by the neglect or failure of the 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 Contractor by reasonable investigation before proceeding with the Work;
- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;
- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

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

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

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

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

The Project Manager shall endeavor to review and respond to the Contractor's request for Excusable Delays in a reasonable period of time; however, the Contractor shall be obligated to

neglect by any separate contractor employed by own, fires, floods, labor disputes beyond the control of the Contractor, epidemics, abnormal weather conditions (if applicable), or acts of God.

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

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

Excusable Delay is (i) caused by circumstances beyond the control of Contractor, its Subcontractors, suppliers, and is also caused by circumstances beyond the control of the Town, or (ii) is caused jointly or concurrently by Contractor or its Subcontractors, suppliers and by the Town. Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor must document its claim for any time extension as provided herein.

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

### **3.36 DISPUTES AND MEDIATION**

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

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

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager identified in Article 3.2, Notices, of the claim or dispute

The Contractor shall submit its dispute in writing, with all supporting documentation, to the Procurement Manager, as identified in Article 3.2, Notices. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

individual, corporation, entity, or affiliate shall be responsible for all direct or indirect costs associated with termination or cancellation.

**3.39 STOP WORK ORDER**

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

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 3.34, Termination for Convenience.

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

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

**3.40 HURRICANE PREPAREDNESS**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, shall take all precautions necessary to secure any Work in response to all threatened storm events, regardless of whether the Contractor 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 Contractor to additional Contract time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

**3.41 CLEANING UP; TOWN'S RIGHT TO CLEAN UP**

Contractor shall at all times keep the Work site(s) free from accumulation of waste materials or rubbish caused by its operations. At the completion of a Work at a work site(s), Contractor shall remove all its waste materials and rubbish from and about the Project(s) as well as any

the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town.

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

c. **Termination for Default**

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

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

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

**3.44 TERMINATION FOR CONVENIENCE**

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

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

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

**3.50. ASSIGNMENT OR SALE OF CONTRACT**

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

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

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

**3.51. MATERIALITY AND WAIVER OF BREACH**

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

**3.52 DEFENSE OF CLAIMS**

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

**3.53 FUNDS AVAILABILITY**

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

**3.54 ACCESS TO AND REVIEW OF RECORDS**

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

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

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.

**3.62 ENTIRE AGREEMENT**

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

**END OF SECTION**



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

#### **4.7 COMPENSATION**

Contractor shall provide the Town with one invoice within thirty (30) days of the date services were rendered. At a minimum the invoice must contain the following information: Multiple invoices will not be accepted and the Town will not make payment based on statements of accounts.

- Name and address of the Contractor
- Contract number
- Date of invoice
- Invoice numbers (Invoice numbers cannot be repeated)
- Description of Work performed or installed, including location(s) where the Work was performed
- Unit prices of Work performed
- Quantities of Work Performed or installed
- Extended prices
- Total value of the invoice

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

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

The Contractor shall be compensated at the unit prices specified in the Proposal/Bid Form of the Contract.

#### **4.8 ESTIMATED QUANTITIES**

The quantities stated on the Bid Form are solely estimates of what the Town anticipated its need to be for the initial term of the Contract. The stated quantities do not reflect the actual quantities to be ordered and the Town has not established any minimum quantities and no guarantee is expressed or implied as to the total quantity of Work to be issued to a Contractor. The Town reserves the right, at its sole discretion, to make adjustment to the number and/or location of the Bid items. The failure of the Town to order any minimum quantities shall not form any basis for a claim by the Contractor for lost work or profits.

#### **4.9 LINE ITEM PRICING**

Line item pricing shall include all costs, both direct and indirect to perform the Work, except for those costs specifically identified as reimbursable costs under the Contract. This

- The Project Manager determines that the Primary Contractor has too much Work
- There is insufficient capacity remaining in the Primary Contractor's Contract.
- The Primary Contractor has failed to successfully perform on previous Work Orders or under other Contracts with the Town.

The determination on using the Secondary Contractor shall rest solely with the Project Manager and the Town.

