

# MIAMI BEACH

## Presentations & Awards/Commission Meeting

### SUPPLEMENTAL MATERIAL 1

City Hall, Commission Chamber, 3rd Floor, 1700 Convention Center Drive

April 27, 2016

Mayor Philip Levine  
Commissioner John Elizabeth Alemán  
Commissioner Ricky Arriola  
Commissioner Kristen Rosen Gonzalez  
Commissioner Michael Grieco  
Commissioner Joy Malakoff  
Commissioner Micky Steinberg

City Manager Jimmy L. Morales  
City Attorney Raul J. Aguila  
City Clerk Rafael E. Granado

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#### ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

#### SUPPLEMENTAL AGENDA

- R7B A Resolution Accepting The Recommendation Of The City Manager, To Award, Pursuant To RFP No. 2016-062-KB, The Design Build Contract For The West Avenue Bridge Over Collins Canal To Bergeron Land Development Inc. (Bergeron), In The Not To Exceed Amount Of \$9,930,000; And Further Authorizing The Mayor And City Clerk To Execute A Design Build Agreement With Bergeron.

(Procurement/Public Works)  
(Deferred from April 13, 2016 - R7O)  
**(Memorandum and Attachments)**

#### R9 - New Business and Commission Requests

- R9D Report On Strategy For Dealing With High Impact Beach Events.  
(Office of the City Manager)  
**(Report)**

#### Reports and Informational Items

1. Miami Beach Convention Center Project Update - LTC.  
(Office of the City Manager)  
**(LTC 174-2016)**

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**Condensed Title:**

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Accepting The Recommendation Of The City Manager, To Award, Pursuant To RFP No. 2016-062-KB, The Design Build Contract For The West Avenue Bridge Over Collins Canal To Bergeron Land Development Inc. (Bergeron), In The Not To Exceed Amount Of \$9,930,000; And Further Authorizing The Mayor And City Clerk To Execute A Design Build Agreement With Bergeron.

**Key Intended Outcome Supported:**

Build and Maintain Priority Infrastructure with Full Accountability

**Supporting Data (Surveys, Environmental Scan, etc):** N/A

**Item Summary/Recommendation:**

In efforts to improve traffic, safety, transit, bicycle, pedestrian mobility and general safety in the area, the Public Works Department is in the process of expediting the construction of the West Avenue Bridge Project while the Sunset Harbour Project is currently on-going, by processing a design build agreement. Public Works had prepared a Design Criteria Package (DCP) as stipulated by the Florida Statutes, to define the design and construction requirements for development of construction documents by Design Build Firms and for submission of their price proposals.

On December 16, 2015, the City Commission directed the Administration to prepare and issue a Request For Proposals (RFP) for design build services for the West Avenue Bridge over the Collins Canal, with an option to include a pedestrian bridge at Lincoln Court over Collins Canal. The RFP was released on December 29, 2015 and City Commission was notified via LTC No. 491-2015 on December 31, 2015.

The scope of work also included street lighting, pedestrian lighting, signage and pavement markings, a new vehicular and pedestrian signal on Dade Boulevard and West Avenue, utility relocation and/or adjustments, and drainage.

On March 9, 2016, the City Commission authorized the Administration to negotiate with the sole respondent and provide price proposals closer to the City's estimates. City staff recommended the following: (1) to modify the PD&E design criteria so that the design would be more in line with the existing conditions; (2) increase the length of the West Avenue Bridge to address the FPL transmission line concerns; and (3) removal of the scope of work related to the reconstruction of the seawall along Dade Boulevard, between the Venetian Causeway Bridge and the 17<sup>th</sup> Street Bridge. The original completion date for raising the travel lanes on Dade Boulevard (75 calendar days and 270 calendar days for total project, including Bridges following the issuance of a notice to proceed as specified in the Design Criteria Package for the project) was maintained after discussions with the City Attorney's office determined that this represented a material change to the original solicitation.

**CITY MANAGER'S RECOMMENDATION**

The City Administration requests that the City Commission accept the recommendation of the City Manager to award Bergeron Land Development, pursuant to RFP No. 2016-062-KB, the Design Build Contract for the West Avenue Bridge and Pedestrian Bridge over Collins Canal in the amount of \$9,930,000; and further authorize the Mayor and City Clerk to execute the Design Build Agreement with Bergeron.

**THE ADMINISTRATION RECOMMENDS APPROVING THE RESOLUTION.**

**Advisory Board Recommendation:**

N/A

**Financial Information:**

Source of Funds:		Amount	Account
	1	\$3,011,000	The cost of the related services is subject to funds availability approved through pending Miami-Dade County Joint Partnership Agreement
	2	\$4,430	187-2950-069357
	3	\$1,104	303-2950-069357
	4	\$112,247	365-2950-061357



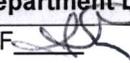
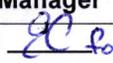
	<b>5</b>	\$1,331,019	365-2950-069357
	<b>6</b>	\$3,379	384-2950-061357
	<b>7</b>	\$52,197	384-2950-069357
	<b>8</b>	\$12,127	384-2950-069358
	<b>9</b>	\$59	158-2575-000670
	<b>10</b>	\$16,864	158-2575-061357
	<b>11</b>	\$800,000	158-2575-069357
	<b>12</b>	\$204,315	187-2575-000356
	<b>13</b>	\$133,846	187-2575-069351
	<b>14</b>	\$339,839	187-2575-069357
	<b>15</b>	\$555,318	303-2575-061357
	<b>16</b>	\$230,000	187-2740-069357
	<b>17</b>	\$24,707	187-2670-061357
	<b>18</b>	\$425,669	187-2670-069357
	<b>19</b>	\$334,000	305-2780-069357
	<b>20</b>	\$137,880	011-9407-000342
	<b>21</b>	\$2,200,000	304-2336-069357
<b>OBPI</b>	<b>Total</b>	\$9,930,000	

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Alex Denis – Procurement Director, Bruce Mowry, P.E. – City Engineer

**Sign-Offs:**

<b>Department Director</b>	<b>Assistant City Manager</b>	<b>City Manager</b>
JJF 	ETC 	JLM  for

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager *Eric Carpenter for*

DATE: April 27, 2016

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, TO AWARD, PURSUANT TO RFP NO. 2016-062-KB, THE DESIGN BUILD CONTRACT FOR THE WEST AVENUE BRIDGE OVER COLLINS CANAL TO BERGERON LAND DEVELOPMENT INC. (BERGERON), IN THE NOT TO EXCEED AMOUNT OF \$9,930,000; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DESIGN BUILD AGREEMENT WITH BERGERON.**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### FUNDING

\$3,011,000	The cost of the related services is subject to funds availability approved through the Miami-Dade County Joint Partnership Agreement
\$4,430	187-2950-069357
\$1,104	303-2950-069357
\$112,247	365-2950-061357
\$1,331,019	365-2950-069357
\$3,379	384-2950-061357
\$52,197	384-2950-069357
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\$425,669	187-2670-069357

\$334,000	305-2780-069357
\$137,880	011-9407-000342
\$2,200,000	304-2336-069357
<b>\$9,930,000</b>	Total

## **BACKGROUND**

In efforts to improve traffic, safety, transit, bicycle, pedestrian mobility and general safety in the area, the Public Works Department is in the process of expediting the construction of the West Avenue Bridge Project while the Sunset Harbour Project is currently on-going, by processing a design build agreement. Public Works had prepared a Design Criteria Package (DCP) as stipulated by the Florida Statutes, to define the design and construction requirements for development of construction documents by Design Build Firms and for submission of their price proposals.

On December 16, 2015, the City Commission directed the Administration to prepare and issue a Request For Proposals (RFP) for design build services for the West Avenue Bridge over the Collins Canal, with an option to include a pedestrian bridge at Lincoln Court over Collins Canal. The RFP was released on December 29, 2015 and City Commission was notified via LTC No. 491-2015 on December 31, 2015.

The scope of work also included street lighting, pedestrian lighting, signage and pavement markings, a new vehicular and pedestrian signal on Dade Boulevard and West Avenue, utility relocation and/or adjustments, and drainage.

## **RFP PROCESS**

The RFP was issued on December 29, 2015 and on March 1, 2016, the City received a single proposal, by Bergeron Land Development ("Bergeron") in a total amount of \$15,645,372.60 (inclusive of 10% owner's contingency) for three (3) components: West Avenue Bridge \$9,434,700.00; Dade Boulevard Harmonization \$4,880,134.60; and Lincoln Court Pedestrian Bridge \$1,330,538.

On March 9, 2016, the City Commission authorized the Administration to negotiate with Bergeron and provide price proposals closer to the City's estimates. City staff met with Bergeron on multiple occasions in recorded negotiating sessions, during the course of these sessions, Bergeron presented several iterations of the proposed design. They also described in detail the challenges and constraints from this project including: the existing substandard geometry of the 17<sup>th</sup> Street Bridge over Collins Canal at the Dade Boulevard approach, the existing profile constraints along Dade Boulevard near Bay Road, the presence of two (2) existing underground FPL high voltage transmission lines located near the support on the north side of the bridge, and impacts to the existing Collins Canal seawalls. Bergeron recommended to increase the length of the West Avenue Bridge by 10 feet from the length specified in the Design Criteria Package due to the need for clearance for the high voltage transmission lines.

City staff recommended the following to value engineer the project while still maintaining the original intent: (1) to modify the PD&E design criteria so that the design would be more in line with the existing conditions described above; (2) increase the length of the West Avenue Bridge to address the FPL transmission line concerns; and (3) removal of the scope of work related to the reconstruction of the seawall along Dade Boulevard, between the Venetian Causeway

Bridge and the 17<sup>th</sup> Street Bridge. The original completion date for raising the travel lanes on Dade Boulevard (75 calendar days and 270 calendar days for total project, including Bridges following the issuance of a notice to proceed as specified in the Design Criteria Package for the project) was maintained after discussions with the City Attorney's office determined that this represented a material change to the original solicitation.

Based upon the foregoing conditions, Bergeron and the City Administration negotiated a modified price proposal in the amount of \$9,930,000 for the West Avenue Bridge for all three components as follows: West Avenue Bridge \$6,806,400; Dade Boulevard Harmonization \$1,729,600; and Lincoln Court Pedestrian Bridge \$864,000. The modified, negotiated proposal includes a \$430,000 City's contingency, \$100,000 for permitting work, with a total allowance of \$530,000.

**CITY MANAGER'S RECOMMENDATION**

The City Administration requests that the City Commission accept the recommendation of the City Manager to award Bergeron Land Development, pursuant to RFP No. 2016-062-KB, the Design Build Contract for the West Avenue Bridge and Pedestrian Bridge over Collins Canal in the amount of \$9,930,000; and further authorize the Mayor and City Clerk to execute a Design Build Agreement with Bergeron.

Attachments: Cost Proposal  
Design Criteria, West Avenue Bridge Over Collins Canal  
Sample Design Build Agreement

JLM/ETC/AD/BAM/WRB/LJS

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Design/Build Services for the West Avenue Bridge Over Collins Canal  
RF# NO. 2016-062-KB

TAB 4

Cost Proposal

4.1 Cost Proposal Form (Appendix E)



MIAMI BEACH

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# Cost Proposal Form

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2016-062-KB

## DESIGN BUILD SERVICES FOR THE WEST AVENUE BRIDGE OVER COLLINS CANAL

PROCUREMENT DEPARTMENT  
1755 Meridian  
Avenue, 3<sup>rd</sup> Floor  
Miami Beach,  
Florida 33139

APPENDIX A PROPOSAL TENDER FORM

Failure to submit Section 5, Proposal Tender Form, in its entirety and fully executed by the deadline established for the receipt of proposals will result in proposal being deemed non-responsive and being rejected.

Bidder affirms that the prices stated on the proposal price form below represents the entire cost of the items in full accordance with the requirements of this RFP, inclusive of its terms, conditions, specifications and other requirements stated herein, and that no claim will be made on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other unless a cost escalation provision is allowed herein and has been exercised by the City Manager in advance. The Bid Price Form (Section 5) shall be completed mechanically or, if manually, in ink. **Proposal Tender Forms (Section 5) completed in pencil shall be deemed non-responsive.** All corrections on the Proposal Tender Form (Section 5) shall be initialed.

WEST AVENUE BRIDGE OVER COLLINS CANAL					
Item	Description	Quantity	U / M	Unit Cost	Total (Quantity X Unit Cost)
1	Mobilization/Demobilization	1	LS	\$850,000	\$850,000
2	Design and Construction Administration	1	LS	\$880,000	\$880,000
3	Clear and Grubbing	1	LS	\$50,000	\$50,000
4	West Avenue Bridge	1	LS	\$1,980,000	\$1,980,000
5	Bridge Lighting	1	LS	\$40,400	\$40,400
6	Precast Arch Fascia Panel	1	LS	\$71,000	\$71,000
7	West Avenue Road	1	LS	\$120,000	\$120,000
8	West Avenue Sidewalk	1	LS	\$20,000	\$20,000
9	Dade Boulevard Reconstruction	1	LS	\$200,000	\$200,000
10	Dade Boulevard Sidewalk	1	LS	\$50,000	\$50,000
11	Embankment	1	LS	\$520,000	\$520,000
12	Handrail	1	LS	\$175,000	\$175,000
13	Gravity Wall	1	LS	\$350,000	\$350,000
14	Concrete Barrier	1	LS	\$50,000	\$50,000
15	Type F curb and gutter	1	LS	\$50,000	\$50,000
16	Pedestrian Lighting	1	LS	\$70,000	\$70,000
17	Street Lighting	1	LS	\$500,000	\$500,000
18	Water Relocation and/or Adjustments	1	LS	\$25,000	\$25,000
19	Sewer Relocation and/or Adjustments	1	LS	\$25,000	\$25,000
20	Drainage	1	LS	\$300,000	\$300,000
21	Signing and Marking	1	LS	\$45,000	\$45,000
22	Signalization at Dade Blvd and West Avenue	1	LS	\$350,000	\$350,000
23	Bond and Insurance ( 3 sections)	1	LS	\$85,000	\$85,000
24	Allowance for Bridge Aesthetics beyond the Precast Arch Fascia Panel with Creative Formed Lines or Texture	1	LS	\$300,000	\$300,000
25	Allowance for Permitting	1	LS	\$100,000	\$100,000
<b>TOTAL WEST AVENUE BRIDGE</b>					<del>\$7,206,400.00</del>
26	Owner Controlled Project Contingency 10% of Total West Ave Bridge	0	%		<del>\$720,640.00</del>
<b>TOTAL GMP WEST AVENUE</b>					<del>\$7,206,400.00</del>

*city*  
*contingency*  
*\$400,000*

*\$6,806,400.00*

ALTERNATE LINCOLN COURT PEDESTRIAN BRIDGE					
Item	Description	Quantity	U / M	Unit Cost	Total (Quantity X Unit Cost)
1	Mobilization/Demobilization	1	LS	\$120,000	\$120,000
2	Design	1	LS	\$135,000	\$135,000
3	Clear and Grubbing	1	LS	\$12,000	\$12,000
4	Lincoln Court Pedestrian Bridge	1	LS	\$350,000	\$350,000
5	Precast Arch Fascia Panel	1	LS	\$70,000	\$70,000
6	Bridge Lighting	1	LS	\$47,000	\$47,000
7	Lincoln Court Reconstruction	1	LS	\$000	\$000
8	Dade Boulevard Reconstruction	1	LS	\$9,000	\$9,000
9	Dade Boulevard Sidewalk	1	LS	\$10,000	\$10,000
10	Embankment	1	LS	\$10,000	\$10,000
11	Handrail	1	LS	\$44,000	\$44,000
12	Gravity Wall	1	LS	\$29,000	\$29,000
13	Type F curb and gutter	1	LS	\$000	\$000
14	Street Lighting	1	LS	\$000	\$000
15	Water Relocation and/or Adjustments	1	LS	\$14,000	\$14,000
16	Sewer Relocation and/or Adjustments	1	LS	\$14,000	\$14,000
17	Drainage	1	LS	\$000	\$000
18	Signing and Marking	1	LS	\$000	\$000
19	Bond and Insurance	1	LS	\$000	\$000
20	Allowance for Bridge Aesthetics beyond the Precast Arch Fascia Panel with Creative Formed Lines or Texture	1	LS	\$100,000	\$100,000
21	Allowance for Permitting	1	LS	\$000	\$000
<b>TOTAL ALTERNATE LINCOLN COURT</b>					<b>\$964,000.00</b>
22	Owner Controlled Project Contingency 10% of Total Lincoln Court Pedestrian Bridge	0	%	\$	<i>\$ 864,000.00</i>
<b>TOTAL GMP ALTERNATE LINCOLN COURT PEDESTRIAN BRIDGE</b>					<b>\$964,000.00</b>

*city  
79,000,000*

*100,000  
\$ 864,000*

DADE BOULEVARD HARMONIZATION VENETIAN CAUSEWAY TO BAY ROAD					
Item	Description	Quantity	U / M	Unit Cost	Total (Quantity X Unit Cost)
1	MOBILIZATION AND DEMOBILIZATION	1	LS	\$50,000	\$50,000
2	DESIGN AND CONSTRUCTION ADMINISTRATION	1	LS	\$220,000	\$220,000
3	CLEAR AND GRUBBING	1	LS	\$50,000	\$50,000
4	DADE BOULEVARD RECONSTRUCTION	1	LS	\$300,000	\$300,000
5	CONCRETE SIDEWALK	1	LS	\$60,000	\$60,000
6	EMBANKMENT	1	LS	\$50,000	\$50,000
7	HANDRAIL	1	LS	\$20,000	\$20,000
8	GRAVITY WALL	1	LS	\$000	\$000
9	SEAWALL	1	LS	\$000	\$000
10	CONCRETE CURB AND GUTTER (TYPE F)	1	LS	\$17,500	\$17,500
11	STREET LIGHTING	1	LS	\$390,000	\$390,000
12	PEDESTRIAN LIGHTING	1	LS	\$60,000	\$60,000
13	WATER RELOCATION AND/OR ADJUSTMENTS	1	LS	\$23,100	\$23,100
14	SEWER RELOCATION AND/OR ADJUSTMENTS	1	LS	\$20,000	\$20,000
15	DRAINAGE	1	LS	\$110,000	\$110,000
16	SIGNING AND MARKING	1	LS	\$15,000	\$15,000
17	SIGNALIZATION AT DADE BLVD AND PURDY	1	LS	\$200,000	\$200,000
18	SIGNALIZATION AT DADE BLVD AND BAY ROAD	1	LS	\$144,000	\$144,000
19	BOND AND INSURANCE	1	LS	\$000	\$000
20	ALLOWANCE FOR HARMONIZATION	1	LS	\$000	\$000
50	ALLOWANCE FOR PERMITTING	1	LS	\$000	\$000
<b>TOTAL DADE BLVD VENETIAN CAUSEWAY TO BAY ROAD</b>					<b>1,729,600.00</b>
22	OWNER CONTROLLED CONTINGENCY 10% OF TOTAL DADE BLVD VENETIAN CAUSEWAY TO BAY ROAD	0	PERCENT	\$	
<b>TOTAL GMP DADE BLVD VENETIAN CAUSEWAY TO BAY ROAD</b>					<b>\$1,729,600.00</b>

*\$30,000*

Bidder's Affirmation	
Company:	Bergeron Land Development
Authorized Representative:	Chad Widup, P.E. Operations Director
Address:	19612 SW 69th Place, Fort Lauderdale, Florida 33332
Telephone:	(954) 680-6100
Email:	cwidup@bergeroninc.com
Authorized Representative's Signature:	

DESIGN CRITERIA

WEST AVENUE BRIDGE OVER COLLINS CANAL

PART 1 - GENERAL

1.01 THE REQUIREMENT

- A. WORK to be performed under this Contract shall consist of furnishing and installing all tools, equipment, materials, supplies, and manufactured articles and furnishing all labor, transportation, and services, including fuel, power, water, and essential communications, and performing all WORK, or other operations required for the fulfillment of the Contract in strict accordance with the Contract Documents. The WORK shall be complete, and all WORK, materials, and services not expressly indicated or called for in the Contract Documents, which may be necessary for the DESIGN / BUILD FIRM shall provide the complete and proper construction of the WORK in good faith as though originally so indicated, at no increase in cost to the CITY.
- B. Wherever the term Project is used in these documents, it shall be construed to mean all WORK associated with the WEST AVENUE BRIDGE OVER COLLINS CANAL AND DADE BOULEVARD HARMONIZATION BETWEEN VENETIAN CAUSEWAY AND BAY ROAD.
- C. Wherever the term CONSULTANT is used in these documents, it shall be construed to mean the registered professional engineer, architect, and/or landscape architect who have contracted with or who are employed by the DESIGN / BUILD FIRM to provide professional services for the design and permitting of the Project. The CONSULTANT shall be the Engineer of Record and shall be licensed by the State of Florida to provide said services.
- D. Wherever the term CONTRACTOR is used in these documents, it shall be construed to mean the DESIGN / BUILD FIRM.
- E. Wherever the term CITY is used in these documents, it shall be construed to mean the entity responsible for the development of the Design Criteria Package for the Project. The CITY shall also be responsible for reviewing the contract documents and providing construction administration services. The DESIGN / BUILD FIRM shall interact with the CITY.
- F. Whenever a reference to number of days is noted, it shall be construed to mean calendar days.

