

**RESOLUTION NO. 12-999**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, TO APPROVE AWARD OF CONTRACT ITB 2012-20, TO MAGNA CONSTRUCTION INC., FOR LAKE PATRICIA ROADWAY AND DRAINAGE IMPROVEMENTS, IN THE AMOUNT OF \$515,449.00; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS 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; 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. 2012-20 on May 15, 2012, for Lake Patricia Roadway and Drainage Improvements; and

**WHEREAS**, the Town Manager, has determined that Magna Construction, Inc. ("Magna"), is the lowest responsive and responsible bidder, and recommends award of Contract ITB 2012-20 to same; and

**WHEREAS**, Magna, will be responsible for furnishing all labor, materials, tools, means of transportation, supplies, equipment and services necessary to complete the drainage and roadway improvements along Lake Patricia Drive, Lake Placid Court, Lake Lure Court, Lake George Court, Lake Candlewood Court, and Lake Champlain Terrace; and

**WHEREAS**, the Town Council approves the recommendations of the Town Manager and authorizes the Town Manager to enter into contract with Magna, for Award of Contract ITB 2012-20, for Lake Patricia Roadway and Drainage Improvements, in an amount not to exceed \$515,449.00.

**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.

Resolution 12-999

**Section 2.** Approval of the Contract. The Town Council hereby approves the award of ITB No. 2012-20, to Magna Construction, Inc., in an amount not to exceed of \$515,449.00 for Lake Patricia Drainage and Roadway Improvements.

**Section 3.** Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract with Magna for Lake Patricia Roadway and Drainage Improvements.

**Section 4.** Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contract.

**Section 5.** Execution of the Contract. The Town Manager is authorized to execute the Contract with Magna for drainage and roadway improvements on behalf of the Town for Lake Patricia Roadway and Drainage Improvements, in an amount not to exceed \$515,449.00, in substantially the form attached hereto.

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

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Resolution 12-999


**PASSED AND ADOPTED** this 10 day of July, 2012.

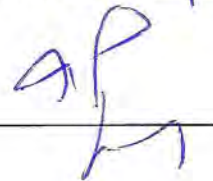
Motion to adopt by Mayor Pizzi, second by Councilmember Pulido

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi YES

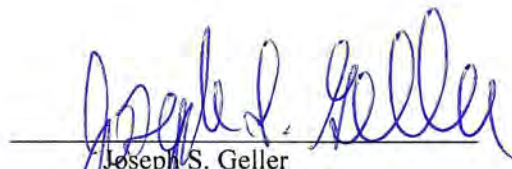
Vice Mayor Ceasar Mestre	<u>YES</u>
Councilmember Mary Collins	<u>YES</u>
Councilmember Tim Daubert	<u>absent</u>
Councilmember Nelson Hernandez	<u>YES</u>
Councilmember Nick Perdomo	<u>YES</u>
Councilmember Richard Pulido	<u>YES</u>

  
\_\_\_\_\_  
Michael Pizzi  
MAYOR



Attest: Approve as to Form and Legal Sufficiency

  
\_\_\_\_\_  
Marjorie Tejada  
TOWN CLERK

  
\_\_\_\_\_  
Joseph S. Geller  
Greenspoon Marder PA  
TOWN ATTORNEY

# **LAKE PATRICIA ROADWAY & DRAINAGE IMPROVEMENTS**



## **The Town of Miami Lakes Council:**

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

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

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**SECTION 1**  
**NOTICE TO BIDDERS**  
**TOWN OF MIAMI LAKES**  
**LAKE PATRICIA ROADWAY & DRAINAGE**  
**IMPROVEMENTS**

The Town of Miami Lakes (the "Town") will be accepting sealed Bids for the Town's Lake Patricia Roadway & Drainage Improvements ("Project"). Bidders are to submit three (3) Bids, with original signatures, signed in blue ink 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 June 15, 2012.**

**Scope of Work:**

The Work consists of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment, and services necessary for the drainage improvements, roadway resurfacing, and striping, on Lake Patricia Neighborhood, specifically along Lake Patricia Drive, Lake Placid Court, Lake Lure Court, Lake George Court, Lake Candlewood Court and Lake Champlain Terrace; refer to drawing for specific limits and connections.

**Minimum Qualification Requirements:**

Prospective Bidder shall hold a current certified license as a General 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 with experience meeting the requirements of the Scope of Work. Bidder must also possess a minimum of five (5) years' experience with roadway construction projects, and have successfully completed at least three (3) projects of a similar size, scope, and complexity during the past five (5) years. The Bidder must self-perform fifty percent (50%) of the primary physical construction Work.

The Town will consider a Bid as responsive where a Bidder has less than the stipulated minimum number of years of experience in instances where the Bidder has undergone a name change and such change of name has been filed with the State of Florida. This is the sole exception to the experience requirement.

**A Non-Mandatory Pre-Bid Conference will be held on May 30, 2012 at 10:00 am in the Town Hall Conference Room, which is located at 15150 NW 79<sup>th</sup> Court, Miami Lakes, FL 33016.**

Bid Documents may be obtained by visiting the Town's website at [www.miamilakes-fl.gov](http://www.miamilakes-fl.gov) and selecting "Contractual Opportunities". Any further inquiries regarding the Project may be directed exclusively via e-mail to Gary Fabrikant, at [fabrikantg@miamilakes-fl.gov](mailto:fabrikantg@miamilakes-fl.gov). **It is the sole responsibility of all firms to ensure the receipt of any addendum and it is recommended that firms periodically check the Town's Procurement webpage for updates and the possible issuance of addenda.**

All Bids shall be submitted in accordance with the Instructions to Bidders. **Any Bids received after the specified time and date will not be considered.** The responsibility for submitting a Bid before the stated time and date is solely and strictly the responsibility of the Bidder.

*Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this purchase.*

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

**2.1 DEFINITION OF TERMS**

**Basis of Design** means a specific manufacturer's product that is named; including the make or model number or other designation, establishing the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of other manufacturers.

**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 incorporated or unincorporated business entity, acting directly or through an 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. A Change Order must comply with the Contract Documents.

**Completed Project** means that the applicable regulatory authority has issued a Certificate of Completion.

**Construction Change Directive** means a written directive to effect changes to the Work, issued by the Consultant or the Project Manager that may affect the 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 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 all plans, specification, bonds, addendum, clarifications, directives, change orders, payments and other such documents issued under or relating to the Contract.

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

**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.

**Design Documents** means the construction plans and specifications included as part of the ITB prepared by the Consultant under a separate agreement with the Town.

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

**Design Documents** means the construction plans and/or specifications included as part of the ITB prepared by the Consultant for this Project.

**Drawings or Plans** 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 direction from the Consultant or Project Manager directing the Contractor to proceed with Work requested by the Town, which is minor in nature and typically should not involve additional cost.

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work under a Work Order 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.

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

**Notice of Award** means the written letter to the Contractor notifying the Contractor that it has been awarded the Contract.

**Notice to Proceed** means a written letter or directive issued by the Town Manager or designee acknowledging that all conditions precedent to award have been met and directing that the Contractor may begin Work.

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

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

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

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

**Submittal** means the documents submitted by the Bidder in response to this ITB.

**Substantial Completion** means that point at which the Work is at a level of completion in substantial compliance with the Contract Documents, and is fit for use in its intended purpose. Substantial Compliance shall not be deemed to have occurred until any and all governmental entities, with regulatory authority or which have jurisdiction over the Work, have conducted all final inspections, and approved the Work. Beneficial use or occupancy shall not be the sole factor in determining whether Substantial Completion has been achieved, unless a temporary certificate of completion has been issued.

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

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

## **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. Bidder shall not be allowed to modify its Bid 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 Bid amount. Failure to include pricing on all line items as well as the total 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 the required forms may 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 shall not be considered for award under this ITB.

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

All cost involved with the preparation and submission of a 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 Town Council or Town Manager, as applicable. The Town shall bear no responsibility for any cost associated with any judicial proceedings resulting from the ITB process.

## **2.5 PRE-BID CONFERENCE**

A **Non-Mandatory** pre-proposal conference will be held on May 30, 2012 at 10:00 A.M. The conference will be held at Town Center Conference Room, located at 15150 NW 79<sup>th</sup> Court Miami Lakes, FL 33016. Prospective Bidders should attend this meeting to obtain information relative to the ITB. Attendees are requested to sign-in and provide the requested information at the time of sign-in. Failure to attend or sign-in will not result in a Bidder's Response being rejected as non-responsive.

## **2.6 PERFORMANCE OF THE WORK**

**Bidder must be capable of self- performing fifty (50%) percent of the primary physical construction Work.** By submitting a Bid the Bidder certifies that it will meet these requirements. As part of the Bid, the Bidder is 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. If the Contractor is deemed to not meet this requirement during the performance of the Work, the Contractor shall be in default of the Contract Documents.

## **2.7 EXAMINATION OF CONTRACT DOCUMENTS AND THE SITE**

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 any conflicts, errors or discrepancies.
- Visit the site to become familiar with conditions that may affect costs, progress, or performance of the Work.
- Take into account federal, state and local, 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 of the Work.

## **2.8 INTERPRETATIONS AND CLARIFICATIONS**

All questions about the meaning or intent of the ITB, drawings, or specifications shall be directed in writing and submitted by e-mail to Roxana Tejeda, at [TejedaR@miamilakes-fl.gov](mailto:TejedaR@miamilakes-fl.gov). 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). It is the sole responsibility of the Bidder to obtain all

addenda by visiting the Town's website. 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.

## **2.9 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. Any such postponement will be announced through the issuance of an addendum posted to the Town's website.