Upon completion of the Scope of Work, which may or may not include drawings for a Project the Town will determine which Category best fits the Project's Scope of Work. For example, if the Project only includes Paving Work Category 2 will be used or if the Project includes Work under Categories 2-4 then Category 5 will be utilized. The Project Manager will calculate the cost of the Project by multiplying the estimated quantities for each line item times the unit Bid price.

The Project Manager will then provide the Contractor a written work proposal (Proposal) for a Project and provide it with the spreadsheet used for the calculations (if one is required), the timeframe for completing the Project, and available drawings (if any), and any additional contract terms and conditions specific to the Project, including but not limited to additional insurance, liquidated damages, etc. The Contractor will also be provided a deadline to respond to the Project Manager concerning the Project.

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

Upon written acceptance of the Work Order Proposal, the Project Manager will issue a written Work Order and Notice to Proceed for the Project. Where the Contractor rejects the Proposal or where the Contractor fails to respond within the stipulated timeframes the Project Manager may award the Project to another Contractor, or utilize other means available to the Town. Contractor shall not commence any Work without receiving a written Work Order and Notice to Proceed from the Town.

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

#### **4.13 PAYMENTS**

Payment for Projects shall be paid in accordance with the State of Florida Local Government Prompt Payment Act, upon Final Completion of a Project.

#### **4.14 LIQUIDATED DAMAGES**

The Town may establish liquidated damages on a Project by Project basis. Where the Town determines that liquidated damages shall apply to a Project the amount established will be set forth in the Work Order.

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

**4.17 TOWN FURNISHED DRAWINGS**

The Town, in its sole discretion, may furnish design drawings. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of any Town provided drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the Town prior to commencement. This shall also apply to any revisions or omissions identified by the Contractor. The Contractor shall submit all requests for information entitled Request for Information (RFI).

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

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

**4.18 SUBSTITUTIONS**

The Contractor may request the Town to approve substitution where the specified materials are not available. Such requests must be submitted in writing to the Project Manager in advance with sufficient information to evaluate the substitution. The Contractor must provide the substitute materials plant designation, type, grade, quality, and size. Acceptance of substitutions shall be at the sole discretion of the Town. The Town may require an adjustment in price based on any proposed substitution.

**4.19 REQUEST FOR INFORMATION**

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

**4.20 WARRANTY**

All Work have a one (1) year warranty on labor from the date of final acceptance and the Contractor shall provide a such written warranty prior to the Town issuing final payment. Contractor shall provide a minimum written warranty of one (1) year on all equipment,

submitted until the Contractor has obtained the Certificate(s) of Completion. The Project Manager or Consultant shall schedule the date and time for any inspection and notify the Contractor and any other parties deemed necessary. During this inspection, the Project Substantial Completion Inspection Form will be completed as necessary. Any remaining Construction Work shall be identified on this form and shall be known as Punch List Work. The Punch List shall be signed by the Project Manager and the Contractor confirming that the Punch List contains the item(s) necessary to complete the Work. The failure or refusal of the Contractor to sign the Project Substantial Completion Inspection Form or Punch List shall not relieve the Contractor from complying with the findings of the Project Substantial Completion Inspection and completing the Project to the satisfaction of the Town.

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

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

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

#### **4.24 OWNERSHIP OF THE WORK**

The Contractor shall be solely responsible for all Work, including trees, plants, materials, supplies, and or equipment prior to final written acceptance. Contractor shall be liable for all damage, theft, maintenance, health and safety until such time as the Town issues final acceptance. The Contractor is responsible for the protection, and maintenance of all of its own tools, equipment, and vehicles.

#### **4.25 RECORD SET**

Contractor shall maintain in a safe place one record copy and one permit set of the Contract Documents, including, but not limited to, all Drawings, Specifications, amendments, Change Orders, RFIs, and Field Directives, as well as all written interpretations and clarifications issued by the Project Manager, in good order and annotated to show all changes made during construction. The record documents shall be continuously updated by Contractor throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Construction Change Directives, and Field Directives as well as all written interpretations and clarifications, and all concealed and buried installations of piping, conduit and utility services. Contractor shall certify the accuracy of the updated record documents. The record documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. Upon completion of the Work and as a condition precedent to Contractor's entitlement to final payment, the Record Set shall be delivered to the Project Manager by the Contractor. The Record Set of Drawing shall be submitted in both hard copy and as electronic plot files.