1.02 PROFESSIONAL SERVICES

- A. Work to be performed in this Section includes providing professional engineering services to design and permit a project meeting the intent of the Design Criteria Package (DCP). The DCP is a multi-volume document including the following items:

Volume 1: - Request for Qualifications

Volume 2: - Design Criteria (this document)

Volume 3 – Attachments

- Attachment 1: Project Development Summary Report and Project Development and Environmental (PD&E) Study by Gannett Fleming.
- Attachment 2: Joint Project Agreement between Miami-Dade County and the City Of Miami Beach.
- Attachment 3: Perpetual Easement Agreement by Housing Authority of the City of Miami Beach and the City of Miami Beach for West Avenue between Collins Canal and 17<sup>th</sup> Street.
- Attachment 4: Copy of the Plans for the Design of the Shared Path along Dade Boulevard.
- Attachment 5: Geotechnical Report for Structures dated May 18, 2012
- Attachment 6: Geotechnical Report for Roadways dated May 11, 2011.
- Attachment 7: Bridge Analysis Report.
- Attachment 8: Essential Fish Habitat Assessment.
- Attachment 9: Endangered Species Biological Assessment. (Addendum 3).
- Attachment 10: City of Miami Public Works Department Neighborhood No. 9 City Center Seawall Dade Boulevard Collins Canal Drawings. (Addendum 3).
- Attachment 11: Dade County Small Business Development SBD 400 Form.

This document and the Technical Specifications include Project requirements to be adhered to by the DESIGN / BUILD FIRM.

### 1.03 SCOPE OF WORK

- A. The DESIGN / BUILD FIRM shall become familiar with the PD&E study conducted by the City of Miami Beach and shall use the approved concepts as a basis for design. The project includes the design and construction of the West Avenue Bridge over Collins Canal using the preferred bridge typical section recommended by the PD&E study Alternative 2 consisting of 2-11' through lanes, 1-11' southbound left turn lane, 5.5' bicycle lane and 10' sidewalk on both sides of the road between 17<sup>th</sup> Street and just north of Dade Boulevard. The bridge shall be designed as stated on the Bridge Analysis Report attached. The

substructure design shall be based on the recommended option stated on the geotechnical report for structures attached.

- B. The bridge shall be a single span with beam elements to be set at an elevation to allow a freeboard equal to the existing freeboard on the existing Alton Road Bridge over Collins Canal. The proposed bridge shall have retaining walls associated with the approaches and bridge abutments.
- C. The DESIGN / BUILD FIRM shall include the design of Lincoln Court pedestrian bridge over Collins Canal as a separate alternate. The City may, at its option, either award the design, construction management and construction of the pedestrian bridge as an additive to the West Avenue Bridge Guaranteed Maximum Price (GMP) or exclude it from the project. Design and construction costs associated with the pedestrian bridge shall be separate from the West Avenue Bridge. The pedestrian bridge shall be 8 foot wide, single span, precast concrete arch. The proposed bridge elevation shall be set at an elevation to allow a 6-foot freeboard dimension above MHW over Collins Canal. The design criteria for the pedestrian bridge shall be based on the most current Federal, State and Local guidelines for pedestrian overpasses
- D. Due to the minimum freeboard over Collins Canal and to the close proximity of Dade Boulevard to the Collins Canal, the West Avenue Bridge approach will result in higher elevation than Dade Boulevard. As a result of this grade differential, Dade Boulevard requires reconstruction for a few hundred between Alton Road and 17h Street. The reconstruction includes but not limited to removal and replacement of the existing pavement, curb and gutter, sidewalk, landscaping, modification of the seawall, concrete barrier along Collins Canal, concrete barrier along the Dade Boulevard median, handrail, signing and pavement markings, lighting, and drainage. The seawall in this section is relatively new so it does not need replacement. Gravity wall can be used to mitigate the grade differential so not to cause impact to the existing seawall. In addition, a concrete barrier with handrail or other similar roadside safety device approved by Dade County will be required to prevent errant vehicles into the Collins Canal. The DESIGN / BUILD FIRM shall be alerted to the fact that time is of the essence to substantially complete Dade Boulevard. Therefore, there is a time constraint for the reconstruction of Dade Boulevard as stated in the time constraint section below.
- E. The DESIGN / BUILD FIRM shall also include the design and reconstruction of Dade Boulevard from the Venetian Causeway Bridge to approximately 250 feet east of Bay Road, referred to in this DCP as Dade Blvd harmonization. The reconstruction of Sunset Harbour Drive and Bay Road will be by others in the current Sunset Harbour Project to the north of Dade Boulevard ROW. The reconstruction includes but not limited to removal and replacement of the existing pavement, curb and gutter, sidewalk, and landscaping. Installation of new seawall in the water side of the existing seawall along the south side of Dade Boulevard between the Venetian Causeway bridge and the 17<sup>th</sup> Street

bridge including a concrete barrier with handrail or other similar roadside safety device approved by Dade County to prevent errant vehicles into Collins Canal will be done by others under a separate contract. The harmonization of Dade Boulevard shall be kept separate from the West Avenue Bridge and from the Pedestrian Bridge as the City will get reimbursement from Dade County for this portion separately.

- F. The DESIGN / BUILD FIRM shall coordinate with adjacent property owners impacted due to grade differential between existing elevation of the property and the new elevation at the right of way line. The contractor shall assume gravity wall with handrail as means of transitioning to the existing properties as a base of his proposal. Should coordination with property owner results in a more expensive harmonization than the assumed base, the DESIGN / BUILD FIRM shall provide a proposal to the City for review and approval. The City will use the allowance under Property Harmonization item to cover the additional costs beyond the base costs.
- G. The DESIGN / BUILD FIRM shall design the horizontal and vertical alignment based on the design speed of 25 MPH for West Avenue and 30 MPH for Dade Boulevard. Design deviations will be allowed at the intersection of West Avenue and 17<sup>th</sup> Street.
- H. Pavement shall be designed as recommended on the geotechnical report for roadways (attached). The proposed pavement structure shall be based on the latest FDOT pavement design manual. The DESIGN / BUILD FIRM shall assume that placement of geosynthetic reinforcement is required on all new pavement.
- I. All new concrete sidewalk for this project shall be of gray concrete and non-permeable.
- J. The intersection of Dade Boulevard and West Avenue shall have a new traffic and pedestrian signal and shall be designed in accordance FDOT, MUTCD and Miami Dade County requirements. The signal shall be designed with a signal operation plan (SOP) that ensures coordination and phasing for the section and shall be coordinated with Miami Beach Transportation and Miami-Dade County Traffic Signals and Signs.
- K. The intersections of Dade Boulevard/Sunset Harbour Drive and Dade Boulevard and Bay Road signalization shall be reconstructed with new mast arms and pedestrian signals in accordance with FDOT, MUTCD and Miami Dade County requirements. The signal shall be designed to match the existing signal operation plan (SOP) and shall be coordinated with Miami Beach Transportation and Miami-Dade County Traffic Signals and Signs.
- L. Street Lighting and pedestrian lighting shall be provided for the limits of this project. The illumination design parameters will be minimum 0.5 foot-candles and a maximum uniformity ratio of 4:1 foot-candles. Lighting shall be compatible

with other sections of the City's street network adjacent to West Avenue. Street lighting for Dade Boulevard shall be approved by Dade County. Existing bollard lights shall be removed within the limits of this project.

- M. The DESIGN / BUILD FIRM shall assume the bridge aesthetics for the West Avenue Bridge and the Lincoln Court Pedestrian Bridge shall be as identified in the bridge analysis report with a Precast Arch Fascia Panel with creative formed lines or texture in the fascia panel as a base for this proposal. The DESIGN / BUILD FIRM shall develop exhibits with at least three options, prepare notification, flyers, and/or letters to elected public officials and other public officials, private property owners, tenants, the Miami-Dade Transportation Aesthetics Review Committee (TARC) and assist the City to organize two public meetings to present the options and receive feedback on the proposed bridge aesthetics. Should the aesthetics for the bridges become more involved beyond what is considered in the base of this proposal, the DESIGN / BUILD FIRM shall provide a proposal to the City for review and approval. The City will issue a change order to cover the additional costs beyond the base costs.
- N. The City will the public, public officials and or review committees result in a more comprehensive There will be allowance built in this Design Build Contract should there be any additional requirements or additional work from what it is specified above on bridge aesthetics as a result of the public input.
- O. The DESIGN / BUILD FIRM shall perform a topographic survey and a ROW survey along West Avenue between south of 17<sup>th</sup> Street to just north of Dade Boulevard; along Dade Boulevard and Collins Canal from the Venetian Causeway Bridge to Alton Road; along Lincoln Court from just south of its north end to Dade Boulevard..
- P. The DESIGN / BUILD FIRM shall prepare a Subsurface Utility Exploration sufficient to determine the exact location, size, and material of all underground utilities within the project limits.
- Q. The DESIGN / BUILD FIRM shall perform coordination of all private and public utilities and perform any required relocation of water, sewer and drainage infrastructure to allow the proposed work.
- R. The DESIGN / BUILD FIRM shall apply for all Federal, State, County and City permits, including but not limited to U.S. Army Corps of Engineers, FDEP, SFWMD, Miami-Dade County Class I, II and V permits and City of Miami Beach ROW permit.
- S. The consultant shall submit the following deliverables as part of the design plan package using FDOT's Plans Preparation Manual Volume 2:
  - 1) Signed and sealed topographical survey sheets by a professional land surveyor licenses in the State of Florida.

- 2) Signed and sealed Right of Way Maps.
- 3) 60%, and 100% plans, for the West Avenue Bridge; Lincoln Court Pedestrian Bridge, Dade Boulevard, West Avenue and Lincoln Court. The plans shall include roadway, structures, lighting, signal, signing and markings, traffic control plans, etc. the plan and profile sheets shall be on 11" X 17" sheets at a scale of 1" = 40' horizontal scale and 1" = 4' vertical scale.
- 4) Drainage technical letter report
- 5) Lighting design analysis technical letter report for both bridges and Dade Boulevard.
- 6) An itemized list of items with quantities of all roadway and bridge items based on FDOT standard specifications at each plan submittal.
- 7) A schedule of values using the itemized list.
- 8) Specification package.
- 9) CAD and PDF copies of deliverables.
- 10) Back of sidewalk Profiles.
- 11) Typical sections.

T. Time Frames and constrictions:

- 1) Dade County is participating in the funding source for the construction of West Avenue Bridge. There is a Joint Participation Agreement (JPA) between the City and the County. The DESIGN / BUILD FIRM shall become very familiar with this JPA and abide by its commitments including but not limited to the Responsible Wages and Benefits Schedule (Construction Type: Heavy) for wages and benefits to be paid for work performed under this contract in effect on January 1<sup>st</sup> of the calendar year the work is performed. In addition, the DESIGN / BUILD FIRM shall abide by Dade County Small Business Development recommendation of 4.19% Small Business Enterprise goal. The DESIGN / BUILD FIRM shall fill out Schedule of Intent Affidavit (SOI) SBD 400 Form.
- 2) The City and the County are currently amending the JPA to include the funding participation by Dade County for the Dade Boulevard Reconstruction Project from the Venetian Causeway Bridge to approximately 260' east of Bay Road. The City anticipates that this amendment will be ready approximately 60 days after the execution of this contract.
- 3) Due to the funding participation by Dade County, two Notice to Proceed issuance will be provided by the City. The first Notice to Proceed (NTP1)

will be soon after the contract has been executed by all parties for the West Avenue Bridge and the pedestrian bridge (if awarded). The second Notice to Proceed (NTP2) will be issued by the City soon after the amendment to the JPA has been executed by all parties for the Dade Boulevard Reconstruction between the Venetian Causeway and Bay Road. Based on the current schedule, NTP2 will be approximately 2 months after NTP1.

- 4) Time is of the essence to substantially complete Dade Boulevard either 165 calendar days after all permits have been obtained and the first notice to Proceed (NTP1) is issued or 75 calendar days after the second Notice to Proceed (NTP2) is issued, whichever is greater. Substantial complete will be when the pavement reconstruction of the raised roadway is complete and all lanes are open to traffic along Dade Boulevard. This includes: the proposed alignment design of the bridge and Dade Boulevard; obtained all necessary permits for the Dade Boulevard portion of the work; complete all underground work; curb and gutter; new road base; a minimum of temporary sidewalks; structural work on the Dade Boulevard side of West Avenue such as the bridge approaches, piles, abutments, that would require closure of Dade Boulevard to traffic for extended period time.
- 5) West Avenue Bridge shall be substantially complete in 270calendar days after all permits are issued. Substantially complete will be when the West Avenue Bridge and Lincoln Court Pedestrian Bridge are open to vehicular and pedestrian traffic. This includes: bridge approaches; all underground work; curb and gutter; sidewalk; the new signal at the intersection of Dade Boulevard and West Avenue.
- 6) Final completion shall be 60 calendar days after the issuance of substantial completion of the West Avenue Bridge.

U. The DESIGN / BUILD FIRM shall prepare signed and sealed contract documents for the CITY's review to verify that the Project intent is complied with. The DESIGN / BUILD FIRM shall also utilize the City of Miami Beach Public Works Manual (PWM), current version with all updates to supplement any details required to complete the Project.

V. Contract Document Preparation (Drawings / Specifications): The DESIGN / BUILD FIRM shall review the Design Criteria Package, and information provided in Volumes 1, 2 and 3. The DESIGN / BUILD FIRM shall make the necessary changes, revisions, modifications, etc. to prepare its contract document set that incorporates the intent of the project requirements.. The DESIGN / BUILD FIRM's contract document set shall be submitted to the CITY to verify that the Project intent is complied with at the 60%, and 100% design milestones. The DESIGN / BUILD FIRM shall also utilize the City of Miami Beach Public Works Manual, and any updates to supplement any details required to complete the Project. The Design Standards Manual is provided to the DESIGN / BUILD FIRM as a basis to develop contract documents that meet the intent of the

scope of work. The following is a list of items that the DESIGN / BUILD FIRM shall incorporate into its Contract Documents:

- 1) Encroachments (when applicable): The DESIGN / BUILD FIRM shall familiarize itself with the Design Criteria Package and the City of Miami Beach Public Works Manual in order to properly address the removal of existing encroachments in the right-of-way. It shall be the responsibility of the DESIGN / BUILD FIRM to review, revise and finalize the encroachment analysis to meet the intent of the scope of work and budget and all requirements of the PUBLIC WORKS MANUAL (PWM).
- 2) Relocation of Existing Underground Utilities: It is the DESIGN / BUILD FIRM's responsibility to coordinate the relocation of any and all existing utilities that are in conflict with the proposed improvements as depicted in the DESIGN / BUILD FIRM's contract documents. These include but are not necessarily limited to: FPL, BellSouth, Charter Communications, Level 3 Communications, Adelphia Communications, Atlantic Broadband, AT&T, Teco-Peoples Gas, NUI-City Gas Company, Florida Gas Transmission, MCI WorldCom, M-D WASD, M-D PWD and City of Miami Beach, etc. It is the responsibility of the DESIGN / BUILD FIRM to verify that the final contract documents are free of utility conflicts. The DESIGN / BUILD FIRM shall be responsible for the identification, coordination and cost to relocate existing utilities that are found to be in conflict with proposed improvements.
- 3) Existing Utility Verification: The DESIGN / BUILD FIRM shall utilize whatever means it deems necessary to ensure that the proposed improvements illustrated in its final design drawings are not in conflict with existing underground utilities. Any underground utility data that is deemed necessary shall be provided by the DESIGN / BUILD FIRM team at no additional cost to the City.

During design, the DESIGN / BUILD FIRM shall submit its contract documents to each utility owner and request that they identify / verify the horizontal and vertical location of their utilities. The DESIGN / BUILD FIRM shall forward correspondence and its contract documents to each utility owner with a copy to the CITY and the PROJECT MANAGER. The DESIGN / BUILD FIRM is strongly recommended to field verify each utility and / or manhole excavation, utility crossing, utility tie-in and excavation greater than 12-inches in depth to field verify the location and depth of identified utilities. Methods to be considered by the DESIGN / BUILD FIRM shall include but not be limited to subsurface utility exploration in accordance with ASCE Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data (Quality Level A), vacuum extraction, water extraction, ground penetrating radar, magnetic survey, potholing, or other method deemed appropriate by the DESIGN / BUILD FIRM. The DESIGN / BUILD FIRM shall also verify the design of the proposed improvements with respect to conflicts with identified existing utilities. This

effort shall include the identification and resolution of conflicts between proposed improvements and existing below ground utilities, structures, footings, foundations, landscaping, etc. and existing above-ground improvements. The CITY reserves the right to request that the DESIGN / BUILD FIRM provide documentation of utility verification requests and subsequent responses from utilities during analyses of unforeseen condition claims.

- 4) Construction Sequencing Plan: The DESIGN / BUILD FIRM shall incorporate the construction sequencing restrictions presented in this document into its contract documents. The CITY will consider minor, non-substantial deviations from the construction sequencing restrictions on a case-by-case basis.