## **2.10 ACCEPTANCE OR REJECTION OF BIDS**

The Town reserves the right to reject any and all Bids or portions of any Bid, 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.

Reasonable efforts will be made to either award the Contract or reject all Bids within ninety (90) calendar days after the Bid opening date. A Bidder may not withdraw its Bid unilaterally before the expiration of one hundred twenty (120) days from the date of bid opening. A Bidder may withdraw its Bid after the expiration of one hundred twenty (120) calendar days from the date of Bid opening by delivering written notice of withdrawal to the Town's Procurement Manager prior to award of the Contract. Once the Town makes the award, the Bid cannot be withdrawn under this Article.

## **2.11 WITHDRAWAL OF BID**

A Bidder may withdraw its Bid at any date and time prior to the date and time the Bids are scheduled to be opened.

## **2.12 OPENING OF BIDS**

Bids will be publicly opened at the appointed time and place stated in the ITB and the names of the Bidders will be announced. Late Bids will not be opened. Town staff is not responsible for the premature opening of a Bid if the Bid is not properly sealed, addressed and labeled. Bidders or their authorized agents are invited to be present at the Bid opening. Any additional information on the Bid Submittals will be made available in accordance with Florida Statute 119.071, Paragraph (b) of subsection (1), item 2, as amended. Review of the Bid Submittals by Town staff will determine the lowest responsive and responsible Bidder.

## **2.13 AWARD OF CONTRACT**

The Award of the Contract will be to the lowest responsive and responsible Bidder, as determined by the Town. The Town may require demonstration of competency and, at its sole discretion, conduct site visit(s) and inspections of the Bidder's place of business, require the Bidder to furnish documentation and/or require the Bidder to attend a meeting to determine the Bidder's qualifications and ability to meet the terms and conditions of this Contract. The Town shall consider, but not be limited to, such factors as financial capability, labor force, equipment, experience, knowledge of the trade work to be performed, the quantity of Work being performed by the Contractor and past performance on Town and other contracts. In no case will the Award be made until all necessary investigations have been made into the



responsibility of the Bidder and the Town Manager is satisfied that the Bidders are qualified to perform the Work.

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-responsive.

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 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-issue the ITB.

#### **2.14 COLLUSION**

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

#### **2.15 BIDDER IN ARREARS OR DEFAULT**

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

#### **2.16 PUBLIC ENTITY CRIMES ACT**

In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the

convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

## SECTION 3

### GENERAL TERMS AND CONDITIONS

#### 3.1 INTENTION OF THE TOWN

It is the intent of the Town to describe in the ITB the Project to be completed in accordance with all codes and regulations governing all the Work to be performed under this Contract. Any work, labor, materials and/or equipment that may reasonably be inferred from the Contract as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for in the Contract Documents. Where words, which have well-known technical or trade meanings are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids and Contractor shall comply therewith. Town shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

#### 3.2 TIME IS OF THE ESSENCE

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

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.

#### 3.3 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:  
Magna Construction, Inc.  
18361 SW 55<sup>th</sup> Street  
Southwest Ranches, Florida 3331

PO Box 327418  
Ft. Lauderdale, Florida 33332  
(954) 680-2770  
[magnafl@aol.com](mailto:magnafl@aol.com)

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

### **3.4 PRIORITY OF PROVISIONS**

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

In the event of conflicts in the Contract Documents the priorities stated below shall govern;

- Revisions and Change Orders to the Contract shall govern over the Contract
- The Contract Documents shall govern over the Contract
- The Special Conditions shall govern over the General Conditions of the Contract
- Addendum to an ITB shall govern over the ITB

In the event that Drawings and specifications are provided with a Work Order the priorities stated below shall govern:

- Scope of Work and Specifications shall govern over Plans and Drawings
- Schedules, when identified as such shall govern over all other portions of the Plans
- Specific notes shall govern over all other notes, and all other portions of the Plans, unless specifically stated otherwise
- Larger scale drawings shall govern over smaller scale drawings
- Figured or numerical dimensions shall govern over dimensions obtained by scaling
- Where provisions of codes, manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern

### **3.5 INDEMNIFICATION-**

The Contractor shall indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Contract, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be

liable. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

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

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

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

### **3.6 INSURANCE**

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

- a. Worker's Compensation and Employer's Liability Insurance:** 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 each accident and a waiver of subrogation. The policies must include:
  - 1) Waiver of subrogation
  - 2) Statutory State of Florida
  - 3) Limit of Liability
- b. Employer's Liability:** Limit for each bodily injury by an accident shall be \$1,000,000 policy limit for each accident, per employee, including bodily injury caused by disease.
- c. Comprehensive Business Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor

and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

**d. Commercial General Liability ("CGL").** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, 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 Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

- 1) Products and/or Completed Operations for contracts with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
- 2) Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
- 3) CGL Required Endorsements
  - Employees included as insured
  - Contingent Liability/Independent Contractors Coverage
  - Contractual Liability
  - Waiver of Subrogation
  - Premises and/or Operations
  - Explosion, Collapse and Underground Hazards (if not specifically covered under the policy)
  - Loading and Unloading
  - Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

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

- e. Umbrella Policy:** Contractor shall provide a \$3,000,000, per occurrence, coverage with a \$3,000,000 aggregate limit. The policy shall provide excess coverage on CGL, Business Automobile, and Employer's liability.
- f. Certificate of Insurance:** Contractor shall provide the Town Manager or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically cite this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.
- g. Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town shall be named as additional insured under the CGL, business automobile insurance and umbrella policies. Town shall be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

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

### **3.7 PERFORMANCE AND PAYMENT BOND**

Contractor shall within fifteen (15) calendar days of being notified of award, 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 subcontractors employed pursuant to this Project(s). Each Bond shall be with a Surety, which is qualified pursuant to Article 3.8, Qualification of Surety.

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 Contractor 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 Town must be listed as an Obligee.

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

Alternate Form of Security:

In lieu of a Performance/Payment Bond, Contractor may furnish alternate forms of security, which may be in the form of cash, money order, certified check, cashier's check or an unconditional letter of credit. Such alternate forms of security shall be subject to the prior approval of Town and for same purpose 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.

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

### **3.9 GENERAL REQUIREMENTS**

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



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

The Contractor agrees to adjust staffing levels or to replace any staff personnel if so requested by the Town Manager or designee, should the Town Manager or designee make a determination that said staffing is unacceptable or that any individual is not performing in a manner consistent with the requirements for such a position.

The Contractor represents that its staff personnel have the proper skills, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses necessary to perform the Work, in a competent and professional manner.

The Contractor shall at all times cooperate with the Town, or the Consultant (if any) and coordinate its respective Work efforts to most effectively and efficiently progress the performance of the Work.

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.

### **3.10 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, rules, regulations, codes, and ordinances that affect the Work.

### **3.11 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. Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the Town for their accuracy or completeness. No request for additional

compensation or Contract time resulting from encountering utilities not shown will be considered.

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 of Florida, Inc. and other appropriate agencies, as applicable, prior to the commencement of any excavation or digging 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 Change 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 seventy-two (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.

### **3.12 METHOD OF PERFORMING THE WORK**

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.

The Contractor shall comply with the manufacturer's requirements for the handling, delivery and storage of all equipment and materials. Contractor shall inspect all equipment and materials immediately prior to installation and shall not install any damaged or defective items.

Contractor shall comply with the manufacturer's applicable instructions and recommendations for the performance of the Work, to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents or applicable Work Order.

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

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

If the Project Manager or Consultant reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager, the Project Manager shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the Town. (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 Contractor.

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

Contractor is responsible to control dust and prevent it from becoming a public nuisance or causing off-site damage. Contractor shall take all necessary and prudent measure to control dust.

Depending on the nature of the Work the Project Manager may require a staging plan 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.

### **3.13 CONTRACTOR TO CHECK PLANS, SPECIFICATIONS AND DATA**

Contractor shall verify all dimensions, quantities and details shown on any plans, specifications or other data received from Project Manager and shall notify the Project Manager of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. Contractor will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished to the Project Manager. Contractor shall not be liable for damages resulting from errors, omissions or discrepancies in the

Contract Documents unless Contractor recognized such error, omission or discrepancy and knowingly failed to report it to Project Manager.

### **3.14 SUPPLEMENTAL DRAWINGS AND INSTRUCTIONS**

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

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

### **3.15 SHOP DRAWINGS AND SUBMITTALS**

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

Within five (5) calendar days after Town's award of the Contract, Contractor shall submit to Project Manager or Consultant a complete list and submittal log of items for which Shop Drawings are to be submitted and shall identify the critical items and all submittal dates. Approval of this list by Project Manager or Consultant shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

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

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

Some shop drawings as either denoted in the Contract Documents or by the Florida Building Code (Code) or Florida Statute, such as structural drawings, require that they be prepared by a licensed engineer. It is the sole responsibility of the Contractor to ensure that the Shop Drawings meet all Code requirements.

In addition to all shop drawings required by the Contract Documents the Contractor must provide shop drawings for; all drainage structures including catch basins, drainage pipe, ballast rock, and exfiltration trench filter fabric.

If the Shop Drawings show or indicate departures from the Contract Documents, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point

out such departures shall not relieve Contractor from its responsibility to comply with the Contract and Documents.

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

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

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

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

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

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

### **3.16 PRODUCT DATA AND SAMPLES**

Contractor may be required to provide product data for any or the materials utilized under this contract, including but not limited to the asphalt. The Town reserves the right to inspect the samples at the manufacturing plant or at the Project site

### **3.17 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.

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

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Project Manager and Consultant, if the Contractor submits sufficient information to allow the Project Manager and Consultant to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents.