**END OF SECTION**

equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to complete the Work.

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

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

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

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

**All Bidders must bid on all line items in Category 1. Bidders must also submit prices on all line items in the Categories Bidders is seeking an award.**

**NOTE: Contractor has been awarded as the primary Contractor for Category 2, Paving.**

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**CATEGORY 2  
PAVING**

Item Description	Estimated Qty	Unit Measure	Bid Unit Price
Mowing	2	AC	\$ 596.97
Removal Of Existing Concrete Pavement	50	SY	\$ 11.50
Subsoil Excavation	10	CY	\$ 34.50
Type B Stabilization	20	SY	\$ 1.38
Reworking Limerock Base, 6"	50	SY	\$ 11.50
Reworking Limerock Base, 3"	50	SY	\$ 11.50
Shape & Compact Exist Base, 6"	20	SY	\$ 18.40
Shape & Compact Existing Base, 12", D-Cse	20	SY	\$ 28.75
Optional Base, Base Group 01 (4" Limerock)	50	SY	\$ 23.00
Optional Base, Base Group 04 (6" Limerock)	20	SY	\$ 28.75
Optional Base, Base Group 06 (8" Limerock)	20	SY	\$ 32.20
Milling Exist Asph Pavt, 1" Avg Depth	100	SY	\$ 3.05
Milling Exist Asph Pavt, 2" Avg Depth	100	SY	\$ 3.05
Milling Exist Asph Pavt, 1 1/2" Avg Depth	100	SY	\$ 3.05
Asphaltic Conc, Type S-I (100 Lb/Sy-In) (150 Tn Or Less)	50	TN	\$ 115.00
Asphaltic Conc, Type S-I (100 Lb/Sy-In) (Over 150 To 500 Tn)	10	TN	\$ 115.00
Asphaltic Conc, Type S-III (100 Lb/Sy-In) (150 Tn Or Less)	100	TN	\$ 115.00
Asphaltic Conc, Type S-III (100 Lb/Sy-In) (Over 150 To 500 Tn)	50	TN	\$ 115.00
Guardrail -Roadway	200	LF	\$ 40.25
Guardrail Removal	200	LF	\$ 24.15
Guardrail Post Replacement, Regular	100	EA	\$ 63.25
Guardrail End Anchorage Assembly- Type II	100	EA	\$ 28.75
Guardrail End Anchorage Assembly- Type CRT	100	EA	\$ 28.75
Guardrail Reset	200	LF	\$ 28.75
Bumper Guards, Concrete	20	EA	\$ 69.00
Fencing, Type A, 7.1 - 8.0', Standard	200	LF	\$ 13.23
Fencing, Type B, 0.0-5.0', Reset Existing	200	LF	\$ 6.90
Fencing, Type B, 5.1-6.0', Standard	200	LF	\$ 12.65
Fencing, Type B, 5.1-6.0', Reset Existing	200	LF	\$ 6.90
Single Post Sign, F&I, Less Than 12 Sf	20	EA	\$ 293.25
Single Post Sign, F&I, 12-20 Sf	20	EA	\$ 1,092.50

<b>Item Description</b>	<b>Estimated Qty</b>	<b>Unit Measure</b>	<b>Bid Unit Price</b>
Thermoplastic, Standard, White, Dotted Guideline, 6"	200	LF	\$ 0.69
Thermoplastic, Standard, White, Message	20	EA	\$ 126.50
Thermoplastic, Standard, White, Arrow	20	EA	\$ 63.25
Thermoplastic, Standard, Yellow, Solid, 6"	500	LF	\$ 0.69
Thermoplastic, Standard, Yellow, Solid, 8"	500	LF	\$ 1.15
Thermoplastic, Standard, Yellow, Solid, 12"	200	LF	\$ 2.24
Thermoplastic, Standard, Yellow, Solid, 18"	200	LF	\$ 2.88
Thermoplastic, Standard, Yellow, Solid, 24"	200	LF	\$ 4.03
Thermoplastic, Standard, Yellow, Skip, 6"	200	LF	\$ 0.69
Thermoplastic, Standard, Yellow, Dotted / Guideline, 6"	200	LF	\$ 0.69
Thermoplastic, Standard, Blue, Solid, 6"	100	LF	\$ 1.15
Thermoplastic, Remove	100	SF	\$ 2.88

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**CATEGORY 4  
Sidewalk, Curb & Gutter**

**Not Awarded**



Our TOTAL BID AMOUNT includes the total cost for the Work specified in this solicitation, consisting of furnishing all materials, labor, equipment, supervision, overhead & profit required, in accordance with the Contract Documents.