W. Contract Document Permitting: The DESIGN / BUILD FIRM shall prepare applications and such documents and design data as may be required to procure approvals from all such governmental authorities that have jurisdiction over the Project as represented in its contract documents. The DESIGN / BUILD FIRM shall consider the impact of permit fees in its construction opinions of probable cost. DESIGN / BUILD FIRM shall be responsible for meetings, submissions, resubmissions and negotiations with such authorities. CITY will attend meetings with governmental authorities as deemed necessary by CITY. The DESIGN / BUILD FIRM shall respond to comments by such authorities within ten working days of receipt of comments. It is recognized by the CITY that the time period for obtaining permits is beyond the control of the DESIGN / BUILD FIRM except for issues concerning the ability to permit of the design and the DESIGN / BUILD FIRM's ability to respond to permitting agency requests for information. The DESIGN / BUILD FIRM shall be responsible for monitoring and tracking progress on the preparation and review of permits and subsequent requests for information. The DESIGN / BUILD FIRM shall correspond with noted jurisdictional authorities to establish permitting requirements, revise its documents and respond to permitting inquiries as required. The DESIGN / BUILD FIRM shall copy the CITY on all correspondence and also attend meetings with the CITY staff to review and discuss permitting status. The following governmental authorities that have or may have jurisdiction over the Project have been identified:

- 1) City of Miami Beach Building Department
- 2) City of Miami Beach Design Review Board
- 3) City of Miami Beach Historical Preservation Board
- 4) City of Miami Beach Planning Department
- 5) City of Miami Beach Public Works Department

- 6) Miami-Dade Transportation Aesthetics Review Committee (TARC)
- 7) Miami-Dade County Department of Regulatory and Economic Resources (RER) (formerly DERM)
- 8) Miami-Dade County Water and Sewer Department
- 9) Miami-Dade County Public Works Department
- 10) Miami-Dade Department of Health and Rehabilitative Services
- 11) South Florida Water Management District
- 12) Florida Department of Environmental Protection
- 13) U.S. Army Corps of Engineers
- 14) U.S. Environmental Protection Agency

Failure to identify governmental authorities that have jurisdiction over Project at the time of permitting does not relieve DESIGN / BUILD FIRM from responsibility to pursue the permit as described above. Note that this effort includes the procurement of permit extensions, whether existing or new.

- X. Construction Certifications: The DESIGN / BUILD FIRM shall make certification to the City at the end of the project that the project was constructed in accordance with all approved plans and applicable codes. The DESIGN / BUILD FIRM shall provide all certifications, inspection reports and project information necessary to close out all permits for the project. It should be noted that phasing of the project shall require multiple phased certifications to put some partial systems in to service during construction.
- Y. Submittal of Contract Documents to the CITY for Review: The DESIGN / BUILD FIRM shall submit three (3) hard copies and a CD of the design documents in digital format (pdf and native format -AutoCAD, word, etc) to the CITY for review and comments, the contract documents at the 60%, and 100% completion stages. The submittal of the progress review contract documents shall be in compliance with the requirements of the PUBLIC WORKS MANUAL (PWM) for each completion stage. All review comments generated by the CITY shall be addressed and included in the subsequent submittal.
- Z. CAD files shall accompany all the as-built and record drawings for review by the City, and be included in all pay requests. As-built drawings shall be consistent with current CITY surveying and GIS standards as required in the PWM.
- AA. Community Design Review Meeting (CDRM) and Pre-Construction Meeting (PCM): The DESIGN / BUILD FIRM shall prepare necessary presentation materials and attend one (1) pre-CDRM prior to start the design and two (2) prior to the acceptance of the 60% and contract documents by the CITY. The purpose of the CDRM is to review the progress and concept during the

development of the design. The DESIGN / BUILD FIRM shall also prepare necessary presentation materials and attend one (1) review PCM following the acceptance of the 100% contract documents by the CITY. The purpose of the PCM is to advise residents on the schedule and sequencing of the upcoming construction activities. The CITY will schedule, find locations for, and notify residents of all such meetings. The DESIGN / BUILD FIRM shall prepare draft meeting minutes and forward them to the CITY who shall review, provide comments and distribute accordingly. Based upon the input provided by the residents, The DESIGN / BUILD FIRM shall incorporate necessary contract document revisions, as approved by the CITY. The DESIGN / BUILD FIRM shall attend weekly design and construction meeting with the CITY to review the project progress. The DESIGN / BUILD FIRM is responsible for preparation and updating the project schedule for these meetings and provide, one (1) days prior to the meeting, a list of items and issues to discuss and address during these meetings.

#### 1.04 STANDARD SPECIFICATION

- A. Except as noted, all materials and workmanship shall meet the requirements of the latest editions of the following publications:
1. Miami-Dade County Public Works manual "Design and Construction Standards";
  2. The Florida Department of Transportation "Standard Specifications for Road and Bridge Construction, and its supplements;
  3. The Florida Department of Transportation "Roadway and Traffic Design Standards";
  4. The Florida Department of Transportation "Structures Standards,"
  5. Miami-Dade Water and Sewer Department "Design and Construction Standard Specification and Details".
  6. City of Miami Beach Public Works Manual.

#### 1.05 SITE INVESTIGATION

- A. The DESIGN / BUILD FIRM, by virtue of signing the Agreement, acknowledges that it has satisfied itself to the nature and location of the WORK, the general and local conditions including, but not restricted to: those bearing upon transportation; disposal, handling and storage of materials, availability of water and electric power; access roads to the site; the conformation and conditions of the WORK area; and the character of equipment and facilities needed

preliminary to and during the performance of the WORK. Failure on the part of the DESIGN / BUILD FIRM to completely or properly evaluate the site conditions shall not be grounds for additional compensation. Failure by the DESIGN / BUILD FIRM to acquaint itself with all available information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the WORK. The CITY assumes no responsibility for any conclusions or interpretations made by the DESIGN / BUILD FIRM on the basis of the information made available by the CITY.

#### 1.06 WORK BY OTHERS

- A. Concurrent work by Other Contractors. The DESIGN / BUILD FIRM's attention is directed to the fact that work may be conducted at the site by other Contractors during the performance of the WORK under this Contract. The DESIGN / BUILD FIRM shall conduct its operations to cause little or no delay to work of such other Contractors, and shall cooperate fully with such Contractors to provide continued safe access to their respective portions of the site, as required to perform work under their respective contracts.
- B. Interference With Work On Utilities. The DESIGN / BUILD FIRM shall cooperate fully with all utility forces of the CITY or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities which interfere with the progress of the WORK, and shall schedule the WORK so as to minimize interference with said relocation, altering, or other rearranging of facilities.

#### 1.07 WORK SEQUENCE AND PHASING

- A. The DESIGN / BUILD FIRM shall schedule and perform the WORK in such a manner as to result in the least possible disruption to the public's use of roadways, driveways, and utilities. Utilities shall include but not be limited to water, sewerage, drainage structures, ditches and canals, gas, electric, internet, television and telephone. Prior to commencing with the WORK, the DESIGN / BUILD FIRM shall perform a location investigation of existing underground utilities and facilities and shall have obtained all required permits and permissions. The DESIGN / BUILD FIRM shall provide a schedule to the CITY, City's Public Information Office (PIO) and the City Project Manager at least two weeks prior to each planned disruption to the roadway, sidewalks, driveways, and utilities for notification of the residents. City and City's PIO will prepare the notices with assistance from the DESIGN / BUILD FIRM. The Design / Build Firm shall provide the information for the preparation of the notices in a timely manner for distribution to the residents 72 hours in advance of the disruption.

- B. The DESIGN / BUILD FIRM shall sequence the WORK so as to minimize impact on residents.
- C. A preliminary plan identifying the work area included under each phase is presented in the Conceptual Plans. The limits of the phases are outlined in zones as follows:
- D. The WORK shall be sequenced so that the existing utilities prone to damage are replaced first followed by other deeper, more disruptive work. The DESIGN / BUILD FIRM shall provide a detail sequence of all utilities that require relocation and/or adjustments and the pavement reconstruction to the City for review and approval prior to beginning construction.
- E. It is expected that the DESIGN / BUILD FIRM will employ multiple crews so that construction can be carried on concurrently.
- F. The WORK shall be sequenced so all testing are performed and “Certification to Place Into Operation” are obtained for the proposed water distribution system and stormwater management system prior to the construction of the proposed roadway improvements. In addition to the above, the following restrictions shall be maintained:
  - 1. The DESIGN / BUILD FIRM shall provide a detailed phasing and Maintenance of Traffic plans, for review and acceptance by the CITY prior to the commencement of any construction activities. The DESIGN / BUILD FIRM shall notify the City's Fire and Police Department, and the Post Office 14 days prior to planned disruptions.
  - 2. The DESIGN / BUILD FIRM's phasing plans shall clearly illustrate the DESIGN / BUILD FIRM's WORK intent. Each phase shall be broken down into sub-phases that allow work on different areas simultaneously. The DESIGN / BUILD FIRM's phasing plan shall be linked to the Project's Construction Schedule.
  - 3. The DESIGN / BUILD FIRM shall provide temporary asphalt patching for the pavement disturbed at the end of each workday.
  - 4. Construction within the right of way of affected roads shall be scheduled so that all improvements are completed at once, and the residents are only disrupted for one time period.
  - 5. Access for emergency vehicles shall be maintained at all times to all homes or businesses. Excavation must be back-filled or barricaded at the end of each workday to prevent hazardous conditions. If a trench, excavation or structure is to be left open, it must be covered with a steel plate and made accessible to residents at the end of each workday or when work will be suspended for more than eight (8) hours.

6. The DESIGN / BUILD FIRM shall coordinate with the appropriate local agencies and private companies, which provide services to the residents, as required to provide uninterrupted bus, school bus, garbage collection, mail delivery and other service during the WORK period. A traffic maintenance plan indicating proposed street closings, schedules, and alternate routes, which have been approved by the applicable jurisdictional agency, should be submitted to all affected agencies and companies for coordination and routing purposes.
7. Transportation provisions for handicapped or disabled residents shall be made by the DESIGN / BUILD FIRM if construction prevents access to homes.
8. Materials and equipment shall be stored in a fenced or otherwise enclosed area during non-working hours. Pipe and material shall not be strung out along installation routes for more than one workday. The DESIGN / BUILD FIRM shall store minimal amount of material on site within designated areas shown on the Construction Documents.
9. Street and lighting shall be maintained in operation at all times during construction. The DESIGN / BUILD FIRM shall provide temporary power supply and/or temporary lighting when necessary, to maintain lighting conditions meeting the existing lighting conditions.
10. The DESIGN / BUILD FIRM shall develop a staging plan for review and acceptance by the CITY. The plan shall provide for the staging of necessary equipment, material and field operation trailers. The DESIGN / BUILD FIRM shall restrict parking for its employees and sub-contractors within the staging areas and/or swales adjacent to the work area. If necessary, the DESIGN / BUILD FIRM shall provide additional off-site storage, staging and parking as necessary at no additional cost to the contract. DESIGN / BUILD FIRM shall maintain all staging areas until the project is completed.
11. The DESIGN / BUILD FIRM shall limit the number of non-essential vehicles on the project area. The Design Built Firm is responsible to provide public parking for its staff and sub-contractors offsite and arrange for group transportation to and from the project area in order to eliminate the need for personnel vehicles to be brought to the project area.

#### 1.08 TRAFFIC CONTROL

- A. The DESIGN / BUILD FIRM shall submit a conceptual Traffic Control Plan at the Pre-Construction Conference. This preliminary plan shall identify the phases of construction that the DESIGN / BUILD FIRM intend to utilize to identify the traffic flows during each phase. The DESIGN / BUILD FIRM will be required to submit a detailed plan showing each phase's Maintenance and Protection Plan prior to starting construction of any phase.

- B. The DESIGN / BUILD FIRM shall submit a weekly Traffic Impact Plan to the CITY by Wednesday of each week to allow for notification of anticipated road closures to public entities located in and doing business in the project area. The Traffic Impact Plan shall identify streets that are under construction and construction activities that may impact vehicular and pedestrian traffic.
- C. The Maintenance of Traffic Plans shall be prepared in accordance the Current Edition of the Florida Department of Transportation Standard Specification for Road and Bridge Construction, Florida Department of Transportation Design Standard for Road and Bridge Construction, and the Miami-Dade County Public Works Department Manual for Design and Construction.
- D. The "Maintenance of Traffic" plan shall address pedestrian traffic as well as vehicular traffic.
- E. The DESIGN / BUILD FIRM, at all times, shall conduct the WORK in such a manner as to insure the least obstruction to traffic as is practical. Convenience of the general public and of the residents adjacent to the work shall be provided for in a satisfactory manner, as determined by the CITY.
- F. Fire hydrants on or adjacent to the WORK shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within twenty (20) feet of any such hydrant.
- G. All existing stop signs and traffic signalization shall be maintained in operating conditions at all times during construction. A complete inventory of all existing signage and traffic control features shall be provided to the CITY prior to the commencement of construction activities.
- H. When permission has been granted by the City of Miami Beach Public Works Department to close an existing roadway, the DESIGN / BUILD FIRM shall furnish and erect signs, barricades, lights, flags and other protective devices, which shall conform to the requirements, and be subject to the approval of the jurisdictional agency. The DESIGN / BUILD FIRM shall furnish and maintain proper protective devices at such location for the entire time of closure as the jurisdictional agency may direct. Signage shall be affected one week before closure.
- I. The DESIGN / BUILD FIRM shall furnish a sufficient number of protective devices to protect and divert the vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new work. Failure to comply with this requirement will result in the shutdown of the work until the DESIGN / BUILD FIRM provides the necessary protection.
- J. In areas where there are existing pavement markings, the DESIGN / BUILD FIRM shall install temporary pavement markings any time traffic is diverted for a period of time that will exceed one work day or as allowed by the City of Miami Beach Public Works Department. Existing pavement markings that conflict with

the new work zone traffic pattern must be obliterated. Painting over existing pavement markings (black out) shall not be permitted.

#### 1.09 WORK SCHEDULE

- A. Substantial Completion: There are two substantial completions for this project: the first Substantial Completion, as defined in the General Conditions, shall be achieved either 225 days after the all permits have been obtained or 135 calendar days after the second Notice to Proceed (NTP2) is issued, whichever is greater, for the Dade Boulevard Reconstruction. The second Substantial Completion, as defined in the General Conditions is 330 calendar days for the West Avenue Bridge after all permits have been obtained.
- B. Completion: Project Final Completion, as defined in the General Conditions, shall be achieved within 60 calendar days after the second Substantial Completion.
- C. Time is of the essence in completing this project. Because time is of the essence, the DESIGN / BUILD FIRM shall commit the necessary resources to this project to complete it in a timely manner. Note that a typical workday will be based on hours between 8:30 am and 5:00 pm, Monday through Friday, excluding holidays. If the DESIGN / BUILD FIRM wish to work longer hours than those specified herein, it shall request so, in writing, a minimum of 72-hours (3-business days) of each week. Work completed at other than regular working hours should be easily observable by CITY on the subsequent day. If the DESIGN / BUILD FIRM propose to complete work that will be "covered up" after normal working hours, it shall reimburse CITY for costs associated with the observation of such work.
- D. The Construction progress will be measured with the construction schedule submitted by the DESIGN / BUILD FIRM. If the CITY determines that the DESIGN / BUILD FIRM does not meet the Critical Path Method (CPM) as specified in the Section entitled "Schedules and Reports", the DESIGN / BUILD FIRM will be required to commit those resources necessary to ensure the completion of the project in a timely manner. All costs incurred to implement measures to complete the WORK in timely manner will be borne by the DESIGN / BUILD FIRM.
- E. SCHEDULE TRACKING
  - 1. The DESIGN / BUILD FIRM shall submit scheduling information for the WORK as required in the Section entitled "Schedules and Reports".
  - 2. No separate payment shall be made for preparation and/or revision of the schedule.

#### 1.10 COMPUTATION OF CONTRACT TIME

- A. It is the DESIGN / BUILD FIRM's responsibility to provide clear and convincing documentation to the CITY as to the effect additional WORK will have with respect to additional contract time extension requirements. If additional quantities of WORK can be carried out concurrent with other existing construction activities without disrupting the critical path of the project then no contract time extension will be granted. The DESIGN / BUILD FIRM is obligated to provide documentation to the CITY if additional elements of WORK affect the critical path of the project. If WORK set forth in the original scope of the project is deleted, the contract time may be reduced. This contract is a calendar day contract. While the DESIGN / BUILD FIRM may be granted, time to suspend WORK operations for vacations or holidays, contract time will not be suspended. During suspensions, the DESIGN / BUILD FIRM shall be responsible for all maintenance of traffic and liability without additional compensation from the CITY. In addition, DESIGN / BUILD FIRM shall comply with timely notice requirements as specified in the General Conditions.

#### 1.11 PRE-CONSTRUCTION CONFERENCE

- A. Thirty (30) days prior to the start of construction activities, a Pre-Construction Conference will be held between the DESIGN / BUILD FIRM, CITY, other interested agencies, representatives of utility companies and others affected by the WORK. The time and place of this conference will be set by the CITY. The DESIGN / BUILD FIRM shall bring to the conference a copy of its preliminary WORK schedule for review and comment by the CITY. The schedule shall include sequences of operation and time schedule. The final schedule will be due as noted in the Section entitled "Schedules and Reports". The WORK shall be performed in accordance with such schedule or approved amendments thereto.

#### 1.12 UTILITY LOCATIONS

- A. To the extent possible, some existing utility lines in the project area have been shown on the conceptual plans. However, the CITY guarantees neither that all lines are shown, nor that said lines are in their true location. It shall be the DESIGN / BUILD FIRM's responsibility to identify and locate all underground or overhead utility lines or equipment affected by the project. No additional payment will be made to the DESIGN / BUILD FIRM because of discrepancies in actual and plan location of utilities and damages suffered as a result thereof of lines shown on the plans.
- B. The DESIGN / BUILD FIRM shall notify each utility company involved at least thirty (30) days prior to the start of construction to arrange for positive underground location, relocation or support of its utility where that utility may be in conflict with or endangered by the proposed construction. The DESIGN / BUILD FIRM shall pay for relocation of water mains or other utilities for the convenience of the DESIGN / BUILD FIRM. All charges by utility companies for temporary support of their utilities and permanent utility relocations to avoid

conflict shall be the responsibility of the DESIGN / BUILD FIRM and the utility company involved.

- C. The DESIGN / BUILD FIRM shall schedule and coordinate its WORK in such a manner that the utility companies relocating or supporting their utilities do not delay project construction activities. No compensation will be paid to the DESIGN / BUILD FIRM for any loss of time or delay.
- D. All overhead, surface or underground structures and/or utilities encountered are to be carefully protected from damage or displacement. All damage to said structures and/or utilities is to be completely repaired within a reasonable time; needless delay will not be tolerated. The CITY reserves the right to remedy any damage by ordering outside parties to make repairs at the expense of the DESIGN / BUILD FIRM. All repairs made by the DESIGN / BUILD FIRM are to be made to the satisfaction of the Utility Owner and shall be inspected by a representative of the Utility Owner and the CITY.
- E. Within forty-eight (48) hours before excavating, the DESIGN / BUILD FIRM should call the CITY, for assistance with locating City-owned utilities. The DESIGN / BUILD FIRM shall contact Sunshine State One Call of Florida (1-800-432-4770) for free locating service for utilities for contractors and excavators. Within forty-eight (48) hours before excavating, the DESIGN / BUILD FIRM should call Sunshine State One Call of Florida Inc., and a locator will be dispatched to the WORK location. The DESIGN / BUILD FIRM shall coordinate with the utility companies not included in the Sunshine State One Call of Florida, Inc. location service.