The Project Manager and Consultant shall be allowed a reasonable time within which to evaluate each proposed substitute. The Project Manager and Consultant shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Project Manager's and Consultant's prior written acceptance, which shall be evidenced by either a Change Order or a written approval of the request for substitution. The Project Manager and Consultant may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Project Manager and Consultant reject the proposed substitute, at their discretion, the Town may require the Contractor to reimburse the Town for the charges incurred as a result of the Consultant evaluating the proposed substitute.

Approval of a substitution does not waive or mitigate the Contractor's sole responsibility to meet the requirements of the Contract Documents.

### **3.18 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, 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 Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Consultant or Project Manager as the date of substantial completion.

### **3.19 PROTECTION OF PROPERTY, UTILITIES, AND THE PUBLIC**

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

Contractor shall be responsible to restore all areas impacted by the Work, including but not limited to swale areas, existing structures, driveways and approaches, landscaping, drainage, and lighting to pre-existing conditions to the satisfaction of the Project Manager.

### **3.20 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTIES AND SERVICE**

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

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

The Contractor and 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 Contractor for damages as a result of the Contractor's failure to protect property 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, Contractor shall promptly notify the owner, any required regulatory authority, and the Project Manager. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair and any required interim measures to ensure safety. In no event shall interruption of any utility service be allowed unless granted by the owner of the utility.

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

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

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

### **3.21 MAINTENANCE OF TRAFFIC**

Maintenance of Traffic (M.O.T.) shall be performed in accordance with the applicable FDOT Index Numbers (600 Series). The manual on Uniform Traffic Control Devices for Streets and Highways (U.S. Department of Transportation, FHWA), shall be followed in the design, application, installation, maintenance and removal of all traffic control devices, warning devices and barriers necessary to protect the public and workmen from hazards with the Project limits. Pedestrian and vehicular traffic shall be maintained and protected at all times.

Contractor shall submit the M.O.T. plan to the Project Manager for approval two (2) weeks prior to commencement of the Work.



Failure by the Contractor to comply with the M.O.T. 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.

### **3.22 COORDINATION OF THE WORK**

Prior to the commencement of the Work, the Project Manager 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 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 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 any discrepancy between the executed Work and the requirements of the Contract Documents.

### **3.23. ACCESS TO THE PROJECT SITE**

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.

### **3.24 SAFETY PRECAUTIONS**

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

- 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.

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

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

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

All open trenches or holes shall be properly marked and barricaded to assure the safety of both vehicular and pedestrian traffic. No open trenches or holes are to be left open during nighttime or non-working hours without the prior written approval of the Project Manager.

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration.

Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Project Manager has issued the Contractor a notice of Final Acceptance.

### **3.25 MATERIAL SAFETY DATA SHEETS**

In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a part of the Project must be accompanied by a Material Safety Data Sheet (MSDS) which shall 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.

### **3.26 LABOR AND MATERIALS**

Unless otherwise provided herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Work. All materials shall be new unless otherwise specified in a Work Order.

### **3.27 VEHICLES AND EQUIPMENT**

Contractor shall have on hand at all times clean and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. The Town may require the repair or replacement of equipment as reasonably necessary.

### **3.28 PROJECT MANAGEMENT**

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

Contractor shall have a competent English speaking Superintendent full time on the Project site, who shall represent Contractor and all directions given to the Superintendent shall be as binding as if given to Contractor. The Superintendent shall not be changed except with the prior written consent of Project Manager. Contractor will provide properly licensed personnel where such personnel are required by any rule, regulations, or law. Contractor shall give efficient supervision to the Work, using its best skill and attention.

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

The Project Manager, Contractor and Consultant 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 outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

### **3.29 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 Chapter 218.735. 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.

### **3.30 CONSULTANT SERVICES**

The Town, at its sole discretion may hire a Consultant who shall serve as the Town's Representative for the Project. 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 3.31, Authority of the Project Manager, of the General Terms and Conditions.

The Project Manager will work with 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.

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

### **3.31 AUTHORITY OF THE PROJECT MANAGER**

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

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

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

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

The Project Manager and Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever, in their opinion, it is considered necessary or advisable to ensure the proper completion of the Work the Project Manager and Consultant have authority to require special inspections or testing of the Work, whether or not such Work is fabricated, installed or completed.

Neither the Project Manager's nor Consultant's authority to act under this paragraph, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager or Consultant to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

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

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

### **3.32 INSPECTION OF THE WORK**

The Project Manager, Inspectors, 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 making arrangements for all tests and for all associated costs for all required testing. The original copies of all testing reports are to be sent directly to the Project Manager 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 shall 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.

### **3.33 TOWN LICENSES, PERMITS AND FEES**

In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee the Contractor will have to pay the Town before or during the Work or the percentage method or unit method of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Contract are as follows:

- 1) Contractor shall have and maintain during the term of this Contract all appropriate Town licenses. Fees for which shall be paid in full in accordance with the Town's Fee structure for such licenses. THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.
- 2) During the performance of this Contract there may be times when the Contractor will be required to obtain a Town permit for such Work. It is the responsibility of the Contractor to insure that the appropriate Town permits to perform such work as may become necessary during the performance of the Work have been obtained. Any fees related to Town required permits in connection with this Contract will be the responsibility of the Contractor and will be reimbursed by the Town.

Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.

### **3.34 TAXES**

Contractor shall pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

### **3.35 REMOVAL OF UNSATISFACTORY PERSONNEL**

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

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

### **3.36 UNCOVERING FINISHED WORK**

The Project Manager's, right to make inspections shall include the right to order the Contractor to uncover or take down portions of finished Work. The Project Manager shall notify the Contractor in writing concerning all uncovered finished Work. Should the Work prove to be in accordance with the Contract Documents, the uncovering or taking down and the replacing and the restoration of the parts removed will be treated as additional Work for the purpose of computing additional compensation and an extension of time. Should the Work examined prove unsatisfactory, such uncovering, taking down, replacing and restoration shall be at the expense of the Contractor. Such expenses shall also include repayment to the 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.

### **3.37 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 Documents. In the event of failure of Contractor to make all necessary repairs promptly and fully, the Town Manager or designee may declare the Contractor in default.

If, within the warranty period required by the Contract Documents, or by any specific provision of the Contract, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from Town, shall promptly correct such defective or nonconforming Work within the time specified by Town without cost to Town. Should the Contractor fail to take such action the Town may take any necessary and appropriate action and hold the Contractor liable and responsible for all costs. The Town may take any action allowed under this Contract or in law to recover all such costs. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

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



### **3.38 FIELD DIRECTIVE**

The Project Manager or Consultant may at times issue Field Directives to the Contractor based on visits to the Project Site. Such Field Directive(s) shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within 48 hours, notify the Project Manager 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 Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the Project Manager that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive, in accordance with the requirements of Article 3.43. At no time shall the Contractor refuse to comply with the Field Directive. Failure to comply with the Field Directive may result in a determination that the Contractor is in default of the Contract.

### **3.39 CHANGE ORDERS**

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 the Work in a manner satisfactory to the 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 and all such changes shall be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

Any changes to the Contract must be contained in a written document, executed by the both parties. However, under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

In the event satisfactory adjustment cannot be reached and a Change Order has not been issued, the Town reserves the right, at its sole option to direct the Contractor to proceed on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work.

Where the Town directs the Contractor to proceed on a time and materials basis, Contractor shall maintain detailed records of all labor and material costs for review by the Town. In addition, the Contractor shall be entitled to a combined profit and overhead rate that shall not be in excess of ten (10%) percent of the direct labor and material costs, unless the Procurement Manager determines that the complexity and risk of the Change Order Work is such that an additional factor is appropriate. The final amount to be paid to the Contract for Change Order Work shall be subject to negotiation between the Town and the Contractor.

Failure by the Contractor to proceed with Change Order Work when so directed by the Town Manager or designee may result in the Contractor being found in default of the Contract.

### **3.40 FORCE MAJEURE**

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

If the Contractor is delayed in performing any obligation under the Contract Documents due to a force majeure condition, the Contractor 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 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.

### **3.41 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 continue to perform the Work required regardless of whether the Project Manager has issued a decision or whether the Contractor agrees or disagrees with that decision.

With regard to an injunction, strike or interference of public origin which may delay the Project, the Contractor shall promptly give the Project Manager a copy of the injunction or other orders and copies of the papers upon which the same shall have been granted. The 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.

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Article 3.42, Excusable Delay, Non-Compensable, the Contractor shall not be entitled to a separate extension for each one of the causes, only one period of extension shall be granted for the delay.

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

### **3.42 EXCUSABLE DELAY, NON-COMPENSABLE**

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

Contractor is entitled to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Article 3.43 and Article 3.44.

Failure of Contractor to comply with Article 3.43 and Article 3.44, 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.

### **3.43 CLAIMS**

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

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

The Contractor 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, avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by Contractor for actual delays due solely to fraud, bad faith or active interference on the part of Town. 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 Article 3.42. 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).

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.