**Category 2, paving (combined total of Category 1 & Category 2)**

Total Bid Amount: \$ 196,219.<sup>09</sup>

**Category 3, Drainage (combined total of Category 1 & Category 3)**

Total Bid Amount: \$ 274,998.<sup>36</sup>

**Category 4, Sidewalk, Curb, & Gutter (combined total of Category 1 & Category 4)**

Total Bid Amount: \$ 205,230.<sup>16</sup>

Firm's Name: J.B. Builders & Contractors, Inc dba. Ballanera Construction

Signature: 

Printed Name/Title: Jorge Ballanera, President.

Town/State/Zip: Local Cables, FL 33134

Telephone No.: 305-441-9118

Facsimile No.: 305-441-8111 E-Mail Address: jb@ballanera-group.com

Social Security No. or Federal  
I.D.No.: 20-2753867

Dun and  
Bradstreet No.: -  
(if applicable)

**END OF SECTION**



**Town of Miami Lakes**

**ITB 2010-05**

**Title: General Roadway & Drainage Repairs & Minor Construction**

**Addendum #1**

**RFP Closing Date: May 17, 2011**

This addendum is hereby incorporated into and made a part of the Request For Proposals (RFP) 2011-03. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the RFP, which take precedence over the RFP documents. Underlined word(s) indicate additions and deletion are indicated by strikethrough.

**Clarification of Bid Due Date**

The Bid Due Date as shown in Section 1 of the Invitation to Bid ("ITB") is correctly stated as May 17, 2011. The dates shown on the front cover of the ITB are hereby deleted and the following is added "CLOSING DATE: May 17, 2011".

The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and at the time of Bid submission.

**Acknowledgement:**

Jorge Ballarena  
Name of Signatory

President  
Title

05/07/2011  
Date

[Signature]  
Signature

Ballarena Construction  
Name of Bidder



The MS Excel spreadsheet entitled "Price Proposal" is hereby replaced with the document entitled "Price Proposal-Revised". Price Proposal-Revised must be submitted to be considered revised.

The spreadsheet has been revised to reflect the revisions to the Bid Form.

3. Article 4.10, Page 38 - The following is added to the list of reimbursable expenses:

➤ Mobilization – the Town will pay 5% of the Project cost for mobilization.

4. Article 4.24, Page 43 – The language in the 1<sup>st</sup> sentence is revised as follows:

The Contractor shall be solely responsible for all Work, including ~~trees, plants~~, materials, supplies, and or equipment prior to final written acceptance.

The Bidder shall acknowledge receipt of this addendum by completing the applicable section of the ITB or by completing the section below acknowledgment information below. Either form of acknowledgement must be completed and at the time of Bid submission.

Acknowledgement:

Jorge Ballanera  
Name of Signatory

President  
Title

5/16/2011  
Date

  
Signature

Ballanera Const.  
Name of Bidder

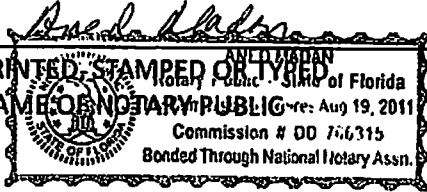
NOTARIZATION

STATE OF Florida )

COUNTY OF Miami-Dade ) SS:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of May, 2011, by Jorge Ballarera, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did) take an oath.

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

  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC: Anselmo Ballarera  
Notary Public, State of Florida  
Comm. Expires: Aug 19, 2011  
Commission # DD 766315  
Bonded Through National Notary Assn.