1.13 Construction Layout Survey

- A. The DESIGN / BUILD FIRM surveyor shall provide vertical and horizontal control for layout of the WORK in the form of benchmarks and control points located adjacent to the WORK. From these controls provided, the DESIGN / BUILD FIRM shall develop and make all detailed surveys needed for construction and shall establish all working points, lines and elevations necessary to perform the WORK. The surveying WORK shall be supervised by a Professional Land Surveyor registered in the State of Florida and meet the requirements of the Public works Manual, Part I, Section 1 Standard Design and Plan Production Criteria.

1.14 PROTECTION AND RESTORATION OF SURVEY

1.15 POINTS

- A. The DESIGN / BUILD FIRM shall carefully protect from disturbance all survey points, stakes bench marks, etc., whether or not established by it, and shall not remove or destroy any survey point until it has been properly referenced referenced/ tied-in by the DESIGN/BUILD Surveyor. Surveyor All survey points that have been damaged by the DESIGN / BUILD FIRM such as section

corners, 1/4 section corners, property corners or block control points, including centerline of road Right of Ways such as the points of curve, tangent and intersection, shall be replaced at the DESIGN / BUILD FIRM's expense with markers of a size and type as required by Florida State Statutes. Their replacement shall be under the supervision of a Florida Registered Land Surveyor. The DESIGN / BUILD FIRM Surveyor shall document survey monuments prior to construction and submit the location and type of all markers to the CITY. All survey points on the topographic, construction layout and as-built/record surveys perform through the duration of the project.

1.16 EQUIPMENT

- A. All equipment necessary and required for the proper construction of all work shall be on the construction site, in first-class working condition.

1.17 OWNERSHIP OF EXISTING MATERIALS

- A. All materials removed or excavated from the job site shall remain the property of the CITY until released by the CITY, at which time it shall become the property of the DESIGN / BUILD FIRM, who shall dispose of it in a manner, complying with all applicable jurisdictional requirements.

1.18 EXCESS MATERIAL

- A. All vegetation, debris, concrete or other unsuitable materials shall be disposed of off-site in approved areas provided by the DESIGN / BUILD FIRM. Storage of unsuitable materials on site shall not be allowed. All unsuitable materials are to be removed from work site as they are generated. The DESIGN / BUILD FIRM shall deliver any excess material desired to be retained by the CITY to a designated area within a 5-mile radius of the project, at no extra cost to the CITY.

1.19 AUDIO-VISUAL PRE-CONSTRUCTION RECORD

- A. General:
  - 1. The DESIGN / BUILD FIRM shall engage the services of a professional videographer. A responsible commercial firm known to be skilled and regularly engaged in the business of pre-construction color audio video tape documentation shall prepare the color audio-video tapes.
  - 2. Prior to beginning the WORK, the DESIGN / BUILD FIRM shall have a continuous color audio-video tape 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 tapes covering the construction area by the CITY. The CITY shall have the authority to reject all or any portion of the video tape not conforming to the specifications and order that it be redone at no additional charge. The DESIGN / BUILD FIRM shall reschedule unacceptable coverage within five

days after being notified. The CITY shall designate those areas, if any, to be omitted from or added to the audio-video coverage.

B. Equipment:

1. The DESIGN / BUILD FIRM shall furnish all equipment, accessories, materials and labor to perform this service.
2. The total audio-video system shall reproduce bright, sharp, clear pictures with accurate colors and shall be free from distortion, tearing, rolls or any other form of imperfection. The audio portion of the recording shall reproduce the commentary of the camera operator with proper volume and clarity and be free from distortion and interruptions.
3. When conventional wheeled vehicles are used, the distance from the camera lens to the ground shall not be less than twelve feet. In some instances, audio-video tape coverage may be required in areas not accessible by conventional wheeled vehicles. Such coverage shall be obtained by walking or special conveyance approved by the CITY.
4. The color video camera used in the recording system shall have a horizontal resolution of 300 lines at center, a luminance signal to noise ratio of 45 dB and a minimum illumination requirement of 25 foot-candles.

C. Recorded Information - Audio:

1. Each tape shall begin with the current date, project name and municipality and be followed by the general location, i.e., name of street, house address, viewing side and direction of progress. The audio track shall consist of an original live recording. The recording shall contain the narrative commentary of the videographer, recorded simultaneously with his fixed elevation video record of the zone of influence of construction.

D. Recorded Information - Video

1. All video recordings must, by electronic means, display continuously and simultaneously generated with the actual transparent digital information to include the date and time of recording, and station numbers as shown on the drawings. The date information shall contain the month, day and year. The time information shall contain the hour, minutes and seconds. Additional information shall be displayed periodically. Such information shall include, but not be limited to, project name, contract number, name of street, house address, direction of travel and the viewing side. This transparent information shall appear on the extreme upper left hand third of the screen.
2. All taping shall be done during times of good visibility. No taping shall be done during precipitation, mist or fog. The recording shall only be done

when sufficient sunlight is present to properly illuminate the subjects of recording and to produce bright, sharp video recordings of those subjects.

3. The rate of speed of the vehicle used during taping shall not exceed 10 miles per hour. Panning, zoom-in and zoom-out rates shall be sufficiently controlled to maintain a clear view of the object.
4. Video coverage shall include all surface features located within the zone influence of construction supported by appropriate audio coverage. Such coverage shall include, but not be limited to, existing driveways, sidewalks, curbs, pavements, ditches, mailboxes, landscaping, culverts, fences, signs and headwalls within the area covered. Particular attention should be paid to those items outside or adjacent to the work limits that may become damaged during construction.

1.20 ADJUSTING EXISTING VALVES, METERS, CATCH BASINS, AND MAINTENANCE ACCESS STRUCTURES (i.e. MANHOLES)

- A. It shall be the DESIGN / BUILD FIRM's responsibility to coordinate and have all adjustments made to existing water meters, valves, and structures encountered during construction, to meet all final grades, unless otherwise instructed by the respective utility owner. All valves and maintenance access structures shall be accessible during all phases of the WORK for emergency access. Omission of such structures from the conceptual plans does not relieve the DESIGN / BUILD FIRM from making such adjustments as may be deemed necessary.

1.21 ENVIRONMENTAL PROTECTION

- A. The DESIGN / BUILD FIRM shall furnish all labor and equipment and perform all WORK required for the prevention of environmental pollution during and as a result of the WORK under this contract. For the purpose of this contract, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents, which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life, affect other species of importance to man, or degrade the utility of the environment for aesthetic and recreational purposes. The control of environmental pollution requires consideration of air, water, land and involves noise, solid waste management and management of radiant energy and radioactive materials, as well as other pollutants.
- B. The DESIGN / BUILD FIRM shall take all steps necessary to protect water quality in the connected waters around the project and shall utilize such additional measures as directed by the CITY. Silt screens shall not be removed until the turbidity of the affected waters is equal to or lower than the ambient turbidity of undisturbed segments of adjacent surface waters.
- C. The DESIGN / BUILD FIRM shall implement a Stormwater Pollution Prevention Plan in accordance with the Florida Department of Environmental Protection

minimum requirements. The DESIGN / BUILD FIRM shall obtain and prepare all documents necessary to obtain a Florida Department of Environmental Protection National Pollution Discharge Elimination System Permit for Construction Activities.

- D. All protection requirements covered by this subsection shall comply with all applicable jurisdictional agency requirements.

#### 1.22 BASIS OF PAYMENT

- A. The DESIGN / BUILD FIRM's during the design the pay request shall contain updated project schedule and a written status report providing the status of each discipline under design and permitting. During construction Professional Land Surveyor will prepare "As-built record" Survey monthly to support the payment request. In the event of disputes, the CITY shall make the final determination; no additional compensation will be made for surveying services. A Florida Licensed Registered Professional Land Surveyor and meet the requirement of the Public works Manual, Part I, Section 1 Standard Design and Plan Criteria, Construction Layout Surveys shall supervise this WORK.
- B. The DESIGN / BUILD FIRM shall not be permitted to invoice for quantities of WORK beyond those contained in the contract and all previously approved change orders. Invoice for partial payment shall not be accepted by CITY as complete without the following:
  - 1. Certificate of payment to subcontractors.
  - 2. Updated Construction Schedule
  - 3. Release of Liens from subcontractors

#### 1.23 APPLICATION FOR PAYMENT FOR STORED MATERIALS

- A. The DESIGN / BUILD FIRM is advised that the CITY will not pay for stored materials.

#### 1.24 VIBRATORY COMPACTION

- A. The use of vibratory compaction equipment shall be limited to a total gross weight of three (3) tons. The use of vibratory equipment shall be limited to compacting backfill of utility trenches and subgrade of roadways only. If approved in writing by the CITY larger vibratory compaction equipment may be allowed if operated in a static mode only. The DESIGN / BUILD FIRM shall be responsible for all damages/claims resulting from its compaction activities on the surrounding neighborhood and its residents.

#### 1.25 REPORTING OF DAMAGE CLAIMS

- A. The DESIGN / BUILD FIRM shall keep the CITY informed of any damage claims made against the DESIGN / BUILD FIRM during the construction period.

All claims for automobile damage, property damage and/or bodily injury will be reported to the CITY within 24 hours of receipt of notice. DESIGN / BUILD FIRM will conduct a timely investigation of the claim and determine if they will honor claim and/or report to their insurance carrier and provide periodic updates, each quarter, until final disposition of claims. The DESIGN / BUILD FIRM will advise the CITY in writing of its decision/referral to carrier.

1.26 PERMITS

- A. It shall be the DESIGN / BUILD FIRM's responsibility to secure all permits of every description required to initiate and complete the work under this Contract, except for permits obtained by the CITY.
- B. The DESIGN / BUILD FIRM shall furnish signed and sealed sets of Contract Documents for permit use as required.
- C. The DESIGN / BUILD FIRM shall furnish to the DESIGN CRITERIA PROFESSIONAL and CITY copies of all permits prior to commencement of work requiring permits.
- D. The DESIGN / BUILD FIRM shall be responsible for procuring extension permits as required throughout the duration of the project. An allowance for Permit Fees is included in the Schedule of Price Bid.

1.27 DIMENSIONS OF EXISTING FACILITIES

- A. Where the dimensions and locations of existing improvements are of critical importance in the installation or connection of new work, the DESIGN / BUILD FIRM shall verify such dimensions and locations in the field prior to the fabrication and/or installation of materials or equipment which are dependent on the correctness of such information.

PART 2 - PRODUCTS (Not Applicable)

PART 3 - PART 3 - EXECUTION (Not Applicable)

- END OF SECTION -

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

AGREEMENT

Between

CITY OF MIAMI BEACH, FLORIDA

and

\_\_\_\_\_

for

XXXXXXXXXXXXXXXXXXXXXXX

This is an Agreement (the "Agreement") between the CITY OF MIAMI BEACH, FLORIDA, a not for profit corporation of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

AND

\_\_\_\_\_, its successors and assigns, hereinafter referred to as "DESIGN/BUILD FIRM."

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and DESIGN/BUILD FIRM agree as follows:

**ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS**

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

Whenever the following terms or pronouns in place of them appear in this Agreement the intent and meaning shall be interpreted as follows:

1.00 Applicable Laws: All federal, state, county, and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Project and any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws may be amended from time to time to perform the Work

1.01 Change Order: To the extent permitted under this Agreement, a fully executed written document authorizing a change in the Contract Price or Contract Time or a material change in the Work.

1.02 City: The CITY (or Owner) shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139, which is a party hereto and/or for which this Contract is to be performed. In all respects hereunder, CITY's performance is pursuant to CITY's position as the owner of a construction project. In the event CITY exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to CITY's regulatory authority as a

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

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governmental body and shall not be attributable in any manner to CITY as a party to this Contract.

1.03 City Commission: City Commission shall mean the governing and legislative body of the CITY.

1.04 City Manager: City Manager shall mean the Chief Administrative Officer of the CITY.

1.05 Construction Documents Phase: The phase in which DESIGN/BUILD FIRM will consult with the Contract Administrator and prepare the Construction Documents for the Project, based upon the DCP, for review and approval of the CITY (including, without limitation, any and all applicable CITY departments) and any applicable regulatory agencies.

1.06 Construction Manager: The Construction Manager is the authorized individual or firm which is the representative of DESIGN/BUILD FIRM who will administer/manage the construction effort on behalf of the DESIGN/BUILD FIRM.

1.07 Construction Manager Representative: An authorized representative of Construction Manager assigned to the Project site to perform those services detailed in Article 17.

1.08 Construction Phase. The phase of services which constitutes DESIGN/BUILD FIRM's administration of the construction of the Project and all activities necessary for the completion of the Project.

1.09 Consultant: The registered architect, professional engineer, professional land surveyor, civil engineer, architect and/or registered landscape architect who has contracted with or who is employed by DESIGN/BUILD FIRM to provide professional services for the design of the Project and who is licensed by the State of Florida to provide said services

1.10 Contract: This Agreement and all addenda, exhibits and amendments thereto between the CITY and the DESIGN/BUILD FIRM for this Project, all as defined herein. Contract shall also mean the same as Agreement.

1.11 Contract Administrator: The CITY's Capital Improvement Projects Office Director, or his designee, shall be designated as the Contract Administrator for matters concerning the Agreement.

1.12 Contract Documents: This Agreement, as approved by the Mayor and City Commission, pursuant to and subject to the conditions of City Resolution No. 2013-xxxxx, and executed by the Mayor and City Clerk, and any addendums, exhibits or amendments thereto; Change Orders; the performance bond and payment bonds; the DCP; the Construction Documents, including but not limited to, Plans and Specifications (as approved and permitted) as prepared by the DESIGN/BUILD FIRM in general accordance with the DCP, computerized Critical Path Method (CPM) Project Schedule and Schedule of Values; and any additional documents the submission of which is required by this Agreement. When reference is made in the Contract Documents to publications, standards or codes issued by associations or societies, the intent shall be to specify the current or adopted edition of such publication or standard including revision and effect on the date of the issuance of all applicable permits.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

1.13 Contract Time: The original time between Project commencement and Project completion, including any milestone dates thereof, established in Article 6 of the Contract, as may be amended by Change Order.

1.14 Contract Price: The Guaranteed Maximum Price agreed to between DESIGN/BUILD FIRM and the CITY. The Contract Price is not subject to increase, except as expressly allowed within the Contract Documents.

1.15 Design/Build Firm: \_\_\_\_\_, its successors and assigns, is the DESIGN/BUILD FIRM selected to perform the Work pursuant to this Agreement, and is the person, firm or corporation liable for the acceptable performance of, and payment of all legal debts pertaining to, the Project. All references in the Contract Documents to third parties under contract or control of DESIGN/BUILD FIRM shall be deemed to be a reference to DESIGN/BUILD FIRM. The DESIGN/BUILD FIRM will be responsible for the provision, installation, and performance of all equipment, materials, and services offered. The DESIGN/BUILD FIRM is in no way relieved of the responsibility for the performance of all equipment furnished.

1.16 Design Criteria Package (DCP): DCP shall mean those certain conceptual plans and specifications and performance oriented drawings or specifications of the Project, as prepared and sealed by the Design Criteria Professional, and in compliance with the requirements of Section 287.055, Florida Statutes.

1.17 Design Criteria Professional: Design Criteria Professional shall mean the individual or entity who/which holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who is employed by or retained by the CITY to provide professional services in compliance with the requirements of Section 287.055, Florida Statutes, and in connection with the preparation of the DCP; who shall review and provide recommendations regarding the Construction Documents prepared by the DESIGN/BUILD FIRM for the Project; and evaluate compliance of Project construction with the DCP.

1.18 Field Order: A written order issued by the Contract Administrator or Project Manager which orders minor changes in the Project but which does not involve a change in the Contract Price or Contract Time or a material change in the Work.

1.19 Final Completion: The date certified by the Project Manager or the Design Criteria Professional that all conditions of the permits and regulatory agencies have been met; all construction, including corrective and punch list work, has been performed; all administrative requirements of the Contract Documents have been completed; and CITY has received from DESIGN/BUILD FIRM all necessary documentation, as deemed by the CITY, including but not limited to the following: all final releases of liens, consent of surety, release of claims by DESIGN/BUILD FIRM, corrected as-built drawings, a final bill of materials, executed final adjusting Change Order, final invoice, "before and after" electronic DVD's (including, without limitation, electronic DVD's of stormwater lines and outfalls within the Project limits), copies of pertinent test results, correspondence, warranties, guarantees, operational manuals, spare parts, service contracts and tools.

1.20 [Intentionally Deleted].

1.21 Contractor: \_\_\_\_\_, its successors and assigns (the DESIGN-BUILD FIRM) shall also be the general contractor which shall perform the Work pursuant to this Agreement.

1.22 Hazardous Materials: As used in this Contract the term “Hazardous Materials” means any chemical, compound, material, substance or other matter that:

- (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- (b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- (c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or
- (d) is any other material or substance giving rise to any liability, responsibility or duty upon the CITY with respect to any third person under any Hazardous Materials Law.

1.23 Hazardous Materials Laws: As used in this Contract, the term “Hazardous Materials’ Laws” means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so called “common law”), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§6901 et seq.), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

1.24 Material(s): Material(s) incorporated in this Project or used or consumed in the performance of the Work.

**1.25 GUARANTEED MAXIMUM PRICE: THE MUTUALLY AGREED UPON CONTRACT PRICE TO BE PAID TO THE DESIGN/BUILD FIRM, AND THAT THE DESIGN / BUILD FIRM GUARANTEES NOT TO EXCEED, FOR ALL LABOR, EQUIPMENT, AND MATERIALS TO DESIGN, PERMIT, ADMINISTER, COORDINATE, INSPECT, CONSTRUCT, AND INSTALL THE PROJECT WITHIN THE CONTRACT TIME. THE GUARANTEED MAXIMUM PRICE IS NOT SUBJECT TO INCREASE, EXCEPT AS EXPRESSLY ALLOWED WITHIN THE CONTRACT DOCUMENTS.**

1.26 Notice-to-Proceed: A written document issued by the Contract Administrator informing the DESIGN/BUILD FIRM to officially begin the Project.

1.27 Plans and Specifications: The official graphic and descriptive representations of the Project which, upon written approval of CITY, shall become a part of the Contract Documents. 1.28 Project: The DESIGN/BUILD FIRM will be responsible for the design, permitting, construction and construction management associated with the rehabilitation and restoration of the historic London House Project. The Project limits consist of the properties located at 1965 & 1975 Washington Avenue. A DCP has been prepared by the Design Criteria Professional and includes and/or references in such DCP, as the case may be, conceptual construction drawings and technical specifications for the exterior Architectural Features, Structural Shell (including sheathing), Site Construction, Concrete, Masonry, Rough and Finish

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

Carpentry, Thermal and moisture protection, Doors and Windows, Interior Finishes, Equipment, Conveying Systems, Plumbing, Mechanical and Electrical.

The DESIGN/BUILD FIRM shall obtain all necessary permits for the construction of the Project including, but not limited to, the following: Miami-Dade Department of Health, Miami-Dade Department of Environmental Resources Management, and the CITY's regulatory departments (i.e. Public Works, Fire, Building, etc.).