#### **3.44 DISPUTES AND MEDIATION**

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

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

Should the initial efforts of mediation not end in a mutual resolution then the Contractor shall notify in writing the Procurement Manager as identified in Article 3.3, 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 3.3, Notices. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

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

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

- (i) it has first received Town Manager's written decision, approved by the Town Council 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 in an instance 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 within fourteen (14) calendar days of receipt of the written determination. The

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

### **3.45 CONTINUING THE WORK**

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

### **3.46 FRAUD AND MISREPRESENTATION**

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

### **3.47 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 3.52, Termination for Convenience.

If a Stop Work Order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume the Work without compensation to the Contractor for such suspension other than extending the time to complete any Work under the Contract or extending the Contract Term to the extent that, in the opinion of the Town Manager or designee, the Contractor may have been delayed by such suspension. In

the event the Town Manger or designee determines that the suspension of Work was necessary due to Contractor's defective or incorrect Work, unsafe Work conditions caused by the Contractor, or any other reason caused by Contractor's fault or omission, the Contractor shall not be entitled to an extension of time or Contract Term or (Time) as a result of the issuance of a Stop Work Order.

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

### **3.48 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 immediately respond by taking all precautions necessary to secure any Work threatened by storm events, regardless of whether the Contractor has been given notice of same by the Project Manager or other Town representative.

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.

### **3.49 CLEANING UP; TOWN'S RIGHT TO CLEAN UP**

Contractor shall at all times keep the Work site(s) free from accumulation of excess materials, waste materials or rubbish caused by its operations. At the completion of Work at a work site(s), Contractor shall remove all its excess materials, waste materials and rubbish from and about the Project(s) as well as any tools, equipment, machinery and surplus materials or supplies. If Contractor fails to clean up during the performance of the Work or at the completion of the Work, Town may do so and the cost incurred shall be charged to Contractor. Any combustible waste materials must be removed from the work site(s) at the end of each day.

Should the Contractor leave any open trenches at any time that Work is not being performed, the Town may have the open trenches covered and deduct any cost incurred from any outstanding payments due or to become due to the Contractor. The Town may also invoice the Contractor for all costs incurred in mitigating any open trenches.

### **3.50 SET-OFFS, WITHHOLDING, AND DEDUCTIONS**

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

- Any amount of any claim by a third party;

- Any Liquidated Damages, and/or;
- Any unpaid legally enforceable debt owed by the Contractor to the Town.

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

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

### **3.51 CONTRACTOR DEFAULT**

#### **a. Event of Default**

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

- The Contractor has not performed the Work in a timely manner;
- The Contractor has refused or failed to supply properly skilled staff or provided sufficient quantities of staff to perform the Work;
- The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services, materials, or supplies provided to Contractor ;
- The Contractor has become insolvent or has assigned the proceeds received for the benefit of the Contractor’s creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor’s affairs have been put in the hands of a receiver;
- The Contractor has failed to obtain the approval of the Town where required by the Contract Documents;
- The Contractor has failed in the representation of any warranties stated herein;
- When, in the opinion of the Town, reasonable grounds for uncertainty exist with respect to the Contractor’s ability to perform the Work.

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

Where an Event of Default (“Default”) occurs under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town; 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 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 issue(s) 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.

### **3.52 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).

Upon receipt of such notice, unless otherwise directed by the Town,

the Contractor shall, Stop all Work on the date specified in the notice (“the Effective Date”);

- 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;
- Remove all materials, supplies or equipment that may be used by the Contractor on other work;
- 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.

In the event that the Town exercises its right to terminate the Contract pursuant to the Contract Documents, the Town will pay the Contractor for the actual cost, or the fair and reasonable value, as substantiated by invoice documentation, of any non-cancelable material(s) and equipment that cannot be used elsewhere by the Contractor in the performance of its work.

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

**3.53 TOWN MAY AVAIL ITSELF OF ALL REMEDIES**

The Town may avail itself of each and every remedy stated in the Contract Documents or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

**3.54 COMPLIANCE WITH APPLICABLE LAWS**

The Contractor shall comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

**3.55 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT**

Contractor shall not unlawfully discriminate against any person, shall provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Contact. Contractor shall comply with all applicable Federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

**3.56 INDEPENDENT CONTRACTOR**

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

**3.57 THIRD PARTY BENEFICIARIES**

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

**3.58 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.

### **3.59 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.

### **3.60 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.

### **3.61 FUNDS AVAILABILITY**

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

### **3.62 ACCESS TO AND REVIEW OF RECORDS**

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

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

### **3.63 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.

### **3.64 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN**

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

### **3.65 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 the sole venue shall be Miami-Dade County, Florida.

### **3.66 NON-EXCLUSIVE CONTRACT**

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

### **3.67 SEVERABILITY**

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

### **3.68 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.

### **3.69 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.

## SECTION 4

### SPECIAL TERMS AND CONDITIONS

#### 4.1 SCOPE OF WORK

The Work consists of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment, and services necessary for the drainage improvements, roadway resurfacing, and striping at Lake Patricia, specifically along Lake Patricia Drive, Lake Placid Court, Lake Lure Court, Lake George Court, Lake Candlewood Court and Lake Champlain Terrace; refer to drawing for specific limits and connections.

#### 4.2 LINE ITEM QUANTITIES

The estimated quantities will be used solely for bid comparison purposes for the Town to determine the lowest responsive and responsible Bidders. No guarantee is expressed or implied as to the total quantity of Work to be issued to the Contractor. **Where the Town has determined that a Bidder has submitted an unbalanced Bid, said Bid will be rejected as non-responsive.** In determining if any line item pricing is unbalanced the Town will compare line item pricing from all bidders as well as current pricing based on market and industry conditions.

#### 4.3 TIME FOR PERFORMANCE OF THE WORK

Contractor shall complete the Work and obtain all permit approvals, and Final Acceptance by the Town within one hundred and twenty (120) days from the date of issuance of the Notice To Proceed.

#### 4.4 CONTRACT TERM

This Agreement shall be effective upon execution by both parties and shall continue until expiration of the warranty period.

#### 4.5 HOURS FOR PERFORMING WORK

All Work shall be performed in accordance with the hours set forth in the Town's noise Ordinance No. 04-50.

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.

#### 4.6 PROGRESS PAYMENTS

Contractor may make application for payment for Work completed during the Project at intervals of not more than one invoice per month or upon completion and Final Acceptance of the Work. Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed. All applications shall be submitted in triplicate and the Contractor shall only use the Town's Contractor Payment Application Form or an invoice format approved by the Town. Supporting evidence to be

included with any application for payment shall include, but is not limited to, an updated Project schedule as required by Article 4.10 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 duplicate for approval.

Ten percent (10%) of all monies earned by Contractor 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 Contractor or Town because of Contractor's performance.
- Failure of Contractor to make payments properly to Subcontractors or for material or labor.
- Damage to another contractor not remedied.
- Liquidated damages and costs incurred by Town and/or Consultant for extended construction administration.
- Failure of Contractor to provide any and all documents required by the Contract Documents.

Contractor may be paid for materials or equipment purchased and stored at the Project(s) Site(s) or another location, subject to the sole discretion and approval of the Project Manager. Where a payment request is made for materials or equipment not incorporated in the Project, but delivered and suitably stored at the site or at some other location agreed upon in writing, the written documentation must be submitted at the time of request for payment. Payment shall be conditioned upon submission by the Contractor of paid invoices and an executed Material Purchased/Stored On-Premises form to establish the 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 Project site.

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

#### **4.7 INVOICES**

Contractor shall provide the Town with one invoice for progress payments in accordance with Article 4.6 above. Multiple invoices will not be accepted and the Town will not make payment based on statements of accounts. At a minimum the invoice must contain the following information:

- 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.

All payment(s) shall be made in accordance with the State of Florida Local Government Prompt Payment Act.

#### **4.8 LIQUIDATED DAMAGES**

The Contractor is obligated and guarantees to complete the Project in the time set forth in the Contract or any approved extension of time the Contractor may be granted by the Town. In the event of a delay in completion beyond the timeframe set forth in the Contract, the Contractor shall pay to the Town five hundred dollars (\$500.00) for each and every calendar day of Unexcused Delay, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified in writing of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the Project.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the Town, the Contractor shall pay the difference upon demand by the Town. Should the Contractor 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.

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

#### **4.9 SCHEDULE OF VALUES**

The Contractor must submit two 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. Contractor's overhead and profit should be listed 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 Contractor's submittal. The Town reserves the right to require such information from the Contractor as may be necessary to determine the accuracy of the Schedule of Values. The combined total value for mobilization under the Schedules of Values shall not exceed 5% of the value of the Contract.

The approved Schedule of Values shall be updated with the submittal of the Contractor Payment Application Form.

#### **4.10 PROJECT SCHEDULE**

Contractor shall submit a proposed Project schedule as follows:

- Schedule identifying all tasks within the critical path. The proposed Project schedule shall be submitted within ten (10) calendar days of the Notice of Award and such submittal shall be subject to the Project Manager's review. Subsequent to such review of said schedule the Contractor shall establish said schedule as the baseline schedule.
- All updates of schedules shall be tracked against the baseline schedule and shall be at a minimum submitted with each pay application. An updated schedule against the baseline shall also be submitted upon execution of each change order that impacts the Contract Documents Time for completion. Failure to submit such schedules shall result in the rejection of any submitted payment application.
- All Project Schedules shall be prepared in Microsoft Project 2007 or earlier unless otherwise approved by the Project Manager. At the time of submission of schedules, Contractor shall submit a hard copy as well as an electronic version. Electronic versions shall not be submitted in a .pdf format.

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

In addition to the Project Schedule the Contractor shall provide a two (2) week look-ahead schedule that reflects the Work to be performed during the two (2) week period. The look-ahead schedule shall be provided to the Project Manager and Consultant every other Thursday prior to the start of the two-week period. This schedule will, at a minimum, include the area(s) where Work is to be performed and the Work to be performed in the area(s).