(Corporations will be required to provide a copy of their corporate resolution prior to executing a contract)

4. Company Ownership

a. Identify all owners of the company

Name	Title	% of ownership
Jorge Ballarena	President	100%
/	/	/
/	/	/
/	/	/
/	/	/

b. Is any owner identified above an owner in another company?  Yes  No  
If yes, identify the name of the owner, other company names, and % ownership

International Group Developers - Jorge Ballarena - 100%

c. Identify all individuals authorized to sign for the company, indicating the level of their authority (check applicable boxes and for other provide specific levels of authority)

Name	Title	Signatory Authority			
		All	Cost	No-Cost	Other
Jorge Ballarena	President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
/	/	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
/	/	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
/	/	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation for Other: \_\_\_\_\_

5. Employee Information

Total No. of Employees: 7 Number of Managerial/Admin. Employees: 4

Number of Trades Personnel and total number per classification:

(Apprentices must be listed separately for each classification)

3

11. Has your company been cited for any OSHA violations in the past five (5) years? If yes, please provide an attachment including all details on each citation,  Yes  No
12. Provide an attachment listing all of the equipment, with a value of \$3,000 or greater, owned by your company.
13. Provide an attachment listing of all equipment that your company does not own but plans to rent, lease, or borrow for the performance of the Work

**B. Project Management & Subcontract Details**

**1. Project Manager for this Project:**

a. Name: Jorge Ballarera

b. Years with Company: 6

c. Licenses/Certifications: CE 1509527

**d. Last 3 projects with the company including role, scope of work, & value of project:**

Amphitheater - City of Miami Gardens - Senior P.M. - \$740,000

Veterans Park - City of Doral - Senior P.M. - \$810,000

Senior Center - City of Sweetwater - Senior P.M. - \$775,000

**2. Subcontractors:**

Name	Trade/Work to be performed	% of Work	License No.
N/A			

**3. Scope of actual Work to be performed by your company and the corresponding percentage of the work: (This does not include such items as Insurance \* bonds, dumpsters, trailers, and other similar non-construction work items)**

Civil Improvement - 100%

**C. Current and Prior Experience:**

1. Current Experience including current under projects or contracts, recently awarded, or pending award (Provide an attachment to this questionnaire that lists all such contracts or projects, including the owner's name, title and value of project, scope of work, projected or actual start date, projected completion date.



SECTION 6

CONTRACT EXECUTION FORM

This Contract 2011-05-BC made this 14 day of June in the year 2011 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and J.B. Builders, Inc. dba Ballarena Construction.

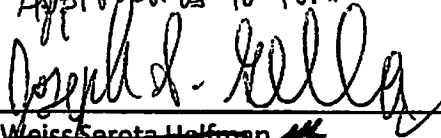
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By:   
Marjorie Tejada, Town Clerk

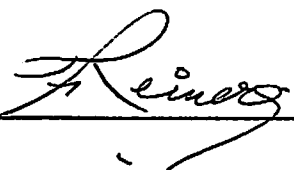
By:   
Alex Rey, Town Manager

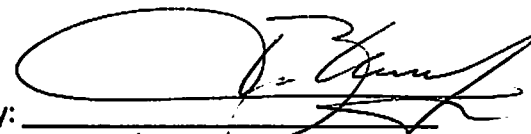
Approved as to form:  
By:   
Joseph D. Helfman  
Pastoriza Cole & Boniske, P.L.L.C.,  
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

J.B. Builders, Inc. dba Ballarena Construction

By: 

By:   
Name: Jorge Ballarena  
Title: President

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



**CORPORATE RESOLUTION**

WHEREAS, J.B. Builders, Inc. dba Ballarena Construction, 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

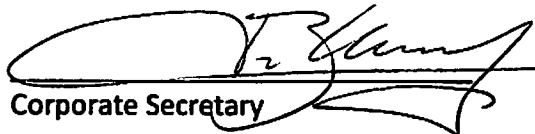
WHEREAS, the Board of Directors at a duly held corporate meeting has considered the matter in accordance with the By-Laws of the corporation;

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

Jorge Ballarena. 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 14 day of June, 2011.

  
Corporate Secretary

(Corporate Seal)