1.29 Project Manager: An authorized representative of CITY, who may be a CITY employee or a Resident Project Representative assigned to the Project by the CITY, assigned to make necessary observations of materials furnished by DESIGN/BUILD FIRM and of the Work performed by DESIGN/BUILD FIRM as detailed in Subsection 5.06.

1.30 Shop Drawings: Drawings, diagrams and schedules, and other data specially prepared by the DESIGN/BUILD FIRM or its Subcontractors, sub-Subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.31 Subconsultant: The person or entity who is a registered architect, professional engineer, professional land surveyor, and/or registered landscape architect having a contract with Consultant to provide professional services for the design of the Project and who is licensed by the State of Florida to provide said services.

1.32 Subcontractor: The person or entity having a direct contract with DESIGN/BUILD FIRM including one who furnishes material worked to a special design according to the Contract Documents for this Project, but does not include one who merely furnishes materials not so worked.

1.33 Substantial Completion: Subject to the requirements of Article 41, the date(s) certified by the Contract Administrator that all conditions of the permits and regulatory agencies have been met for the CITY's intended use of the Project, and all construction has been performed therein in accordance with the Contract Documents so CITY can fully occupy or utilize, as opposed to partially occupy or utilize, the Project for its intended purpose. At a minimum, a Certificate of Substantial Completion is one of the requirements for Substantial Completion.

1.34 Surety: The surety company or individual which is bound by the performance bond and payment bonds with and for DESIGN/BUILD FIRM who is primarily liable and which surety company or individual is responsible for DESIGN/BUILD FIRM's acceptable performance of the Work under the Contract and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.35 Utilities: The public or private systems on the Project site for rendering electrical power, light, heat, gas, water, communication, sewage systems, and the like.

1.36 Work: The completed construction required by the Contract Documents, as permitted, including all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

**ARTICLE 2 GENERAL PROVISIONS**

2.01 Generally: DESIGN/BUILD FIRM hereby agrees to furnish all of the labor, Materials, equipment, Work, services, and incidentals necessary to perform all of the Work described in

the Contract Documents, and related thereto for the Project, for the Guaranteed Maximum Price.

2.02 Relationship of CITY and DESIGN/BUILD FIRM: The DESIGN/BUILD FIRM accepts the relationship of trust and confidence established between it and the CITY by this Agreement. The DESIGN/BUILD FIRM represents that it will furnish its best skill and judgment in performing the Work, and shall always act to further the interest of the CITY in the expeditious completion of the Project at the lowest cost to the CITY, and in strict accordance with the Contract Documents and prudent and customary construction practices.

By signing this Contract, the DESIGN/BUILD FIRM accepts a fiduciary duty with the CITY and warrants and represents to the CITY that the DESIGN/BUILD FIRM: (a) has all licenses and certifications required by Applicable Laws; (b) is experienced in all aspects of pre-construction and construction planning for projects similar to the Project; (c) will act in the CITY'S highest and best interests in performing the Work; and (d) that no employee or affiliate of the DESIGN/BUILD FIRM, including all Subconsultants, Subcontractors, and suppliers, at any tier, has been convicted of a public entity crime, fraud, theft and/or a property damage crime within the preceding thirty-six (36) months from the time this Contract is executed, pursuant to Section 287.133, Florida Statutes.

2.03 Intention of CITY: It is the intent of CITY to describe in this Agreement and the DCP a functionally complete Project to be designed and constructed in accordance with the Contract Documents, for the Guaranteed Maximum Price, and in accordance to all Applicable Laws governing construction of the Project. Any Work, services, Materials, or equipment that may reasonably be inferred from the Agreement and the DCP as being required to produce the intended result shall be supplied by DESIGN/BUILD FIRM whether or not specifically called for. When words which have a well-known technical or trade meaning 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 associations, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of issuance of all applicable permits. If a conflict exists between two or more referenced standards, the most stringent shall apply. The CITY shall have no duties other than those duties and obligations expressly set forth within the Agreement and the DCP.

2.04 Preliminary Matters:

2.04.01 Within five (5) calendar days prior to the pre-construction meeting described in Subsection 2.04.02, DESIGN/BUILD FIRM shall submit the following to Project Manager, for Project Manager's review and approval:

2.04.01.01 A CPM Project "Base Line" Schedule inclusive of all contract scope, one (1) copy on a CD, and one (1) hard copy (activities arranged in "waterfall"), in the indicated form for final review and approval:

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- ( ) Bar Chart
- ( ) Modified CPM
- ( ) CPM
- (X) Computerized CPM **using the latest edition of the Primavera software**

(CPM shall be interpreted to be generally as outlined in the Association of General Contractors (AGC) publication, "The Use of CPM in Construction.")

DESIGN/BUILD FIRM shall provide a preliminary man loaded, logic based CPM Project "Base Line" Schedule using "Early Start" and "Early Finish" dates for each activity. The DESIGN/BUILD FIRM shall include, in addition to normal work activity input, input that encompasses all submittal approvals; delivery durations for important materials and/or equipment; logic relationships of activities, including physical and site restraints; and shall clearly identify the Project's critical path. This input shall be precedence based CPM scheduling using the most recent version of Primavera software. DESIGN/BUILD FIRM shall provide Project Manager with a copy of the software.

The preliminary CPM Project "Base Line" Schedule, when submitted, shall have attached a program-generated error report stating that no errors exist in the schedule.

DESIGN/BUILD FIRM shall submit monthly, with each requisition for payment, an update of the CPM Project Schedule (with a program-generated error report stating that no errors exist in the schedule and that does not revise the CPM Project "Base Line" Schedule's Substantial Completion or Final Completion date) showing the progress for the month. DESIGN/BUILD FIRM SHALL SUBMIT ONE HARD COPY AND ONE ELECTRONIC COPY. In addition to the CPM Project "Base Line" Schedule, DESIGN/BUILD FIRM shall include a narrative report of the month's progress, an explanation of any delays and or additions/deletions to activities.

It is strongly recommended that DESIGN/BUILD FIRM hire a seasoned professional, in the use of Primavera, to develop and update the Primavera CPM Project "Base Line" Schedule.

DESIGN/BUILD FIRM shall attend weekly progress meetings and provide an updated (3) week look ahead schedule for review and discussion and, monthly, be prepared to discuss any:

- 1) Proposed changes to the CPM Project "Base Line" Schedule logic;
- 2) Explain and provide a narrative for reasons why logic changes should be made;
- 3) Update to individual subcontractor activities; and
- 4) Integration of changes into the schedule.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

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The CPM Project "Base Line" Schedule shall be the basis of the DESIGN/BUILD FIRM's Work and shall be complied with in all respects.

If the DESIGN/BUILD FIRM's Work becomes more than (30) days behind schedule DESIGN/BUILD FIRM shall be required to submit a "Make-Up" schedule to Project Manager, for review and approval, that demonstrates "Catch Up" within thirty (30) days. DESIGN/BUILD FIRM shall provide, at DESIGN/BUILD FIRM's sole expense, the necessary additional labor and or equipment necessary to make-up the lost time. Failure to provide a "Make-Up" schedule or vigorously follow the "Make-Up" schedule shall be reason to default DESIGN/BUILD FIRM.

2.04.01.02 After award, but prior to the submission of the final CPM Project "Base Line" Schedule, Project Manager, Contract Administrator and DESIGN/BUILD FIRM shall meet with all utility owners and secure from them a schedule of utility relocation; provided, however, that CITY shall not be responsible for non-performance by the utility owners.

2.04.01.03 A preliminary schedule of Shop Drawing submissions; and

2.04.01.04 A preliminary Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of work which will be confirmed in writing by DESIGN/BUILD FIRM at the time of submission.

2.04.02 At a time specified by Project Manager, but before DESIGN/BUILD FIRM commences the Work at the Project site, a conference attended by DESIGN/BUILD FIRM, Project Manager and others, as deemed appropriate by Contract Administrator, will be held to discuss the schedules referred to in Subsection 2.04.01; to discuss procedures for handling Shop Drawings and other submittals; for processing requisitions for payment; and to establish a working understanding among the parties as to the Work.

2.04.03 Within thirty-five (35) days from the Project Initiation Date (as set forth in the first Notice-to-Proceed), a conference attended by DESIGN/BUILD FIRM, Project Manager and others, as deemed appropriate by Contract Administrator, will be held to finalize the schedules submitted in accordance with Subsection 2.04.01. Within forty-five (45) days after the Project Initiation Date (as set forth in the first Notice-to-Proceed), the DESIGN/BUILD FIRM shall revise the original schedule submittal to address all review comments from the CPM review conference and resubmit for Project Manager review. The finalized CPM Project "Base Line" Schedule will be accepted by Project Manager only as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance shall not constitute acceptance by CITY of the means or methods of construction or of the sequencing or scheduling of the Work, and such acceptance will not impose on the CITY responsibility for the progress or scheduling of the Work, nor relieve DESIGN/BUILD FIRM from full responsibility therefore. The finalized schedule of Shop Drawing submissions must be acceptable to

Project Manager as providing a workable arrangement for processing the submissions. The finalized Schedule of Values pursuant to Subsection 2.04.01.03 above must be acceptable to Project Manager as to form and substance.

2.05 The DESIGN/BUILD FIRM agrees that the Work shall be performed in a good and professional manner, free from defects in Materials and workmanship, conflicts, and that all Materials shall be new and approved by and acceptable to the Project Manager and Contract Administrator, except as otherwise expressly provided for in the Contract Documents. The DESIGN/BUILD FIRM shall cause all Materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the Project improvements.

### **ARTICLE 3 INTENTION OF AGREEMENT**

It is the intent of the Agreement and the DCP to describe a functionally complete Project to be designed and constructed by the DESIGN/BUILD FIRM in accordance with the Contract Documents and for the Guaranteed Maximum Price. Any Work, Materials, services or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, Materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to Applicable Laws including, without limitation, reference to standard specifications, manuals or codes of any technical society, organization or association, or to laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of issuance of all applicable permits. Applicable Laws that may be changed after a permit is issued may result in additional compensation should additional Work or services be required on behalf of the DESIGN/BUILD FIRM.

### **ARTICLE 4 CONTRACT DOCUMENTS**

4.01 The Contract Documents shall be followed as to Work, Materials, and dimensions except when the Contract Administrator may authorize, in his/her sole discretion, and in writing, an exception.

4.02 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Consultant, with concurrent written notice to Contract Administrator and Project Manager. DESIGN/BUILD FIRM shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Consultant, with concurrent written notice to Contract Administrator and Project Manager.

4.03 DESIGN/BUILD FIRM shall maintain four (4) copies of the Contract Documents; two (2) of which shall be preserved and always kept accessible at the site for the Contract Administrator, Project Manager, and/or their authorized representatives.

4.04 This Contract incorporates by reference the Contract Documents defined in Subsection 1.12. The following documents listed in Subsection 1.12 have the following order of precedence, beginning with the most important:

1. This Agreement (Contract) and all exhibits, addendums, and amendments thereto;
2. Change Orders (to the extent permitted under this Agreement);

3. The Specifications (approved and permitted);
4. The Plans (approved and permitted);
5. The DCP;
6. CPM Project Schedule and Schedule of Values.

### **ARTICLE 5 SCOPE OF WORK**

5.01 DESIGN/BUILD FIRM hereby agrees to complete the Project generally described by the DCP, including furnishing all preliminary study designs, drawings and specifications, job site inspection, administration of construction, engineering, architecture, landscape architecture, and land surveying services, labor, materials, equipment and other services necessary to perform all of the Work described in the Contract Documents, to be prepared by the DESIGN/BUILD FIRM, including drawings and addenda thereto for the construction of the Project, to be constructed in accordance with the requirements and provisions of said Contract Documents and for the Guaranteed Maximum Price.

5.02 DESIGN/BUILD FIRM agrees to meet with Contract Administrator and/or Project Manager or their designees at reasonable times and with reasonable notice.

5.03 Prior to the Final Completion of construction services under this Agreement, and as a condition precedent to final payment, there shall be established a record set of Plans and Specifications, on reproducible vellum and on CD Rom, noncompressed, formatted in the latest version of AutoCAD, which shall bear the approvals of DESIGN/BUILD FIRM and Contract Administrator. Such approval shall be indicated by the written signature of both parties. In addition, prior to the commencement of construction services under this Agreement, DESIGN/BUILD FIRM shall submit to the Contract Administrator a CPM Project "Base Line" Schedule, and such other items as required in Subsection 2.04.03, for the planning and execution of the Construction Phase of the Project, for prior written approval by Project Manager.

5.04 DESIGN/BUILD FIRM herein represents that Construction Manager, at a minimum, will provide the following services:

5.04.01 At least thirty (30) days prior to the commencement of the Construction Phase of the Project, the DESIGN/BUILD FIRM will identify and provide the qualifications of a suitably qualified and experienced Construction Manager who will be full time, on site at the Project.

5.04.02 DESIGN/BUILD FIRM will use reasonable efforts to have the same Construction Manager on the Project full time to its conclusion, and any new representative will first be approved in writing by Contract Administrator before permanent assignment. Approval shall not be unreasonably withheld.

5.04.03 The Construction Manager will conduct weekly on-site meetings with the Contractor and its Subcontractors at regular times, as previously agreed upon and approved by the Project Manager, and shall issue weekly reports on the progress of the Work and the minutes of the previous meeting.

5.04.04 Construction Manager will administer the Contractor's Work.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

5.04.05 The Construction Manager shall maintain and monitor the CPM Project Schedule, subject to Project Manager's prior written approval, and implement updates as required.

5.04.06 The Construction Manager shall coordinate the processing of shop drawings and material submittals.

5.04.07 The Construction Manager will endeavor to achieve satisfactory performance by Contractor and, if required, will require corrections to Contractor's Work including, but not limited to, maintaining punch lists and observing testing.

5.04.08 The Construction Manager will monitor the cost of the Project, including payment applications and the preparation thereof.

5.04.09 The Construction Manager will assist in the preparation of record drawings, and shall transmit to the Consultant requests for additional information concerning the design. In addition, the Project Manager shall be copied on these requests for monitoring purposes.

5.04.10 The Construction Manager will observe testing and start-up activities of machinery and utilities.

5.04.11 The Construction Manager will secure all equipment brochures and warranties from the Contractor.

5.04.12 The Construction Manager will coordinate the correction and completion of the Work including that required by the punch list.

5.05 DESIGN/BUILD FIRM herein represents that Consultant, at a minimum, will provide the following services:

5.05.01 Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.

5.05.02 Consultant shall design the Project so as to comply with all Applicable Laws.

5.05.03 Consultant shall prepare the Plans and Specifications, as well as obtain all required and necessary reviews and approvals (or take other appropriate action upon) for same, and/or other submittals including, but not limited to, shop drawings, product data, and samples.

Consultant shall also submit the Plans and Specifications to the Design Criteria Professional, with a copy to Contract Administrator, for his/her review and written approval. Design Criteria Professional shall expeditiously review and approve the Plans and Specifications in accordance with the accepted Project Schedule. Design Criteria Professional's approval of the Plans and Specifications shall not constitute acceptance of any design work which does not comply with Applicable Laws, the DCP, and/or with the terms of this Contract. Except as provided in, and to the extent limited by, the preceding sentence, the approval of the Plans and Specifications by the Design Criteria

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Professional, shall constitute a representation by the Design Criteria Professional that the Project, if constructed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors, and those in the building trade; and include documents necessary for regulatory agency and other governmental approvals.

5.05.04 Consultant shall prepare construction change directives, if necessary, at no additional cost to CITY, and authorize minor changes in the Work, as provided in the Contract Documents.

5.05.05 Consultant shall receive and review for compliance with the Contract Documents all written warranties and related documents required hereby to be assembled upon Substantial Completion and issue Applications for Payment performed in compliance with the requirements of the Contract Documents;

5.05.06 The approved and permitted Plans and Specifications, shall constitute a representation by Consultant to CITY that the Project, if constructed as required by the Contract Documents, will be sufficient for its purposes. The Plans and Specifications shall include technical drawings, schedules, diagrams, and specifications setting forth in detail the requirements for construction of the Project; provide information necessary for the use of Contractor, Subcontractors, and those in the building trade; and include documents necessary for regulatory agency and other governmental approvals.

5.06 Project Manager will provide the following services:

5.06.01 The Project Manager shall review Applications for Payment and coordinate the processing thereof with the CITY.

5.06.02 The Project Manager shall monitor the schedule(s).

5.06.03 The Project Manager shall track, log and review all required Project related documents and subsequently address any and all concerns with DESIGN / BUILD FIRM.

5.06.04 The Project Manager shall review and observe the Work and testing thereof for general conformance and compliance with the intent of the DCP.

5.06.05 The Project Manager shall attend all required meetings and maintain and distribute meeting minutes, with the exception of weekly construction progress meetings as noted in 5.04.03.

5.06.06 At all times the Project Manager will act as liaison between the parties to this Agreement, and Contract Administrator.

**ARTICLE 6 COMPLETION DATE**

6.01 Time is of the essence for the DESIGN/BUILD FIRM'S performance of the Work pursuant to this Contract. The DESIGN/BUILD FIRM agrees to complete the Work in accordance with the accepted CPM Project Schedule and to achieve Substantial Completion of

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

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the Work, in accordance with this Contract, and within the Contract Time. DESIGN/BUILD FIRM acknowledges that failure to achieve Substantial Completion will result in substantial damages to the CITY, such as loss of beneficial use and/or occupancy of the Project. Completion of the Work shall be achieved no later than thirty (30) calendar days after issuance of a Certificate of Substantial Completion by the Contract Administrator.

6.02 DESIGN/BUILD FIRM shall be instructed to commence the Work by written instructions in the form of a Purchase Order issued by the CITY's Procurement Director, and Notices-to-Proceed issued by the Contract Administrator. As contemplated in subsection 6.02.01 hereof, and following the issuance of the first Notice-to-Proceed, the City's intent is to issue multiple Notices-to-Proceed for the construction phase of this Contract. DESIGN/BUILD FIRM shall commence designing, scheduling activities, permit applications, and other preconstruction work within five (5) calendar days after the Project Initiation Date, which shall be the same as the date of the first Notice-to-Proceed. The first Notice-to-Proceed and Purchase Order will not be issued until DESIGN/BUILD FIRM'S submission to CITY of all required documents and after execution of the Contract by both parties.

- 6.02.01.1 The CITY may issue phased (i.e. multiple) Notices to Proceed for the construction phase based on the receipt of permits from the respective regulatory agencies. The receipt of all necessary permits by DESIGN/BUILD FIRM and review, approval, and acceptance of the CPM Project Schedule by CITY, in accordance with the technical specifications, submittal schedule, and Schedule of Values, is a condition precedent to the issuance of any subsequent Notices-to-Proceed to mobilize on the Project site and commence with physical construction work. DESIGN/BUILD FIRM shall bear the responsibility for all re-work, including design and permitting costs, should the respective regulatory agencies require. Contractor shall submit all necessary documents required by this provision within twenty-one (21) calendar days of the issuance of the first Notice-to-Proceed.
- 6.02.02 The DESIGN / BUILD FIRM shall complete the design phase for the building located at 1965 Washington Ave within 30 calendar days of the Notice-to-Proceed No. 1.
- 6.02.03 The DESIGN / BUILD FIRM shall complete the permitting and construction phase for the building located at 1965 Washington Ave and be substantially complete within 180 calendar days from issuance of a Notice-to-Proceed No. 2.
- 6.02.04 The DESIGN / BUILD FIRM shall complete the design phase for the building located at 1975 Washington Ave within 90 calendar days of the Notice-to-Proceed No. 1.
- 6.02.05 The DESIGN / BUILD FIRM shall complete the permitting and construction phase for the building located at 1975 Washington Ave and be substantially complete within 360 calendar days from issuance of Notice-to-Proceed No. 3.