#### **4.11 RELEASE OF LIENS/SUBCONTRACTOR'S STATEMENT OF SATISFACTION**

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Town upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment

will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor shall, upon request by the Project Manager, provide the Project Manager a Final Release of Lien/Subcontractor's Statement of Satisfaction for the Project. Failure to submit such documentation may delay payment(s) by the Town on this or other Projects awarded by the Town, or may preclude the Contractor from future awards by the Town until such time as the Contractor provides the required documentation. The Town may, in its sole discretion withhold any payments for any work performed by the Contractor where a requested Final Release of Lien has not been submitted.

#### **4.12 PURCHASE AND DELIVERY, STORAGE AND INSTALLATION**

All materials shall be F.O.B. delivered. The Contractor shall be solely responsible for the purchase, delivery, and installation of all equipment and material(s). Contractor shall make all arrangement for delivery. Contractor shall be solely liable receiving, inspecting, accepting, and for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, FDOT, Miami-Dade County, and Town rules and regulations.

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.

#### **4.13 TOWN FURNISHED DRAWINGS**

The Town has furnished design drawings for this Project. It shall be the sole responsibility of the Contractor to bring to the immediate attention of the Project Manager any discrepancies between the drawings and existing conditions, excluding hidden or unforeseen conditions, discovered prior to commencing and during the Work. The Contractor shall be solely responsible for verifying the accuracy of the drawings prior to commencing the Work, and shall be responsible for any errors or revisions of the Work, which might have been avoided by notifying the 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).

During the performance of the Project(s), should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and the Contractor agrees to abide by the Project Manager's or Consultant's interpretation and perform the Work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

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.

#### **4.14 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 request for substitution shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Work to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute(s), including costs for redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager or Consultant in evaluating the proposed substitution(s). The Project Manager or Consultant may require the Contractor to furnish at Contractor's expense additional data about the proposed substitute(s).

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Project Manager or Consultant, who will make a determination only after the Contractor submits sufficient information to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the Project Manager or Consultant shall be the same as those provided herein for substitute materials and equipment.

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

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

The Town may require an adjustment in price based on any proposed substitution.

#### **4.15 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.

#### **4.16 WARRANTY**

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

All Work shall have a one (1) year warranty on labor from the date of Final Acceptance and the Contractor shall provide such written warranty prior to the Town issuing final payment. Contractor shall provide a minimum written warranty of one (1) year on all equipment, parts, or material unless the manufacturer provides a longer warranty. Where the manufacturer of the equipment, parts, or material provides a warranty greater than one (1) year or the time frame stipulated in a Contract, then the manufacturer's warranty term shall take precedence. Contractor shall be required to provide the Project Manager a copy of the manufacturer's warranty prior to the Town issuing final payment. Manufacturer's warranties will become effective upon Final Acceptance of the Project.

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

Should the Contractor fail to perform any required warranty work the Town, at its sole discretion, may have the work performed by others, and deduct such costs from any monies due the Contractor from the Town. Where such funds are not available, the Town will bill the Contractor and Contractor shall reimburse the Town within thirty (30) calendar

days. The Town may take any necessary and appropriate action provided under this Contract or with law to collect such payment due the Town.

#### **4.17 ACCESS TO WATER AND UTILITIES**

The Contractor is responsible for providing all water and power that may be required for the performance of the Work, including the use of a generator. The use of a generator may be subject to the prior approval of the Town's representative should the Work be in a primarily residential neighborhood.

The Town may at its sole discretion provide access to Town utilities and/or water should such be available at the Work site. However, the Contractor is responsible to ascertain the location and accessibility of utilities and potable water sources required for the Work.

#### **4.18 PROGRESS MEETINGS**

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

#### **4.19 STAGING SITE**

The Contractor is solely responsible for making all arrangements for any staging site(s) that may be necessary for the performance of the Work and the Contractor shall be responsible for all site(s) security and any loss, damage or theft to its equipment and materials. The Project Manager at its sole discretion may make a staging site(s) available for use by the Contractor. Contractor shall not utilize the Staging Site for worker's parking without the prior written approval of the Project Manager. If such site is made available by the Town, the Town assumes no responsibility or liability, and the Contractor shall be responsible for any loss, damage or theft to its equipment and materials. The Contractor shall also be responsible for restoring the site(s) to its pre-existing condition prior to the Contractor's use of the site(s).

#### **4.20 PROJECT SITE FACILITIES**

The Contractor shall arrange for all Project site facilities as may be necessary to perform the Work.

Contractor's, Subcontractor's, supplier's, materialmen's personnel shall not use the Town office or public restrooms that may be available at the Project(s) site without the prior consent of the manager of the facility or the Project Manager where there is no manager of a facility. The Contractor shall provide and maintain at its own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements including Chapter 46 of the Building Code and regulations of the State of Florida Department of Health and Rehabilitative Services or Dade County Health Department. The Contractor, his employees or his Subcontractors shall commit no public nuisance or use any facilities that have not been specifically provided for use by the Contractor.

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

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

Contractor 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 Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager.

The Contractor shall be required to obtain all necessary permits required for any Project site facilities. Contractor shall also be responsible to maintain such facilities in a safe and working condition.

All such facilities remain the property of the Contractor and the Contractor shall be responsible for removal and disposal of such facilities prior to Final Acceptance.

#### **4.21 INSPECTION OF WORK**

Contractor shall notify the Project Manager at least 48 hours prior to commencing Work on the following:

- Storm Drain
- Subgrade – submit and have approved densities prior to placement of rock
- Limerock Base – submit and have approved densities and As-Builts prior to placement of any asphalt
- Concrete

#### **4.22 PROJECT LABORATORY TESTING SERVICES**

The Town shall provide and pay for all Project Laboratory Services to perform quality assurance and quality control testing, except for those that may be required by regulatory agencies, which the Contractor shall be required to provide and pay. Contractor shall be responsible for the costs associated with all retesting due to the product or Work failing a test. Costs for such retests shall be deducted from pending invoices.

#### **4.23 SUBSTANTIAL COMPLETION, PUNCH LIST, & FINAL COMPLETION**

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

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. Where the Work requires the Contractor to

obtain a Certificate of Completion no request for Substantial Completion inspection is to be 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 ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Project Manager shall, within ten (10) calendar days, make an inspection thereof. If Project Manager find the Work acceptable, the requisite documents have been submitted and the requirements of the Contract Documents fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate for Payment **shall** be issued by Project Manager, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance under the terms and conditions thereof.

Before issuance of the Final Certificate for Payment, Contractor shall deliver to the Project Manager a final release of all liens arising out of the Contract Documents, receipts in full in lieu thereof; an affidavit certifying that all suppliers and subcontractors have been paid in full and that all other indebtedness connected with the Work has been paid, and a consent of the surety to final payment; the final corrected as-built drawings; operations and maintenance data, and the final bill of materials, if required, and payment application. Contractor shall deliver the written Contractor's and all Manufacturer's warranties prior to issuance of the final invoice.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of Contractor, and Project Manager so certifies, Town shall, upon such certification of Consultant, and without terminating the Contract Documents, make payment of the balance due for that portion of the Work fully completed and accepted.

Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

#### **4.25 OWNERSHIP OF THE WORK**

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

#### **4.26 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 Drawings, including final road elevations, shall be submitted in both hard copy and as electronic plot files.

#### **4.27 AS-BUILT DRAWINGS**

During the Work, Contractor shall maintain records of all deviations from the Drawings as approved by the Project Manager or Consultant and prepare two copies of As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Town and to certify in writing that the As-Built Record 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.

To record actual construction, Contractor shall legibly mark on-site structures and site Work as follows:

- Depths of various elements of foundation in relation to finish first floor datum.



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

Specifications and Addenda: Legibly mark each section to record:

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

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

As-built documents shall be updated monthly as a condition precedent to payment. A final survey signed and sealed by a surveyor shall be provided to the Town at no additional cost, including digital I (CAD and PDF) versions.

For construction of new building, or building additions, field improvements, and or roadway improvements as-built drawings shall be signed and sealed by a Florida Licensed Registered Land Surveyor.

#### **4.28 NDPEs REQUIREMENTS**

Contractor shall comply with the State of Florida rules and regulations for the National Pollutant Discharge Elimination System (NPDES) including but not limited to all permitting, Notices of Intent, and the Storm Water Pollution Prevention Plan (SWPPP). All costs for NPDES and SWPPP shall be included in the Bid price. For further information on compliance requirements for NPDES and SWPPP visit the State of Florida website at <http://www.dep.state.fl.us/water/stormwater/npdes/>. Contractor is responsible for obtaining, completing and paying for any required NPDES application or permits that may be required.

#### **4.29 PROJECT SIGNAGE**

Contractor shall furnish and install a Project sign in accordance with the requirements on the drawings. Shop drawing shall be submitted to the Project Manager for approval prior

to the Contractor ordering the signs. The sign shall be free standing and shall display on both sides and include the following:

- Project name
- Town Logo
- Names of Town Manager and elected officials
- Other specified names
- Funding Sources other than the Town, if applicable
- A phone number that residents can contact for information

#### **4.30 TOWN RESIDENT'S COORDINATION**

Contractor shall be responsible to provide written notification to the Town residents impacted by the Work at least seven (7) days prior to the commencement of the Work. Notification shall be made using a flyer, in a format acceptable to the Project Manager, and shall be delivered by mail or by personal delivery. Contractor shall maintain a record of the date(s) of notification and provide such information to the Project Manager. Contractor shall also coordinate with the residents all Work that impacts resident's driveway approaches.

**SECTION 5**  
**TECHNICAL SPECIFICATIONS**

**5.01 OVERVIEW**

Division II and III of the Florida Department of Transportation (FDOT) "Standard Specifications for Roads and Bridge Construction", latest edition are hereby incorporated by reference and Contractor shall comply with all requirements. Should any conflict exist between Divisions II and III of the FDOT requirements and the Contract terms and conditions, the Contract terms and conditions take precedence.

The applicable portions of the Town of Miami Lake's Codes and Florida Building Code shall apply to the Project.

Contractor's construction staging area shall be subject to the prior written approval of the Project Manager, which shall be within the Town boundaries. The Contractor shall take pictures or make a video record of the existing conditions of the site prior to making any modifications. The Contractor shall install fencing, gates and take all other measures, as necessary, to make said site secure. No vehicles shall be permitted to park in said staging area except for delivery and pickup purposes, without the prior written approval of the Project Manager.

**5.03 INLETS, MANHOLES AND JUNCTION BOXES - NEW STRUCTURES**

Work shall include all backfilling around the structure; the disposal of surplus material; furnishing and placing of all gratings, meter/valve boxes, frames, and covers; and any other necessary fittings.

**5.04 AUDIO-VISUAL PRECONSTRUCTION RECORD**

- A. Prior to beginning the Work, Contractor shall have a continuous color audio-video recording taken along the entire length of the Project, to serve as a record of pre-construction conditions. No construction shall begin prior to review and approval of the audio-video covering the construction area by the Project Manager. The Project Manager shall have the authority to reject any or all portion of the audio-video not clearly documenting the pre-construction conditions in a continuous recording and that the Contractor re-do the audio-video recording at no additional charge to the Town. Rejection of the recording shall not be considered an Excusable Delay and as such the Contractor shall not be entitled to any additional time to complete the Work.

Contractor shall provide the Project Manager with the original of the recording and the Consultant with a copy of the recording.

**AUDIO-VISUAL PRECONSTRUCTION RECORD**

- B. All equipment, accessories, materials and labor to perform this service shall be furnished by the Contractor.

- A. Compensation for the swale restoration as described on the plans and in this specification shall be included in the lump sum price bid for Swale Restoration.
- B. Compensation for the audio-video preconstruction record shall be included in the lump sum price bid for Swale Restoration Pay Item SR-1.

**SECTION 6**  
**BID FORM (REVISED)**

Bid submittal of Magna Construction, Inc.  
(Name of Bidder)

P.O. Box 327418 Ft. Lauderdale, Fl. 33332  
(Address)

Submitted on: 6/15/12  
(Date)

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

**Lake Patricia & Drainage Improvements**  
**Bid No: 2012-20**

To: Town of Miami Lakes, Florida  
Attn: Town Clerk  
Town Hall  
15150 NW 79<sup>th</sup> Court  
Miami Lakes, Florida 33016

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The undersigned, as Bidder, 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 Bid or in the Contract to be entered into or which the Work pertains; that this Bid is made without connection with any other person, company, firm, or parties making a Bid; and that the Bid is, in all respects, made fairly and in good faith without collusion or fraud.

The Bidder 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 ITB and all of the Contract Documents and all addenda thereto issued prior to Bid opening, as acknowledged in its Bid; and that it has satisfied itself about the Work to be performed; and that it has submitted the Bid Guaranty, if required; and all other required information with the Bid; and that this Bid is submitted voluntarily and willingly.

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

The Bidder agrees, if this Bid 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 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 ("Total Bid Amount") for the purpose of determining the lowest responsive and responsible Bidders. However, Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed.**

Bid Item No.	Description	Unit of Measure	Unit Price	Estimated Quantity	Extended Price
101-01	Mobilization	LS	100.**	1	100.**
102-01	Maintenance of Traffic	LS	2500.**	1	2500.**
104-10	Storm Water Pollution Prevention Plan	LS	1500.**	1	1500.**
110-2	Removal And Disposal of Existing Drainage Structures	EA	350.**	4	1400.**
327-1	Mill and Resurface Asphaltic Concrete Pavement (3/4-in thickness)	SY	8.50	19,000	161,500.**
331-1	Remove Asphalt and Limerock base (10" thick)	SY	24.**	2,300	55,200.**
425-1	4' Type- B Catch Basin w/ baffles	EA	1800.**	19	34,200.**
425-2	4' Type- B Manhole w/ baffles	EA	1800.**	10	18,000.**
425-3	5' Type- E Manhole w/ baffles	EA	2000.**	1	2,000.**
425-4	Pollution Retardant Baffle for Type-B Structures	EA	250.**	16	4,000.**
425-5	Pollution Retardant Baffle for Type-E structures	EA	250.**	2	500.**
425-7	Clean and mud existing structure	EA	350.**	5	1750.**
430-1	18-in HDPE Storm Water pipe	LF	30.**	640	19,200.**
430-2	24-in HDPE Storm Water pipe	LF	35.**	170	5,950.**
430-3	Cut existing pipe in order to install manhole	EA	350.**	2	700.**
443-70	18-in perforated HDPE exfiltration trench	LF	74.**	1,500	111,000.**

Bid Item No.	Description	Unit of Measure	Unit Price	Estimated Quantity	Extended Price
524-1	Concrete apron	EA	350.**	17	5950.**
524-2	Concrete flume for existing inlet	EA	500.**	5	2500.**
711-1	Signing and Striping	LS	12,000.**	1	12,000.**
1050-1	Removal and Disposal of Existing 15" RCP drainage pipe	LF	12.**	170	2040.**
AS-1	As-Built (per Town Standards)	LS	1900.**	1	1900.**
EW-1	Concrete Endwall for 24-in HDPE	EA	3700.**	2	7400.**
SG-1	Drainage swale	SF	7.**	700	4900.**
SR-1	Restore topsoil and sod	SF	2.**	1,700	3400.**
A-1	Allowance (Police overtime)	LS	\$8,000.00	1	\$8,000.00
A-2	Allowance (Permits)	LS	\$1,000.00	1	\$1,000.00

**Total bid amount** \$ 468,590.\*\*

The following Bid Item Notes apply to all bid items:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs and also includes the construction of two (2) project signs that shall be displayed at approaches to the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, and contact information. A detail of the sign is included in the plans. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs. Mobilization shall not exceed five (5%) of the total value of Bid Items exclusive of the Mobilization Bid Item.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project. Costs shall include the use of flagmen.
3. Bid Item 104-10 is a lump sum pay item to furnish, install, and maintain the complete storm water pollution prevention plan (SWPPP). Costs shall include but not be limited to all rock bags, filter fabric, turbidity barriers, Notice of Intent fees, and compliance with any SWPPP reporting.
4. Bid Item 110-2 includes all costs associated with the removal and disposal of existing drainage structures including endwalls, along with excavation, dewatering, backfill, compaction, and restoration of surrounding surfaces.
5. Bid Item 327-1 includes all costs associated with milling and resurfacing the entire project area upon completion of the entire trench/pavement restoration phase as well as any other asphalt repair bid items. This resurfacing bid item includes costs to provide a smooth and continuous grading throughout the entire asphalt overlay process to avoid areas of standing water.
6. Bid Items 331-1 include all costs associated with pavement restoration including Type S-III

balances are to remain with the Town. All payments to the Contractor under these two Bid Items will be paid at the cost to the Contractor.

16. No separate payment will be made for prime coat and tack coat materials but the cost of same, including furnishing, heating, hauling and applying (including sand or screening covering where required), shall be included for payment in the contract unit price per square yard of base or asphalt pavement.
17. For New Structures the Bid price shall include all backfilling around the structures; the disposal of surplus material; furnishing and placing of all gratings, meter/valve boxes, frames and covers; and any other necessary fittings.
18. The Total Bid Amount includes the complete restoration of the swale areas impacted by any construction activity adjacent to any Work, including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas not included in the Work impacted by the Contractor outside of the Work such as asphalt overlay, pavement markings, etc. will be restored by the Contractor at no additional cost to the Town. The Bid Item(s) include but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction.

Firm's Name: Magna Construction, Inc.

Signature: M. Tourino

Printed Name/Title: Mitchell Tourino President.

Town/State/Zip: P.O. Box 327418 Ft. Lauderdale Fl. 33332

Telephone No.: 954-680-2770

E-Mail Address: Magnafl@aol.com

Social Security No. or F.E.I.N. No.: 65-0867791

Dun and Bradstreet No. (if applicable): 05-240-9542



- asphaltic concrete and Type B stabilization involved in installation of pipe
7. All 425 Bid Items include all costs associated with installing inlets, manholes, baffles, cleaning/mudding existing inlets, and all drainage pipe connections per the plans. These Bid Items shall include all associated excavation, protection of trench, management of excavated material, backfill and compaction, new fill, testing, and adjacent site restoration per the plans and details.
  8. All 430 Bid Items and 443-70 include all costs associated with installing High Density Polyethylene (HDPE) pipe culvert and French drain, existing pipe modifications, trench excavation, protection of trench, management of excavated material, complete trench backfill up to base of subgrade material, compaction, testing, repair/replacement of site damage such as curbing, valley gutter, and sidewalk impacted by construction, and asphalt restoration per the plans and details.
  9. Bid Item 524-1 includes all costs associated with installing concrete aprons at new and existing catch basins as well as concrete flumes for existing inlets as shown on the plans. This bid item shall also include costs associated with retaining walls if required by adjacent grades.
  10. Bid Item 711-1 includes all costs associated with installing signing and thermoplastic pavement markings including temporary pavement markings prior to thermoplastic. Costs also include relocating existing Miami-Dade County signs and decorative concrete pad mounted Town signs as shown on the plans. Costs associated with replacing existing signs damaged as a result of construction will be the responsibility of the contractor.
  11. Bid Item 1050-1 includes all costs associated with the removal and disposal of existing drainage pipe along with excavation, dewatering, backfill, compaction, and restoration of surrounding surfaces.
  12. Bid Item EW-1 includes all costs associated with removal and reinstallation of endwall at the outfall pipe locations as shown on the plans and per FDOT Index 258. The costs shall also include excavating the lake bottom adjacent to the outfall pipe and sidewalk replacement as applicable. Costs for sod and site restoration associated with the concrete endwall and outfall pipe shall be included in Bid Item SR-1.
  13. Bid Items SG-1 includes all costs associated with grading the existing swales as shown on the plans. The costs shall include excavation and management of excavated material. Costs associated with sod and swale restoration shall be included in Bid Item SR-1.
  14. Bid Item SR-1 is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to asphalt and base removal, pipe culvert, French drain, catch basins, swale grading, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, new fill, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.
  15. Bid Item A-1 and A-2 are allowances from the Town for the cost of overtime police presence to assist the MOT and permits if needed, these amounts belong to the Town and any

**SECTION 9**  
**SPECIFICATIONS**

The following requirements are in addition to those contained on the drawings prepared by Chen –Moore & Associates, dated April, 2012, which are incorporated into and made a part of this ITB.