**6.03 TIME IS OF THE ESSENCE THROUGHOUT THIS CONTRACT. THE WORK SHALL BE SUBSTANTIALLY COMPLETED FOR THE BUILDING LOCATED AT 1965 WASHINGTON AVE WITHIN ONE HUNDRED EIGHTY (180) CALENDAR DAYS FROM THE DATE SPECIFIED IN THE SECOND NOTICE-TO-PROCEED; THE WORK SHALL BE SUBSTANTIALLY COMPLETED FOR THE BUILDING LOCATED AT 1975 WASHINGTON AVE WITHIN THREE HUNDRED SIXTY (360) CALENDAR DAYS FROM THE DATE SPECIFIED IN THE THIRD NOTICE-TO-PROCEED (I.E. WITHIN FOUR HUNDRED EIGHTY(480) CALENDAR DAYS FROM THE PROJECT INITIATION DATE), AND COMPLETED AND READY FOR FINAL PAYMENT IN ACCORDANCE WITH ARTICLE 8,**

**WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE CERTIFIED BY CONTRACT ADMINISTRATOR AS THE DATE OF SUBSTANTIAL COMPLETION.**

6.04 Upon failure of DESIGN/BUILD FIRM to substantially complete the entire Contract within the total specified period of time, plus approved time extensions, DESIGN/BUILD FIRM shall pay to CITY the sum of One Thousand Dollars (\$ 1,000.00) for each calendar day after the time specified in Article 6 (plus any approved time extensions) for Substantial Completion on the entire Project. After Substantial Completion, should DESIGN/BUILD FIRM fail to complete the remaining Work within ten (10) calendar days after said thirty (30) calendar day period for completion and readiness for final payment, DESIGN/BUILD FIRM shall pay to CITY the sum of One Thousand Dollars (\$ 1,000.00) for each calendar day after said ten (10) calendar day period, for completion and readiness for final payment. The time frame for liquidated damages shall not commence and thus shall not be tolled until the Contract Administrator submits the punch list to the DESIGN/BUILD FIRM. These amounts are not penalties but are liquidated damages to CITY for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by CITY as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of DESIGN/BUILD FIRM to complete the Contract on time.

6.05 CITY is authorized to deduct liquidated damages from monies withheld due to DESIGN/BUILD FIRM for the Work under this Contract or as much thereof as CITY may, in its sole discretion, deem just and reasonable. The CITY shall first deduct the liquidated damages from the monies referenced in Subsection 8.02.

6.06 DESIGN/BUILD FIRM shall be responsible for reimbursing CITY, in addition to liquidated damages, for all costs incurred by Project Manager in administering the construction of the Project beyond the completion date specified above. All such costs shall be deducted from the monies due DESIGN/BUILD FIRM for performance of Work under this Contract by means of unilateral credit Change Orders issued by CITY as costs are incurred by Project Manager and agreed to by Contract Administrator.

**ARTICLE 7 DESIGN/BUILD FIRM'S RESPONSIBILITY**

7.01 The parties acknowledge and agree that the DESIGN/BUILD FIRM will be responsible for the design, permitting, construction, and the construction management associated with the rehabilitation and restoration of the two (2) historic London House apartment buildings located respectively at 1965 Washington Ave and 1975 Washington Ave, using those necessary construction activities that include but is not limited to work on the exterior Architectural Features, Structural Shell (including sheathing), Site Construction, Concrete, Masonry, Rough and Finish Carpentry, Thermal and Moisture Protection, Doors and Windows, Interior Finishes, Equipment, Conveying Systems, Plumbing, Mechanical and Electrical.

7.02 DESIGN/BUILD FIRM shall be fully responsible for applying for and securing all permits and approvals from all governmental authorities having jurisdiction over the Project. All permits and licenses required by federal, state or local laws, rules and regulations necessary for the prosecution of the Project by DESIGN/BUILD FIRM pursuant to this Agreement shall be secured and paid for by DESIGN/BUILD FIRM. It is DESIGN/BUILD FIRM'S responsibility to

have and maintain appropriate certificate(s) of competency, valid for the Work to be performed and for all persons working on the Project for whom a certificate of competency is required.

7.03 DESIGN/BUILD FIRM shall be fully responsible for the actions of all its agents, servants, employees including, but not limited to: the Contractor, Consultant, Subcontractors, Subconsultants, sub-Subcontractors, sub-Subconsultants, material persons (pursuant to Chapter 713, Florida Statutes), and any and all other persons working for it in conjunction with the design and construction of the Project.

7.04 DESIGN/BUILD FIRM shall be fully responsible for all acts or omissions of its Contractor, Consultant, Subcontractors, Subconsultants, sub-Subcontractors, sub-Subconsultants, material persons, and any and all other persons working for DESIGN/BUILD FIRM in conjunction with the design and construction of the Project; any and all persons working for Contractor, Consultant, Subcontractors or Subconsultant; and any and all persons for whose acts any of the aforesaid may be liable, to the same extent DESIGN/BUILD FIRM is responsible for the acts and omissions of persons directly employed by DESIGN/BUILD FIRM. Nothing in this Agreement shall create any contractual relationship between CITY and Consultant, or CITY and any Subcontractor, Subconsultant, sub-Subcontractor, sub-Subconsultant, or any other person working either for DESIGN/BUILD FIRM or for any of the aforesaid parties in conjunction with the design and construction of the Project; including, without limitation, any obligation on the part of CITY to pay or to see to the payment of any monies due to any of the aforesaid parties.

7.05 DESIGN/BUILD FIRM agrees to bind its Consultant, Subcontractors, and Subconsultants to the applicable terms and conditions of this Agreement for the benefit of CITY.

7.06 Unless otherwise provided herein, DESIGN/BUILD FIRM shall provide and pay for all architecture, engineering, landscape architecture, land surveying services, Materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the design and construction of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.

7.07 DESIGN/BUILD FIRM shall at all times enforce strict discipline and good order among its employees, Consultants, Subcontractors and Subconsultants at the Project site, and shall not employ on the Project any unfit person or anyone not skilled in the work and/or services assigned to him or her.

7.08 [Intentionally omitted]

7.09 DESIGN/BUILD FIRM shall keep itself fully informed of, and shall take into account and comply with any and all Applicable Laws affecting those engaged or employed in the Project; or the Materials used or employed in the design and construction of the Project; or in any way affecting the conduct of the Project; including, without limitation, all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is in violation of any such Applicable Laws, DESIGN/BUILD FIRM shall forthwith report the same to the Contract Administrator in writing. DESIGN/BUILD FIRM shall cause all its employees, agents, Consultant, Subcontractors, Subconsultants, and sub-Subcontractors to observe and comply with all Applicable Laws.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

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7.10 In the event of a change after the issuance of any applicable permit for the Project in any Applicable Law which in any manner affects the Project, DESIGN/BUILD FIRM shall advise the Contract Administrator, in writing, and the Contract Administrator may initiate a Changer Order request to the DESIGN/BUILD FIRM and process a Change Order, the purpose of which shall be to bring the Project into compliance with such Applicable Law, as amended or enacted.

7.11 DESIGN/BUILD FIRM shall pay all applicable sales, consumer, use and other taxes required by law. DESIGN/BUILD FIRM is responsible for reviewing the pertinent State statutes involving State taxes and complying with all requirements.

7.12 CITY shall have the right to inspect and copy, at CITY'S expense, the books and records and accounts of the DESIGN BUILD/FIRM which directly relate to the Project, and to any claim for additional compensation made by the DESIGN BUILD/FIRM, and to conduct an audit of the financial and accounting records of the DESIGN BUILD/FIRM which relate to the Project and to any claim for additional compensation made by the DESIGN BUILD/FIRM. DESIGN BUILD/FIRM shall retain and make available to CITY all such books and records and accounts or portions thereof, financial or otherwise, which relate to the Project and to any claim for a period of three (3) years following Final Completion of the Project. During the Project and the three (3) year period following Final Completion of the Project, the DESIGN BUILD/FIRM shall provide CITY access to its books and records subject to this section upon three (3) business day's written notice.

7.13 The DESIGN/BUILD FIRM shall perform the Work and complete the Project for the Guaranteed Maximum Price, in accordance with the Contract Documents, and shall achieve Substantial Completion of the Work within the Contract Time. Completion of the Work shall be achieved no later than thirty (30) calendar days after issuance of a Certificate of Substantial Completion, as referenced by Article 6 of the Contract.

7.14 DESIGN/BUILD FIRM shall furnish efficient business administration, coordination, management and supervision of the Work and services required to complete the Project, and shall cooperate with the Project Manager and the Contract Administrator, and their respective representatives, in furthering the interests of CITY in the expeditious completion of the Project at the lowest cost to CITY, consistent with the requirements of the Contract Documents and prudent and customary construction practices.

7.14.01 The DESIGN/BUILD FIRM shall perform the Work, and shall cause Contractor and Subcontractors to perform the Work, in strict accordance with all Applicable Laws. By signing this Agreement, the DESIGN/BUILD FIRM represents and warrants that it is familiar with all Applicable Laws that govern the Work.

7.14.02 If DESIGN/BUILD FIRM has knowledge that the Contract Documents do not comply with Applicable Laws, in any respect, the DESIGN/BUILD FIRM shall promptly notify the Project Manager, in writing, and any necessary changes shall be adjusted by appropriate revisions. If the DESIGN/BUILD FIRM performs any Work not in accordance with Applicable Laws, and without such notice to the Project Manager, the DESIGN/BUILD FIRM shall assume full responsibility therefore, and shall bear all costs attributable thereto.

7.14.03 In the event that Work is deemed by competent authority not to comply with Applicable Laws, the DESIGN/BUILD FIRM shall bring such Work into compliance with such Applicable Laws. If an Applicable Law(s) is enacted after the issuance of an

applicable permit for the Project, and the DESIGN/BUILD FIRM had no reasonable prior knowledge of such a change to the Applicable Law(s), such change shall be considered an unforeseeable and unavoidable cost, and the CITY shall approve a Change Order to bring such Work into compliance with such Applicable Law(s). New interpretations of existing Applicable Laws shall not be considered an unforeseeable and unavoidable cost.

7.15 The DESIGN/BUILD FIRM warrants to CITY that it has thoroughly reviewed and studied the DCP, and has determined that it is in conformance with Applicable Laws, and is complete and sufficiently coordinated to perform the Work for the Guaranteed Maximum Price and the Contract Time. DESIGN/BUILD FIRM warrants to CITY that the DCP is consistent, practical, feasible and constructible. DESIGN/BUILD FIRM further warrants to CITY that the Work described in the DCP is constructible for the Guaranteed Maximum Price and the Contract Time.

**THE CITY DISCLAIMS ANY WARRANTY THAT THE DCP, FOR THE PROJECT IS ACCURATE, PRACTICAL, CONSISTENT, AND / OR CONSTRUCTIBLE.**

7.16 The DESIGN/BUILD FIRM accepts the Project site in its observable and/or documented condition existing at the time of this Agreement, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project. By signing this Contract, the DESIGN/BUILD FIRM represents to the CITY that it has: (a) visited the Project site to become familiar with the conditions under which the Work is to be performed; (b) become familiar with all information provided (without warranty) by the CITY pertaining to the Project site; and (c) correlated its observations with the information furnished by the CITY (without warranty), and the Contract Documents. The DESIGN/BUILD FIRM hereby waives additional time or compensation for additional work made necessary by observable and/or documented conditions existing at the Project site, or conditions ordinarily encountered and generally recognized as inherent to the character of the Work to be provided for in this Project.

7.17 The DESIGN/BUILD FIRM agrees specifically that no Change Orders shall be required by the DESIGN/BUILD FIRM or considered by the City for reasons involving conflicts in the Contract Documents; questions of clarity with regard to the Contract Documents; and incompatibility or conflicts between the Contract Documents and the existing Project site conditions including, without limitation, utilities and unforeseen underground conditions. The DESIGN/BUILD FIRM acknowledges that it has ascertained all correct locations for points of connection for all utilities required for this Project.

7.18 The DESIGN/BUILD FIRM shall, as may be required for the proper execution and completion of the Work, secure all necessary permits and revisions thereto, fees, and licenses, as required by Applicable Laws to complete the Project including, but not limited to, all necessary utility connection permits and fees.

7.19 The DESIGN/BUILD FIRM shall comply with all conditions of any permits issued by government authorities.

**ARTICLE 8 THE CONTRACT PRICE (GUARANTEED MAXIMUM PRICE)  
AND METHOD OF PAYMENT**

8.01 The Contract Price is the Guaranteed Maximum Price agreed to by the DESIGN/BUILD FIRM and CITY under this Contract, payable to complete the Work in accordance with the

Agreement and DCP, and, to the extent permitted by this Agreement, as may be increased or decreased by Change Order.

8.01.01 The Contract Price for the Project, which is also the Guaranteed Maximum Price is \_\_\_\_\_.

**8.01.02 In the event that the DESIGN/BUILD FIRM'S total approved expenditures for the Project exceed the Guaranteed Maximum Price, the DESIGN/BUILD FIRM shall pay such excess from its own funds. CITY shall not be required to pay any amount that exceeds the Guaranteed Maximum Price and the DESIGN/BUILD FIRM shall have no claim against the CITY on account thereof.**

8.02 METHOD OF BILLING AND PAYMENT

8.02.01 During the Construction Documents Phase, DESIGN/BUILD FIRM may submit a request for payment monthly based upon percentage of completion of the (final construction) Plans and Specification. During the Construction Phase, DESIGN/BUILD FIRM may submit a request for payment thirty (30) calendar days after beginning field operations, subject to the second Notice-to-Proceed, and every thirty (30) calendar days thereafter. Payment during the Construction Phase will be based upon percentage of work completed for each item in the approved Schedule of Values. DESIGN/BUILD FIRM's requisition for payment shall show a complete breakdown of the Project components, and the amount due, together with such supporting evidence, as may be required by the Contract Administrator. At a minimum, the requisition for payment shall be accompanied by a completed certification of Work; consent of surety in the applicable amount; list of Subcontractors that performed Work during the payment application period being submitted; releases of liens from the Contractor for the previous period being billed; releases of liens from Subcontractors that have performed Work during the previous billing period unless payment for the previous period has not been received by the DESIGN/BUILD FIRM; aerials and photographs of the areas of Work for the applicable billing period; an accepted, updated CPM Project Schedule (as approved); and back up for all items being billed. The certification of Work will mean compliance by DESIGN/BUILD FIRM with the approved CPM Project Schedule; that as-built drawings of improvements are current for the prior period; and Applicable Laws are being met and complied with. Each requisition for payment shall be submitted in triplicate to the Project Manager for approval. Payment for Work performed will be made within thirty (30) calendar days after receipt of a proper requisition for payment, but not more frequently than once a month (i.e. every thirty [30] days). The Contract Administrator shall verify completion of the various phases, as noted, and authorize payment accordingly. Should the Project fall behind schedule as indicated in the CPM Project Schedule, DESIGN/BUILD FIRM shall include a written plan demonstrating how the Final Completion date shall be maintained.

8.02.01.01 The Design Build Firm is advised that the City is willing to pay for Stored Materials when those materials are stored in a bonded warehouse or in facilities which the City has approved and under the following terms and conditions:

- a. The Design Build Firm shall prepare and submit an Affidavit for Payment of Stored Materials fully executed with the Application for Payment to request payment for any stored material(s).
- b. The Affidavit for Payment shall include the following documents:

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- i. Certified Bill(s) of Sale showing that the Design Build Firm has paid for the material(s) and has clear marketable title to the material(s).
    - ii. Copy of the certificate of insurance of the storage facility where the material is stored.
    - iii. Itemized invoice of the material showing description, unit cost, quantity and total value of stored material.
    - iv. Provide an explanation for the circumstances giving rise to the request. The explanation shall include the anticipated installation date of the stored material, in accordance with the approved baseline schedule.
  - c. If and when, the Design Build Firm requests payment of stored material, the Design Build Firm shall revise the schedule of values, bid line item(s) into two separate components that will indicate the costs of material and labor in lieu of a lump sum amount.
  - d. The Contract Administrator shall verify IN WRITING, the following, when processing a request for Payment of Stored Material(s) submitted by the Design Build Firm:
    - i. Confirm that the requested quantities are in accordance with the scope of the contract and that the material complies with the pertinent technical specifications and the approved shop drawings.
    - ii. Confirm appropriateness of the price of the material. The contractor must include an itemized invoice from the supplier as a back up to his request. The payment for stored material shall only include the price of the uninstalled material. The payment shall not include the portion necessary for the installation cost, general conditions, and final installed warranty costs. The payment shall not exceed the lump sum amount included in the lump sum bid line item of the contract.
    - iii. Confirm that the storage facility is safe, secured and insured. The Insurance Certificate shall include coverage for vandalism, weather damage, and theft.
    - iv. Physically inspect the facility and perform an inventory of the stored material(s), prior to recommending payment. The stored material must be packaged, protected and clearly marked as City of Miami Beach property. Photographs and a written report of the Inspection shall be provided.
    - v. Review the explanation provided by the Design Build Firm and advise of their concurrence.
  - e. Once payment is made, the Contract Administrator shall perform periodic inspections of the material at the approved storage facility to ensure that all the paid stored material(s) is intact.
    - i. In the event the stored material is lost, damaged or unsatisfactory partial payment could be deducted on future pay applications.

8.02.02 CITY agrees that it will pay DESIGN/BUILD FIRM within thirty (30) calendar days of receipt of DESIGN/BUILD FIRM's proper requisition for payment, as provided above.

8.02.03 Ten percent (10%) of all monies earned by DESIGN/BUILD FIRM shall be retained by CITY until the Project has obtained Final Completion and been accepted by

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

CITY, except that upon completion of the Construction Documents Phase and approval by CITY of the Work performed under such phase, the Contract Administrator may release the entire amount of the retainage pertaining to the Consultant fees associated with the Construction Documents Phase. After fifty percent (50%) of the Construction Phase of the Project has been completed, the Contract Administrator, upon written request of the DESIGN/BUILD FIRM and written Consent of Surety in support of said request, may reduce the retainage to five percent (5%) of all monies earned subsequent to the Construction Documents Phase. Any interest earned on retainage shall accrue to the benefit of CITY.

8.02.04 Undisputed amounts remaining unpaid thirty (30) calendar days after CITY's receipt of DESIGN/BUILD FIRM's proper requisition for payment for conforming Work shall bear interest at the rate set forth in Section 218.74 (4), Florida Statutes. This section shall not apply if the CITY has a right to withhold any portion of the payment under this Agreement.

8.03 Upon receipt of written notice from DESIGN/BUILD FIRM that the Project is ready for final inspection and acceptance, the Contract Administrator shall, within fourteen (14) calendar days, make an inspection thereof. If the Contract Administrator finds the Project acceptable under the Contract Documents and the Project fully performed, a Final Certificate of Payment shall be issued by the Contract Administrator, over his/her own signature, stating that the Work required by this Agreement has been completed and is accepted under the terms and conditions thereof.