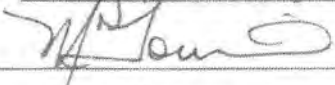
1. All crosswalks and sidewalks shall remain open and free of obstructions.
2. Temporary painting for roadways and crosswalks shall be maintained throughout the Project.
3. Baled hay, straw or filter fabric inlet protection shall be used as needed to comply with NDPEs requirements.
4. Resurfacing process shall provide a smooth and continuous grading throughout the Project to avoid areas of standing water.
5. Contractor shall sawcut and mill all connection points as shown on the plans for smooth asphalt transition.
6. Unless otherwise shown on the plans, Contractor is not required to sawcut and mill at driveway aprons or adjacent paved swales, but the asphalt overlay shall be installed to provide a finished, straight edge.
7. Temporary pavement markings are required prior to thermoplastic.
8. The Work includes the restoration of sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to equal or better condition prior to performing the Work.
9. Any damage not confirmed by preconstruction video and pictures will be repaired at no additional cost to the Town.

ADDENDUM ACKNOWLEDGEMENT FORM

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

Addendum No. <u>1</u> ,	Dated <u>5/23/12</u>
Addendum No. <u>2</u> ,	Dated <u>5/30/12</u>
Addendum No. <u>3</u> ,	Dated <u>6/5/12</u>
Addendum No. <u>4</u> ,	Dated <u>6/12/12</u>
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____
Addendum No. _____,	Dated _____

\_\_\_\_\_ No Addendum issued for this ITB

Firm's Name: Magna Construction, Inc.  
Signature:   
Printed Name/Title: Mitchell Tourino, President

**CERTIFICATE OF AUTHORITY  
(IF CORPORATION)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of Magna Construction Inc., a corporation organized and existing under the laws of the State of Florida, held on the 22 day of September, 1998, a resolution was duly passed and adopted authorizing (Name) Mitchell Tourino as (Title) President of the corporation to execute bids on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation. I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 15 day of June, 2012.

Secretary: [Signature], President  
Print: Mitchell Tourino

---

**CERTIFICATE OF AUTHORITY  
(IF PARTNERSHIP)**

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

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

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

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

---

**CERTIFICATE OF AUTHORITY  
(IF JOINT VENTURE)**

Joint ventures must submit their joint venture agreement indicating that the person signing this Bid is authorized to sign Bid documents on behalf of the joint venture and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

---

**CERTIFICATE OF AUTHORITY  
(IF INDIVIDUAL)**

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

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

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

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

NOTARIZATION

STATE OF Florida )

COUNTY OF Dade ) SS: 65-0867791

The foregoing instrument was acknowledged before me this 15 day of June, 2012, by Mikaelle Tourian, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did/did not) take an oath.



SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA. DOMINGUEZ  
MY COMMISSION # DD981413  
EXPIRES April 12, 2014  
(407) 398-9153 FloridaNotaryServices.com

PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

**SECTION 7**  
**BID FORM ATTACHMENTS**

**QUESTIONNAIRE**

This Questionnaire must be submitted with the Bid, The Town may, at its sole discretion, require that the Bidder submit additional information not included in the Questionnaire. Such information must be submitted within seven (7) Calendar Days of the Town's request. Failure to submit the Questionnaire or additional information upon request by the Town shall result in the rejection of the Bid as Non-Responsive. Additional pages may be used following the same format and numbering. Some Information may not be applicable apply. In such instances insert "N/A".

By submitting its Bid, the Bidder certifies the truth and accuracy of all information contained herein.

**A. Business Information**

1. How many years has your company been in business under its current name and ownership?

a. Professional Licenses/Certifications (include name and number)\*

Since 9/22/98  
Issuance Date

Mitchell Tourino / E 991304

1999 renews every 2 years

(\*include active certifications of small or disadvantage business & name of certifying entity)

b. Date company licensed by the State of Florida or Miami-Dade County: 1999

c. State and Date of Incorporation: Florida September 22, 1998

c. What is your primary business? Paving Engineering, Excavating & Grading  
(This answer should be specific)

Land Clearing & Grubbing, Drainage

d. Name of Qualifier, license number, and relationship to company:

Mitchell Tourino, E991304, President/Qualifier

e. Names of previous Qualifiers during the past five (5) years including, license numbers, relationship to company and years as qualifier for the company

N/A

2. Name and Licenses of any prior companies

Name of Company

License No.

Issuance Date

N/A

3. Type of Company:

Corporation  "S" Corporation  LLC  Sole Proprietorship  Other: \_\_\_\_\_

(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
Mitchell Tourino	President	50%
Cristina Tourino	Vice President	50%

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

Mitchell Tourino, Skyy Contracting Services 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
Mitchell Tourino	President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cristina Tourino	Vice 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"/>

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

5. Employee Information

Total No. of Employees: 11 Number of Managerial/Admin. Employees: 2

Number of Trades Personnel and total number per classification:  
(Apprentices must be listed separately for each classification)

Mitchell Tourino, Project Manager

Leoncio Echevarria, Foreman

6. Has any owner or employee of the company ever been convicted of a federal offense or moral turpitude: If yes, please explain:

N/A

7. Insurance & Bond Information

a. Insurance Carrier name & address: Scottsdale Ins. Co.

500 N.W. 49 Street Hialeah FL 33012

b. Insurance Contact Name, telephone, & e-mail: Jorge Alonso

South Pacific Professional 305-825-3535

c. Insurance Experience Modification Rating (EMR): N/A

(if no EMR rating please explain why)

d. Number of Insurance Claims paid out in last 5 years & value: N/A

e. Bond Carrier name & address: Nielson, Hower & Associates

8000 Chancellors Square Blvd. Suite 101 Miami Lakes, FL 33016

f. Bond Carrier Contact Name, telephone, & e-mail: Charles Nielson Jr.

305-822-305-722-2663 Charles@nielsonbonds.com

g. Number of Bond Claims paid out in last 5 years & value: N/A

8. Have any claims lawsuits been file against your company in the past 5 years, if yes, identify all where your company has either settle or an adverse judgment has been issued against your company. Identify the year basis for the claim or judgment & settlement unless the value of the settlement is covered by a written confidentiality agreement

N/A

9. To the best of your knowledge is your company or any officers of your company currently under investigation by any law enforcement agency or public entity. If yes, provide details:

N/A

10. Has your company been assessed liquidated damages or defaulted on a project in the past five (5) years?  Yes  No (If yes, provide an attachment that provides an explanation of the project and an explanation.



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. Behl Tractor, Tractor, Flatbed, Backhoe, Bobcat, Trailer

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 Loader, Excavator, Roller, Bulldozer

**B. Project Management & Subcontract Details**

1. Project Manager for this Project:

a. Name: Mitchell Torrino

b. Years with Company: 14 years

c. Licenses/Certifications: Paving Engineering

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

1. D.C. Equipment Biscayne Landings \$874,490.78

2. City of Aventura Maintenance & Repair for City Streets + Roads

3. Southeastern Engineering Contrs. Perm \$1.1

2. Subcontractors:

Name	Trade/Work to be performed	% of Work	License No.
<u>P&amp;J Striping</u>	<u>Striping</u>	<u>5%</u>	<u>K</u>

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)

Drainage, Concrete, Grading, Roadwork, Paving

4. Asphalt Plant: (provide the company name, address, contact name, phone no. & e-mail address)

Genial Asphalt

**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.
2. Prior contracts or projects of a similar size, scope, and complexity: Provide an attachment to this Questionnaire that includes contracts or projects the Bidder considers of a similar, size, scope and complexity that the Town should consider in determining the Bidders responsiveness and responsibility. This attachment must include the contracts or projects that meet the minimum number of contracts or projects identified by the bid solicitation. Information provided must include the owner's name , address and contract person, including telephone & e-mail, title of contract or project, location of project, scope, initial value and final cost of the contract or project, projected and final timeframes for completion in calendar days. A reference letter is to be completed by the owner of the Project and submitted as part of the Bid submission.

See Attached

**D. Bidder's References**

Bidders are to include a minimum of five (5) references from contracts or projects listed in C.2 above. The attached form is to be used and is to be included with the Bid submission. The Town, at its sole discretion may allow the Bidder to submit the references after the specified date for Bid submission.

See Attached

ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

SS: 65-0167791

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

By: [Signature]  
Title: President

Sworn and subscribed before this

15 day of June, 2012

[Signature]  
Notary Public, State of Florida

Vivian Dominguez  
(Printed Name)  **V. DOMINGUEZ**  
MY COMMISSION # DD981413  
EXPIRES April 12, 2014  
My commission **EXPIRES**

NON-COLLUSIVE AFFIDAVIT

State of Florida }  
County of Dade } SS: 65-0867791

Mitchell Tourino being first duly sworn, deposes and says that:

a)  He/she is the President / Owner (Owner, Partner, Officer, Representative or Agent) of Magna Construction, Inc. the Bidder that has submitted the attached Proposal;

b)  He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

c) Such Proposal is genuine and is not collusive or a sham Proposal;

d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

e) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, **owners, employees or parties in interest, including this affiant.**

Signed, sealed and delivered in the presence of:

[Signature]  
Witness

By: [Signature]

\_\_\_\_\_  
Witness

Mitchell Tourino  
(Printed Name)

President  
(Title)



SWORN STATEMENT ON PUBLIC ENTITY CRIMES

SECTION 287.133(3)(a), FLORIDA STATUTES

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

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

by Mitchell Tourino  
[print individual's name and title]

for Magna Construction, Inc.  
[print name of entity submitting sworn statement]

whose business address is

P.O. Box 327418

Ft. Lauderdale, FL 33332

and (if applicable) its Federal Employer Identification Number (FEIN) is 05-0867791

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

signing this sworn statement: N/A )

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

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

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

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

person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

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

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

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

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

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

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

*[Signature]* Magna Construction, Inc.  
Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this 15 day of June, 2012.

Personally known Mitchell Touriano

OR produced identification \_\_\_\_\_ Notary Public – State of Florida

\_\_\_\_\_ My commission expires 4-12-14  
(type of identification)

*[Signature]*  
**V. DOMINGUEZ**  
MY COMMISSION # **00004413**  
Expires **April 12, 2014**  
(Printed, typed or stamped name of commissioned notary public)  
(407) 398-0153 FloridaNotaryService.com

END OF SECTION



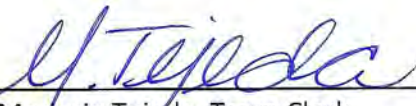
**CONTRACT EXECUTION FORM**

This Contract **2012-20** made this **23rd** day of **July** in the year **2012** in the amount of \$468,590.00 by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Magna Construction, Inc.

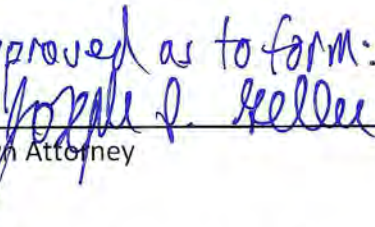
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Attest:

TOWN OF MIAMI LAKES

By:   
Marjorie Tejeda, Town Clerk

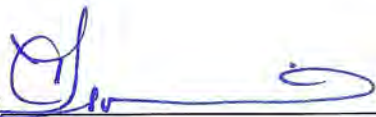
By:   
Alex Rey, Town Manager


By: Approved as to form:  
  
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

Magna Construction, Inc.

By: 

By:   
Name: Mitchell Tourino  
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, Magna 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, Mitchell Tourino is hereby authorized and  
(type title of officer) (type name of officer)

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 23 day of July, 2012.

  
\_\_\_\_\_  
Corporate Secretary

(Corporate Seal)

**SECTION 9**  
**SPECIFICATIONS**

The following requirements are in addition to those contained on the drawings prepared by Chen –Moore & Associates, dated April, 2012, which are incorporated into and made a part of this ITB.

1. All crosswalks and sidewalks shall remain open and free of obstructions.
2. Temporary painting for roadways and crosswalks shall be maintained throughout the Project.
3. Baled hay, straw or filter fabric inlet protection shall be used as needed to comply with NDPES requirements.
4. Resurfacing process shall provide a smooth and continuous grading throughout the Project to avoid areas of standing water.
5. Contractor shall sawcut and mill all connection points as shown on the plans for smooth asphalt transition.
6. Unless otherwise shown on the plans, Contractor is not required to sawcut and mill at driveway aprons or adjacent paved swales, but the asphalt overlay shall be installed to provide a finished, straight edge.
7. Temporary pavement markings are required prior to thermoplastic.
8. The Work includes the restoration of sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to equal or better condition prior to performing the Work.
9. Any damage not confirmed by preconstruction video and pictures will be repaired at no additional cost to the Town.

**Town of Miami Lakes**

**ITB 2012-20**

**Title: Lake Patricia Roadway & Drainage Improvements**

**Addendum #1**

**Bid Opening Date: June 15, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-20. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents. Underlined word(s) indicate additions and deletion are indicated by strikethrough.

**Revision to Plans**

The Drawings initially issued as part of the ITB, and posted on the Town's webpage are hereby deleted and replaced. The revised Drawings, which are dated May 2012 are available on the Town's webpage at [http://miamilakes-fl.gov/c-our\\_govt/admin-procurement.php](http://miamilakes-fl.gov/c-our_govt/admin-procurement.php). Please select the link entitled "Revised Drawings".

**Requests For Clarification or Information**

1. Please provide the budget for this project.

Response: The Town has allocated \$700,000 for this project, which includes all hard and soft costs, as well as a construction contingency.

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 returned by no later than the date and time for receipt of the Bid Submittal.

Acknowledgement:

Mitchell Tourino  
Name of Signatory

President.  
Title

6/15/12  
Date

[Signature]  
Signature

Magna Construction Inc.  
Name of Bidder

Gary Fabrikant  
Procurement Manager

Date Issued: May 23, 2012

# Town of Miami Lakes

ITB 2012-20

Title: Lake Patricia Roadway & Drainage Improvements

Addendum #2

Bid Opening Date: June 15, 2012

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-20. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents. Underlined word(s) indicate additions and deletion are indicated by strikethrough.

### Requests For Clarification or Information

1. Sheet 13 of 18, Drawing DET-01 indicates a depth of **10' depth** below ground elevation. Miami Dade County Public Works Department (MDCPWD) Standard Detail SD 1.1: Exfiltration Trench indicates **15' depth** below ground elevation. Which is the correct depth?

Response: The correct depth is 10' as indicated on Sheet 13 of 18, Drawing DET-01.

2. Sheet PAV-01 of the Drawings show streets to be "Seal Coated" however, there is no line item for seal coating in the Bid Form. Where are we to include the price for the "Seal Coat"?

Response: This question refers to the wrong set of drawings. Please refer to the drawing issued under Addendum #1, which do not require the streets to be "Seal Coated".

3. Are there specific limitations on working hours?

Response: This is addressed in Article 4.5 of the ITB. To provide further clarification the Town allows work as follows:

- Weekdays, except school zones; 7:00 am through 8:00 pm.
- Saturdays; 9:00 am through 8:00 pm
- Sunday; No construction work permitted
- School zone: Work in school zones shall not begin until 9:00 am

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 returned by no later than the date and time for receipt of the Bid Submittal.

Acknowledgement:

Mitchell Tourino  
Name of Signatory

President  
Title

6/15/12  
Date

[Signature]  
Signature

Magna Construction Inc.  
Name of Bidder

Gary Fabrikant  
Procurement Manager  
Date Issued: May 30, 2012

**Town of Miami Lakes**

**ITB 2012-20**

**Title: Lake Patricia Roadway & Drainage Improvements**

**Addendum #3**

**Bid Opening Date: June 15, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-20. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents. Underlined word(s) indicate additions and deletion are indicated by strikethrough.

**Bid Form Replacement**

The Bid Form as issued with the ITB could have resulted in duplication in pricing for several Bid Items. As such the Bid Form, Pages 59-63 are hereby deleted and replaced with Bid Form (Revised), Pages 59R-63R. Pages 59R-63R must be submitted as part of the Bid Submittal to be responsive.

Under the revised Bid Form, Bid Items 331-2, 331-3331-4 have been deleted. The Bid Item Notes for Bid Item 331-1 has also been revised.

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 returned by no later than the date and time for receipt of the Bid Submittal.

Acknowledgement:

Mitchell Tourino

Name of Signatory

President

Title

6/15/12

Date

[Signature]

Signature

Magna Construction Inc.

Name of Bidder

Gary Fabrikant  
Procurement Manager  
Date Issued: June 5, 2012

**Town of Miami Lakes**

**ITB 2012-20**

**Title: Lake Patricia Roadway & Drainage Improvements**

**Addendum #4**

**Bid Opening Date: June 15, 2012**

This addendum is hereby incorporated into and made a part of the Invitation to Bid ("ITB") 2012-20. The following may include clarifications, revisions, additions, deletions, and/or answers to questions received relative to the ITB, which take precedence over the ITB documents. Underlined word(s) indicate additions and deletion are indicated by strikethrough.

**Requests For Clarification or Information**

1. Could we utilize the reference letters from the previous bids in 2012 for this project.

Response: Prior references will only be accepted if they meet the requirements of the Invitation to Bid, which states that all references must be on the Town form, be for a project of a comparable size, scope and complexity, and be within the timeframe established in the Invitation to Bid.

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 returned by no later than the date and time for receipt of the Bid Submittal.

Acknowledgement:

Mitchell Tourino  
Name of Signatory  
President  
Title  
6/15/12  
Date

[Signature]  
Signature  
Magna Construction Inc.  
Name of Bidder

Gary Fabrikant  
Procurement Manager

Date Issued: June 12, 2012