8.04 Before issuance of the Final Certificate for Payment, DESIGN/BUILD FIRM shall deliver to the Contract Administrator a complete release of all liens arising out of this Agreement, or receipts in full in lieu thereof, and an affidavit certifying that all suppliers, Consultant, Subcontractors, and Subconsultants have been paid in full, and that all other indebtedness connected with the Project has been paid, and a consent of the surety to final payment. All as-builts, warranties, guarantees, operational manuals, and instructions in operation must be delivered to CITY at this time. Contractor shall submit a completed as-built drawings package (two (2) full-size (24"x36") and two (2) half-size (11"x17"), to-scale, hard reproducible copies and two (2) CD Rom non-compressed formatted in the latest version of AutoCAD), signed and sealed by a land surveyor registered in the State of Florida and as approved by the CITY's Public Works Department, and proof that all permits have been closed; which shall be delivered prior to requesting final payment. A Certificate of Occupancy, and/or Certificate of Completion (CC), will be obtained prior to final payment being made, if required.

8.05 CITY may withhold final payment or any progress payment to such extent as may be necessary on account of:

8.05.01 Defective Work not remedied.

8.05.02 Claims filed or written notices of nonpayment indicating probable filing of claims as may be prescribed by law by other parties against DESIGN/BUILD FIRM.

8.05.03 Failure of DESIGN/BUILD FIRM to make payments properly to Consultant, Subcontractors or Subconsultants, or for material or labor.

8.05.04 Damage to another Subcontractor, Subconsultant, supplier, material person (as provided for in F.S. 713), party, or person not remedied which are attributable

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to DESIGN/BUILD FIRM, its agents, servants, employees, Contractor, Consultant, Subconsultants, Subcontractors, sub-Subcontractors, sub-Subconsultants, material person and suppliers.

8.05.05 Liquidated damages pursuant to Article 6 hereof.

8.05.06 As-built drawings not being in a current and acceptable state.

8.05.07 The DESIGN/BUILD FIRM warrants to the CITY that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all Work will be of good quality and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized by Contract Administrator, may be considered defective. If required by the CITY, the DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the origin, nature and quality of materials and equipment used for the Project. DESIGN/BUILD FIRM shall properly store and protect all construction materials. Materials which become defective through improper storage shall be replaced with new materials at no additional costs. The DESIGN/BUILD FIRM's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the DESIGN/BUILD FIRM, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

When the above grounds are removed or resolved, or DESIGN/BUILD FIRM provides a surety bond or a consent of surety satisfactory to CITY which will protect CITY in the amount withheld, payment may be made in whole or in part, as applicable.

8.06 If, after the Project has been substantially completed, full completion thereof is delayed through no fault of DESIGN/BUILD FIRM, or by issuance of Change Orders affecting final completion, and the Contract Administrator so certifies, CITY shall, upon certification of the Contract Administrator, and without terminating the Contract, make payment of the balance due for that portion of the Project fully completed and accepted. Such payment shall be made as required by law under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

8.07 The making and acceptance of the final payment shall constitute a waiver of all claims by CITY, other than those arising from faulty or defective Work, failure of the Project to comply with requirements of the Contract Documents, or terms of any warranties required by the Contract Documents. It shall also constitute a waiver of all claims by DESIGN/BUILD FIRM, except those previously made in writing and identified by DESIGN/BUILD FIRM as unsettled at the time of the final application for payment.

8.08 If the Contract Administrator, in its reasonable judgment, determines that the portion of the Guaranteed Maximum Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the DESIGN/BUILD FIRM hereunder unless and until the DESIGN BUILD FIRM, at its sole cost, performs a sufficient portion of the Work so that such portion of the Guaranteed Maximum Price then remaining unpaid is determined by the Contract Administrator to be sufficient to so complete the Work.

8.09 DESIGN/BUILD FIRM shall remain liable for Subcontractors' Work and for any unpaid laborers, material suppliers or Subcontractors in the event it is later discovered that said Work is

deficient or that any Subcontractors, laborers, or material suppliers did not receive payments due to them on the Project.

8.10 The DESIGN/BUILD FIRM shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the DESIGN/BUILD FIRM in performance of the Work.

8.11 Payment will be made to DESIGN/BUILD FIRM at:

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**ARTICLE 9 ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK**

Without invalidating the Agreement and without notice to any surety, CITY reserves and shall have the right to make such changes from time to time in the character or quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the Project in a satisfactory manner. Any extra or additional work within the scope of this Project may be accomplished by means of appropriate Field Orders, and/or fully executed and approved Change Orders.

**ARTICLE 10 CITY'S RESPONSIBILITIES**

10.01 CITY shall assist DESIGN/BUILD FIRM by placing at its disposal any available information pertinent to the Project including previous reports, laboratory tests and inspections of samples, materials and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed and other land use restrictions.

10.02 CITY shall arrange for access to and make all provisions for DESIGN/BUILD FIRM to enter upon public property as required for DESIGN/BUILD FIRM to perform its services.

**ARTICLE 11 RESOLUTION OF DISPUTES**

11.01 To attempt to prevent all disputes and litigation, it is agreed by the parties hereto that Contract Administrator shall first decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any Work done and Materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents, and Contract Administrator's estimates and decisions upon all claims, questions, difficulties and disputes shall be final and binding to the extent provided in Section 11.02. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of CITY and DESIGN/BUILD FIRM shall be submitted to Contract Administrator, in writing, within twenty-one (21) calendar days of the discovery of the occurrence. Unless a different period of time is set forth herein, Contract Administrator shall notify DESIGN/BUILD FIRM in writing of the decision within twenty-one (21) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless Contract Administrator requires additional time to gather information or allow the parties to provide additional information. All nontechnical administrative disputes shall be determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, DESIGN/BUILD FIRM and CITY

shall act in good faith to mitigate any potential damages, including utilization of construction schedule changes and alternate means of construction.

11.02 In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the Contract Administrator's determination must notify the other party in writing within ten (10) 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 Final Completion of the Work, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to avoid litigation. The mediator shall be mutually agreed upon by the parties. Should any objection not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

11.03 Pending final resolution of a claim, including mediation, unless otherwise agreed in writing by the CITY, DESIGN/BUILD FIRM shall proceed diligently with performance of the Contract and the CITY shall continue to make payments in accordance with the Contract Documents.

11.04 Any mediator used shall be certified in accordance with State of Florida law. Mediation will be conducted in Miami-Dade County.

#### **ARTICLE 12 SUBCONTRACT REQUIREMENTS**

12.01 [Intentionally omitted]

12.02 [Intentionally omitted]

12.03 [Intentionally omitted]

12.04 [Intentionally omitted]

12.05 All Subcontracts shall require the following:

12.05.01 That the Subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the CITY or Consultant or attributable to the CITY or Consultant and including claims based on breach of contract or negligence, shall be an extension of its Contract Time.

12.05.02 In the event of a change in the Work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 7% for overhead and profit and bond costs.

12.05.03 Each subcontract shall require the Subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the Contract Price, damages, losses, or additional compensation.

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12.05.04 Each subcontract shall require that any claims by Subcontractor for delay or additional cost must be submitted to DESIGN/BUILD FIRM within the time and in the manner in which the DESIGN/BUILD FIRM must submit such claims to the CITY, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

12.05.05 Each subcontract shall include a provision stating that the subcontract is assignable to the CITY in the event of a termination of all or part of the Contract. Said assignment shall be at the sole option and discretion of the CITY and, if agreed to by CITY shall be upon the same terms and conditions as the original subcontract, unless otherwise mutually negotiated by CITY and Subcontractor.

12.05.06 The DESIGN/BUILD FIRM shall be solely responsible to the CITY for the acts and omissions of its employees and agents and its Contractor, Consultant, Subcontractors, Subconsultants, and their agents and employees, and all other persons performing any of the work or services or supplying materials under a contract to the DESIGN/BUILD FIRM.

12.05.07 The DESIGN/BUILD FIRM shall provide the Project Manager with a copy of each subcontract, including the general supplementary conditions.

**ARTICLE 13 [This Article left intentionally blank]**

**ARTICLE 14 [This Article left intentionally blank]**

**ARTICLE 15 SECURITY [This Article left intentionally blank]**

**ARTICLE 16 INSPECTION OF PROJECT**

16.01 The CITY, Contract Administrator, and their authorized representatives, shall have access to the Project at all times and DESIGN/BUILD FIRM shall provide proper facilities for such access. Such access shall be in accordance with the reasonable rules of the DESIGN/BUILD FIRM.

16.01.01 Should the Contract Documents, any Applicable Laws, or any public authority require any Work for the Project to be specially tested or approved, DESIGN/BUILD FIRM shall give to the Contract Administrator timely notice of readiness of the Work for inspection. If the testing or approval is to be made by an authority other than CITY, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and, where practicable, at the source of supply. Within a reasonable time from execution of this Agreement, CITY shall provide DESIGN/BUILD FIRM with a letter (or e-mail) listing the areas of Work the CITY will inspect. If defined Work for the Project should be covered up without required inspection/approval, it must, if required by the Contract Administrator, be uncovered for examination, and properly restored at DESIGN/BUILD FIRM's expense.

16.01.02 Re-examination and retesting of any Work may be ordered by the Contract Administrator and, if so ordered, such Work must be uncovered by DESIGN/BUILD FIRM. If such Work is found to be in accordance with the Contract Documents, CITY shall pay the cost of re-examination, re-testing and replacement. If

such Work is not in accordance with the Contract Documents, DESIGN/BUILD FIRM shall pay such cost.

16.02 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by DESIGN/BUILD FIRM to any inspector is forbidden, and any such act on the part of DESIGN/BUILD FIRM will constitute a breach of this Agreement.

### **ARTICLE 17 SUPERINTENDENCE AND SUPERVISION**

17.01 The orders of the CITY are to be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case, provided that they are in accordance with this Contract and the other Contract Documents. Construction Manager shall keep on the Project during its progress, a full-time, competent, English speaking supervisor who shall serve as the superintendent, and any necessary assistants, all satisfactory to the Project Manager.

17.02 Construction Manager or Contractor's superintendent shall prepare, on a daily basis, and keep on the Project site, a bound log setting forth at a minimum, for each day: the weather conditions and how any weather conditions affected progress of the Work; time of commencement of Work for the day; the Work performed; materials, labor, personnel, equipment and Subcontractors utilized for the Work; any idle equipment and reasons for idleness; visitors to the Project site; any special or unusual conditions or occurrences encountered; any materials delivered to the Project site; and the time of termination of Work for the day. The daily bound log shall be available for inspection by the CITY, or its authorized designee, at all times during the Project, without previous notice.

17.03 If DESIGN/BUILD FIRM, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the site, or any errors or omissions in the Contract Documents including, but not limited to, the Plans and Specifications, it shall be DESIGN/BUILD FIRM's sole obligation and duty to immediately inform the Contract Administrator, in writing, and the Contract Administrator will promptly verify same. Any Work done prior to or after such discovery will be done at DESIGN/BUILD FIRM's sole risk. **NOTWITHSTANDING THE PRECEDING, OR ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, DESIGN/BUILD FIRM HEREBY ACKNOWLEDGES AND AGREES THAT THIS IS A DESIGN/BUILD PROJECT AND, ACCORDINGLY, ANY ERRORS OR OMISSIONS SHALL BE CORRECTED AT THE SOLE COST AND EXPENSE OF DESIGN BUILD/FIRM AND WITHOUT A CLAIM FOR ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE.**

17.04 DESIGN/BUILD FIRM shall coordinate, supervise and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform and complete the Project in accordance with the Contract Documents. DESIGN/BUILD FIRM shall be solely responsible for the design, preparation of Construction Documents, means, methods, techniques, safety, sequences and procedures of construction. DESIGN/BUILD FIRM shall give efficient supervision to the Work, using DESIGN/BUILD FIRM's best skill, attention, and judgment.

### **ARTICLE 18 CITY'S RIGHT TO TERMINATE AGREEMENT**

18.01 If DESIGN/BUILD FIRM fails to begin the design and construction of the Project within the time specified; or fails to perform the Project with sufficient workers and equipment or with

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sufficient materials to insure the prompt completion of the Project, in accordance with the Contract Documents and schedules; or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable; or shall discontinue the prosecution of the Project, except for excused delays in accordance with this Agreement; or if DESIGN/BUILD FIRM shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors; or shall not carry on the Project in accordance with the Contract Documents, then the CITY shall give notice, in writing, to DESIGN/BUILD FIRM and its surety of such delay, neglect or default, specifying the same. If DESIGN/BUILD FIRM, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then CITY may, upon written notice from the Contract Administrator of the fact of such delay, neglect or default and DESIGN/BUILD FIRM's failure to comply with such notice, terminate the services of DESIGN/BUILD FIRM, exclude DESIGN/BUILD FIRM from the Project site, and take the prosecution of the Project out of the hands of DESIGN/BUILD FIRM, as appropriate, or use any or all materials and equipment on the Project site as may be suitable and acceptable, in the City's reasonable discretion. In such case, DESIGN/BUILD FIRM shall not be entitled to receive any further payment until the Project is finished. In addition, CITY may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in its opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by CITY shall be deducted from any monies due or which may become due to said DESIGN/BUILD FIRM. Actions will be instituted to recover on the posted bonds. In case the damages and expense so incurred by CITY shall be less than the sum which would have been payable under this Agreement, if it had been completed by said DESIGN/BUILD FIRM, then DESIGN/BUILD FIRM shall be entitled to receive the difference. If such damages and costs exceed the unpaid balance, then DESIGN/BUILD FIRM shall be liable and shall pay to CITY the amount of said excess.

18.02 If, after Notice of Termination of DESIGN/BUILD FIRM's right to proceed, it is determined for any reason that DESIGN/BUILD FIRM was not in default, the rights and obligations of CITY and DESIGN/BUILD FIRM shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause, as set forth in Section 18.03 below.

18.03 Notwithstanding any other provision in this Agreement, the performance of work under this Agreement may be terminated in writing by CITY, for convenience and without cause, upon ten (10) business days from the date of DESIGN/BUILD FIRM'S receipt of the written notice to DESIGN/BUILD FIRM of intent to terminate and the date on which such termination becomes effective. In such case, DESIGN/BUILD FIRM shall be paid for all work and reimbursables executed, and expenses incurred, such as materials stored, cost of severance of leases/contracts directly associated with the Project, and demobilization prior to termination. PAYMENT SHALL INCLUDE REASONABLE PROFIT FOR SERVICES ACTUALLY PERFORMED IN FULL PRIOR TO TERMINATION DATE, BUT SHALL EXCLUDE ALL LOST PROFITS, INDIRECT CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.

18.04 Upon receipt of Notice of Termination pursuant to Sections 18.01 or 18.03 above, DESIGN/BUILD FIRM shall, at its sole cost and expense and as a condition precedent to any further payment obligation by the CITY, promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver to CITY within seven (7) calendar days of termination, all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents, whether completed or in

process. Compensation shall be withheld until all documents are provided to CITY pursuant to this Article.

**ARTICLE 19 DESIGN/BUILD FIRM'S RIGHT TO STOP WORK  
OR TERMINATE CONTRACT**

19.01 If the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of DESIGN/BUILD FIRM or of anyone employed by DESIGN/BUILD FIRM; or if the Contract Administrator should fail to review and approve or state in writing reasons for non-approval of any requisition for payment within twenty (20) business days after it is presented; or if CITY fails to pay DESIGN/BUILD FIRM within thirty (30) calendar days after submittal of a proper requisition for payment, as approved by the Project Manager or Contract Administrator (as applicable), then DESIGN/BUILD FIRM may give written notice to CITY, through Contract Administrator, of such delay, neglect, or default, specifying the same. If CITY, within a period of ten (10) business days after such written notice, shall not remedy the delay, neglect, or default upon which notice is based, then DESIGN/BUILD FIRM may stop work until payment is made, or terminate this Agreement and recover from CITY payment for all Work executed and reasonable expense sustained, But excluding any claim for payments for lost profits, indirect, special, consequential, or other damages.

**ARTICLE 20 "OR EQUAL" CLAUSE**

20.01 Whenever a material, article or piece of equipment is identified in the Contract Documents, including without limitation, in the Plans and Specifications, by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, it is intended merely to establish a standard and, unless it is followed by words indicating that "no substitution is permitted," any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Contract Administrator:

- 20.01.01 At least equal in quality, durability, appearance, strength and design;
- 20.01.02 Performs at least equally the function imposed in the general design for the Project;
- 20.01.03 Conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Plans and Specifications; and
- 20.01.04 Carries the same guaranty or warranty of the specified equipment.

All substitution requests will be made via written request which shall be attached to a shop drawing and/or Change Order which shall be attached to a detailed description of the specified item and a detailed description of the proposed substitution. A comparison letter itemizing all deviations from specified items must be included for the Contract Administrator to properly evaluate substitution. Failure to provide the deviation comparison sheet shall automatically deny the request.

Any changes, inclusive of design changes, made necessary to accommodate substituted equipment under this paragraph shall be at the expense of DESIGN/BUILD FIRM.

20.02 Contract Administrator's written consent will be required as to acceptability, and no substitute will be ordered, installed or utilized without Contract Administrator's prior written acceptance, which will be evidenced by either a Change Order or an accepted shop drawing. CITY may require DESIGN/BUILD FIRM to furnish, at DESIGN/BUILD FIRM'S expense, a special performance guarantee or other surety with respect to any substitute.

### **ARTICLE 21 PLANS AND SPECIFICATIONS**

21.01 CITY, through its Contract Administrator, shall have the right to require DESIGN/BUILD FIRM to modify the details of the Plans and Specifications, to supplement same with additional plans, drawings, specifications, or additional information as the Project proceeds which are within the specific intent and stated scope of the Project and which do not cause increase in Contract Price or Contract Time, all of which shall be considered as part of the Contract Documents, at no additional cost to the CITY. All plans, general and detail, are to be deemed a part of this Agreement, and the Plans and Specifications and other Contract Documents are to be considered together, and are intended to be mutually complementary, so that any work shown on the Plans, though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is to be executed by DESIGN/BUILD FIRM as part of the Contract Documents. All things which, in the opinion of the Contract Administrator, may reasonably be inferred from the Contract Documents, including, but not limited to, the Plans and Specifications, are to be executed by DESIGN/BUILD FIRM under the terms of the Contract Documents; and the Contract Administrator shall determine whether said Plans and Specifications conform to the Contract Documents. In the event the work requested under this Article expands the scope of the Project, DESIGN/BUILD FIRM may seek a Change Order pursuant to Article 37.

### **ARTICLE 22 DESIGN/BUILD FIRM TO CHECK DRAWINGS AND DATA**

22.01 DESIGN/BUILD FIRM shall take measurements and verify all dimensions, conditions, quantities and details shown on the Plans and Specifications including, but not limited to, the drawings, schedules, or other data. Failure to discover or correct errors, conflicts or discrepancies shall not relieve DESIGN/BUILD FIRM of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom, nor from rectifying such condition at DESIGN/BUILD FIRM'S own expense. DESIGN/BUILD FIRM will not be allowed to take advantage of any error or omissions.

### **ARTICLE 23 WARRANTY**

23.01 DESIGN/BUILD FIRM warrants to CITY that all Materials and equipment furnished for the Project will be new unless otherwise specified and that all Work for the Project will be of good quality, free from faults and defects and in conformance with the Contract Documents. The standard of quality shall be at least that employed by similarly qualified design/build firms that are duly qualified and licensed to perform similar projects. All Work for the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If Materials or equipment are improperly stored and become altered as a result of such improper storage, DESIGN/BUILD FIRM shall replace said Materials and/or equipment with new ones at no additional cost. DESIGN/BUILD FIRM shall be responsible for proper storage and safeguarding of all Materials and equipment. If required by the Contract Administrator, DESIGN/BUILD FIRM shall furnish satisfactory evidence as to the kind and quality of Materials and equipment. The warranty requirements set forth in the Contract

Documents as herein defined shall govern warranty terms and conditions for all warranty items expressed or implied. The DESIGN/BUILD FIRM'S warranty period under this Article shall be one (1) year from the date of Substantial Completion of the Project. However, this section shall not abridge the times or impede the rights and remedies afforded the CITY against other entities or persons under the Contract Documents, or by law.

**ARTICLE 24 SUPPLEMENTARY DRAWINGS**

24.01 When, in the opinion of DESIGN/BUILD FIRM and/or CITY, it becomes necessary to explain more fully the Work to be done, or to illustrate the Project further to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by the Consultant and submitted by DESIGN/BUILD FIRM to the Contract Administrator for review and written acceptance.

24.02 The authorized supplementary drawings shall be binding upon DESIGN/BUILD FIRM with the same force as the Contract Documents. Where such supplementary drawings require either less or more than the estimated quantities of work, appropriate adjustments shall be made pursuant to Change Order.

**ARTICLE 25 [This Article left intentionally blank]**

**ARTICLE 26 GENERAL WORKMANSHIP**

26.01 Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions. DESIGN/BUILD FIRM shall, if required, furnish satisfactory evidence as to kind and quality of the materials. Should materials arrive to the jobsite new and be improperly stored and deteriorate from new condition, the materials shall be replaced at no additional cost to CITY.

26.02 DESIGN/BUILD FIRM shall apply, install, connect, and erect manufactured items or materials according to recommendations of manufacturer when such recommendations are not in conflict with the Contract Documents. If there is conflict between manufacturer recommendations and the Contract Documents, Contract Administrator shall be notified and shall approve, in writing, any corrective actions prior to implementation of same.

**ARTICLE 27 DEFECTIVE WORK**

27.01 Contract Administrator shall have the authority to reject or disapprove Work for the Project which Contract Administrator finds to be defective. Defective work is defined as Work not in accordance with the Contract Documents; not in conformance with Applicable Laws; installed in violation of the manufacturer's written instructions where the installation has caused new materials to be detrimentally affected; where the life expectancy of the material installed is reduced; or otherwise installed in a non-workmanlike manner. If required by Contract Administrator, DESIGN/BUILD FIRM shall promptly either (as directed) correct all defective work or remove it from the Project site, and replace it with non-defective work. DESIGN/BUILD FIRM shall bear all costs of such removal or correction.

27.02 If, within one (1) year after Substantial Completion, any Work is found to be defective or not in accordance with the Contract Documents, DESIGN/BUILD FIRM shall correct it promptly without cost to CITY, after receipt of written notice from CITY to do so, unless CITY has given

DESIGN/BUILD FIRM a written acceptance of such conditions. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which DESIGN/BUILD FIRM might have under Applicable Laws.

27.03 Should DESIGN/BUILD FIRM fail or refuse to remove or correct any defective work performed for the Project, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of this Agreement within a reasonable time, indicated in writing, CITY shall have the authority to cause the unacceptable or defective work to be removed or corrected, or make such repairs as may be necessary, to be made at DESIGN/BUILD FIRM'S expense. Any expense incurred by CITY in making these removals, corrections or repairs, which DESIGN/BUILD FIRM has failed or refused to make shall be paid for out of any monies due or which may become due to DESIGN/BUILD FIRM, or may be charged against the bond (or other guaranty if applicable). Continued failure or refusal on the part of DESIGN/BUILD FIRM to make any or all necessary repairs promptly, fully, and in acceptable manner shall be sufficient cause for CITY to declare this Agreement terminated, in which case CITY, at its option, may purchase Materials, tools, and equipment, and employ labor, or may contract with any other individual, firm or corporation, or may proceed with its own forces, to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting DESIGN/BUILD FIRM, and the amount thereof deducted from any monies due, or which may become due, to DESIGN/BUILD FIRM, or shall be charged against the bond (or other guaranty). Any special work performed, as described herein, shall not relieve DESIGN/BUILD FIRM in any way from its responsibility for the work performed by it.

27.04 Failure to reject any defective work or Materials shall not in any way prevent later rejection when such defect is discovered, or obligate CITY to final acceptance.

### **ARTICLE 28 SUBCONTRACTS**

28.01 DESIGN/BUILD FIRM shall, at such times as DESIGN/BUILD FIRM decides which Subcontractors will perform the various portions of the Work, promptly notify the Contract Administrator, in writing, of the names of Subcontractors for the Project, and identify the portion of the Work for the Project each will perform. DESIGN/BUILD FIRM shall have a continuing obligation to notify the Contract Administrator of any change in Subcontractors. Notification of the names of Subcontractors shall not relieve DESIGN/BUILD FIRM from the primary responsibility, without limitation, of full and complete satisfactory performance of all contractual obligations.

### **ARTICLE 29 SEPARATE CONTRACTS**

29.01 CITY reserves the right to let other contracts in connection with this Project, provided it does not interfere with DESIGN/BUILD FIRM'S Work or schedule. DESIGN/BUILD FIRM shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs subject to provision of acceptable insurance coverage, including DESIGN/BUILD FIRM as an additional insured. CITY will request that its separate contractors coordinate their activities with the Work of the DESIGN/BUILD FIRM.

29.02 If any part of DESIGN/BUILD FIRM'S Work depends for proper execution or results upon the work of any other contractor or the CITY, DESIGN/BUILD FIRM shall inspect and promptly report to the Contract Administrator any defects in such work that render it unsuitable for such proper execution and results. DESIGN/BUILD FIRM'S failure to so inspect and report shall

constitute an acceptance of the other contractor's work as fit and proper for the reception of DESIGN/BUILD FIRM'S Work, except as to defects which may develop in other contractor's work after the execution of DESIGN/BUILD FIRM'S Work. However, DESIGN/BUILD FIRM shall not be responsible or liable to CITY for any work performed by any other separate contractor not under the auspices or control of DESIGN/BUILD FIRM.

29.03 To insure the proper execution of its subsequent Work, DESIGN/BUILD FIRM shall inspect the work already in place and shall at once report to the Contract Administrator any discrepancy between the executed work and the requirements of the Contract Documents.

### **ARTICLE 30 CITY'S OPTION FOR USE OF COMPLETED PORTIONS**

30.01 In the event of Substantial Completion of a portion of the Project, **which determination and option shall be solely and exclusively within the CITY's authority and discretion whether to allow and accept Substantial Completion of a portion or portions of the Project (versus requiring Substantial Completion of the entire Project at one time)**, CITY shall have the right to take possession of, for maintenance and/or for use, of any such completed or partially completed portion(s) of the Project. However, prior to any possession, a punch list will be issued for the area to be occupied. Such possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such possession or use delays the Project, DESIGN/BUILD FIRM may be entitled to a reasonable extension of time as determined by Contract Administrator.

30.02 In the event CITY takes possession, the following shall occur:

30.02.01 CITY shall give notice to DESIGN/BUILD FIRM at least thirty (30) calendar days in advance on intent to occupy a designated area.

30.02.02 DESIGN/BUILD FIRM shall bring the designated area to point of Substantial Completion. When DESIGN/BUILD FIRM considers that the designated area of the Project is substantially complete, DESIGN/BUILD FIRM shall so notify the Contract Administrator, in writing, and shall prepare for submission to the Contract Administrator a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete work on the designated area in accordance with the Contract Documents. The Contract Administrator shall conduct an inspection to determine that the designated portion of the Project is substantially complete. The Contract Administrator will then instruct DESIGN/BUILD FIRM to deliver to CITY a Certificate of Occupancy (CO) pertinent to the designated portion, which CO shall be issued by the appropriate authority having jurisdiction over the Project. The Contract Administrator and DESIGN/BUILD FIRM shall agree on the time within which DESIGN/BUILD FIRM shall complete the items listed.

30.02.03 Upon issuance and acceptance of Certificate of Substantial Completion, CITY will assume full responsibility for maintenance, utilities, subsequent damages of CITY and public, adjustment of insurance coverage's and start of warranty for occupied area. DESIGN/BUILD FIRM shall remain responsible for all items listed to be completed or corrected as submitted to Contract Administrator as required in Substantial Completion process.

30.02.04 If CITY finds it necessary to occupy or use a portion or portions of the Project prior to Substantial Completion thereof, such occupancy or use shall not

commence prior to a time mutually agreed upon by CITY and DESIGN/BUILD FIRM and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of DESIGN/BUILD FIRM and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

### **ARTICLE 31 CONSTRUCTION AREA**

31.01 DESIGN/BUILD FIRM shall use areas approved by the Contract Administrator for deliveries and personnel. Contract limits of construction area are indicated on the concept drawings as issued by the Contract Administrator. Equipment, materials, and personnel shall be in conformance with this Contract.

31.02 To provide for maximum safety and security, DESIGN/BUILD FIRM shall erect and maintain all necessary barricades, and any other temporary walls and structures as required, and boarding or fencing to protect life and property during the period of construction.

### **ARTICLE 32 LANDS FOR WORK**

32.01 CITY shall provide, as indicated in the Contract Documents, the lands upon which the Project is to be performed, rights-of-way and easements for access thereto and such other lands as are designated for the use of DESIGN/BUILD FIRM. No claim for damages or other claim other than for an extension of time shall be made or asserted against CITY by reason of any delay arising as a result of any failure of CITY to provide such lands on the date needed by DESIGN/BUILD FIRM. The provisions of Article 40 shall apply herein.

### **ARTICLE 33 LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS**

33.01 DESIGN/BUILD FIRM shall conform to all Applicable Laws with regard to labor employed, hours of work, and DESIGN/BUILD FIRM'S general operations. DESIGN/BUILD FIRM shall also conduct its operations so as not to close any thoroughfare, nor interfere in any way with traffic on streets, highways, sidewalks, or other public right of ways without the written consent of the proper authorities.

### **ARTICLE 34 DAMAGE TO EXISTING FACILITIES, EQUIPMENT OR UTILITIES**

34.01 Existing utilities have been shown in the Contract Documents insofar as information is reasonably available; however, it will be DESIGN/BUILD FIRM'S sole responsibility to verify such information and to preserve all existing utilities, whether shown in the Contract Documents or not. If utility conflicts are encountered by DESIGN/BUILD FIRM during construction, DESIGN/BUILD FIRM shall re-design its proposed improvements, at its sole cost, to avoid utility conflicts, and/or provide sufficient notice to the owners of the utilities, and it shall be the sole responsibility of the DESIGN/BUILD FIRM to resolve any conflicts and make all necessary adjustments, at no additional cost to the CITY.

34.02 DESIGN/BUILD FIRM shall exercise care and take all precautions during excavation and construction operations to prevent damage to any existing facilities, equipment, or utilities. Any damage caused by DESIGN/BUILD FIRM shall be reported immediately to the Contract Administrator, and such work shall be repaired and/or replaced by DESIGN/BUILD FIRM in a manner approved by CITY. All costs to repair and/or replace any damage to existing facilities,

equipment, or utilities shall be the sole responsibility of DESIGN/BUILD FIRM, and such repair or replacement shall be performed expeditiously without cost to CITY.

34.03 DESIGN/BUILD FIRM shall provide that type of required protection for finished Work at all times and protect adjacent Work during cleaning operations, and make good any damage resulting from neglect of this precaution.

34.04 Protection of Work shall include protecting of Work that is factory finished, during transportation, storage, during and after installation. Where applicable, and as required, DESIGN/BUILD FIRM shall close off spaces of areas where certain Work has been completed to protect it from any damages caused by others during their operations.

34.05 DESIGN/BUILD FIRM shall store Materials, and shall be responsible for and shall maintain partly or wholly finished Work during the continuance of the Contract and until the final acceptance of the Project. If any materials or part of the work should be lost, damaged, or destroyed by any cause or means whatsoever, the DESIGN/BUILD FIRM shall satisfactorily repair and replace the same at DESIGN/BUILD FIRM'S own cost. The DESIGN/BUILD FIRM shall maintain suitable and sufficient guards, if necessary, and barriers, and at night, suitable and sufficient lighting for the prevention of accidents.

34.06 To all applicable sections where preparatory work is part of Work thereon, DESIGN/BUILD FIRM shall carefully examine surfaces over which finished work is to be installed, laid or applied, before commencing with the work. DESIGN/BUILD FIRM shall not proceed with said work until defective surfaces on which work is to be applied are corrected to the satisfaction of the Contract Administrator. Commencement of work shall be considered acceptance of surfaces and conditions.

34.07 It will be the DESIGN/BUILD FIRM'S responsibility to preserve all existing utilities within the Project limits or as otherwise affected by DESIGN/BUILD FIRM. If utility conflicts are encountered by the DESIGN/BUILD FIRM during construction, it is anticipated that DESIGN/BUILD FIRM shall re-design its proposed improvements, at its sole cost, so as to avoid utility conflicts, and/or provide sufficient notice to their owners and compensate owners of the utilities from its funds so that they may make the necessary adjustments. Damage to any utilities, which in the sole reasonable opinion of the CITY is caused by negligence on the part of the DESIGN/BUILD FIRM, shall be repaired at the DESIGN/BUILD FIRM'S expense.

**ARTICLE 35 CONTINUING THE WORK**

35.01 DESIGN/BUILD FIRM shall carry on the Project and adhere to the CPM Project Schedule during all disputes or disagreements with CITY, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Price or Contract Time. No work shall be delayed or postponed pending resolution of any disputes or disagreements. The provisions of this Article shall be subject to all other applicable provisions of this Agreement.

**ARTICLE 36 FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS**

36.01 The Contract Administrator shall have the right to approve and issue Field Orders setting forth written interpretations of the intent of the Contract Documents to Construction Manager and ordering minor changes in contract execution, providing the Field Order involves no change in the Contract Price or the Contract Time.

36.02 The Contract Administrator shall have the right to approve and issue to DESIGN/BUILD FIRM supplemental instructions setting forth the written orders, instructions, or interpretations concerning the Contract Documents or performance therein, provided they make no major changes in Contract execution and involve no change in the Contract Price or the Contract Time.

**ARTICLE 37 CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS**

37.01 Without invalidating the Contract and without notice to any surety, CITY 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 as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any extra or additional work within the scope of this Project must be accomplished by means of appropriate Field Orders and Supplemental Instructions, or Change Orders.

37.02 Changes to the terms of the Contract Documents must be contained in a written document, executed by the parties hereto, with the same formality and of equal dignity prior to the initiation of any work reflecting such change. This section shall not prohibit the issuance of Change Orders executed only by CITY as hereinafter provided.

37.03 The actual cost of the Payment and Performance Bond as a result of accepted changes in the Work shall be added to or deducted from the cost of the changes in the Work.

37.04 Notification of Change of Contract Time or Contract Price

37.04.01 Any claim for a change in the Contract Time or Contract Price shall be made by written notice delivered by DESIGN/BUILD FIRM to the Contract Administrator within five (5) calendar days of the commencement of the event giving rise to the claim (which may include an occurrence or omission that DESIGN/BUILD FIRM contends delays the Work, or receipt of an order, instruction, Contract Administrator's supplemental information, or other directive changing the Work, or any other occurrence that DESIGN/BUILD FIRM contends causes a change in Contract Time or Contract Price) and stating the general nature of the claim. Notice of the nature and elements of the claim shall be delivered within twenty (20) calendar days after the date of such written notice. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered, unless Contract Administrator and DESIGN/BUILD FIRM allows an additional period of time to ascertain more accurate data in support of the claim, and shall be accompanied by DESIGN/BUILD FIRM's written statement that the adjustment claimed is the entire adjustment to which the DESIGN/BUILD FIRM has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time or Contract Price shall be determined by Project Manager and Contract Administrator in accordance with Article 11 hereof, if Project Manager, Contract Administrator and DESIGN/BUILD FIRM cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID UNLESS IT IS SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

37.04.02 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault, negligence, or act or omission of DESIGN/BUILD FIRM if a claim is made therefore as required by the Contract. Such

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delays shall include, but not be limited to, acts or neglect by any separate contractor employed by CITY, fires, floods, labor disputes, epidemics, abnormal weather conditions, acts of God, or acts of terrorism.

37.04.03 Extensions to the Contract Time for delays caused by the effects of inclement weather shall be submitted as a request for change in Contract Time pursuant to this Article 37. These time extensions are justified only when rain or other inclement weather conditions or related adverse soil conditions prevent DESIGN/BUILD FIRM from productively performing controlling items of work; identified on the accepted schedule or updates resulting in: (1) DESIGN/BUILD FIRM being unable to work at least fifty percent (50%) of the normal work day on controlling items of work identified on the accepted CPM Project Schedule or updates due to adverse weather conditions; or (2) DESIGN/BUILD FIRM must make major repairs to the Work damaged by weather, provided the damage was not attributable to a failure or neglect by DESIGN/BUILD FIRM, and provided that DESIGN/BUILD FIRM was unable to work at least fifty percent (50%) of the normal work day on controlling items of work identified on the accepted CPM Project Schedule or approved updates. No time extension will be allowed for weekend rains unless the DESIGN/BUILD FIRM has been working weekends on a regular basis on exterior Work.

37.04.04 The DESIGN/BUILD FIRM agrees and acknowledges that no ground for an extension to the Contract Time or Contract Price shall arise as a result of any reasonably foreseeable condition at the Project site, or as a result of anything contained in the Contract Documents.

37.05 Change Orders

37.05.01 Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including all changes resulting in changes in the Contract Price, or the Contract Time, shall be authorized only by Change Orders approved and issued by CITY to the extent permitted under this Agreement.

37.05.02 The Project Manager, as authorized by the Contract Administrator, may initiate a Change Order request ("Change Order Request"), setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, the DESIGN/BUILD FIRM shall review the Change Order Request with the Project Manager and Contract Administrator prior to furnishing to the Project Manager a statement setting forth in detail, with a suitable detailed breakdown in Construction Specifications Institute (CSI) format, including a breakdown of labor and materials, the DESIGN/BUILD FIRM's estimate of the changes in the cost of the Work and changes to any other Contract Price elements attributable to the changes set forth in such Change Order Request, and proposed adjustments, if any, to the Contract Time resulting from such Change Order Request. If the Contract Administrator accepts such DESIGN/BUILD FIRM's estimate, a Change Order shall be processed by the CITY and delivered to the DESIGN/BUILD FIRM for execution. Agreement on any Change Order shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the cost of the Work, DESIGN/BUILD FIRM's, Guaranteed Maximum Price, or the Contract Time, subject to performance thereof and payment therefore pursuant to the terms of this Contract and such Change Order. Changes in Contract Time will only be considered by the CITY when Contractor provides sufficient documentation delineating the daily impact

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to controlling items (Critical Path) identified in the original approved CPM Project Schedule.

37.05.03 The DESIGN/BUILD FIRM's fee on such changes shall be a percentage of the net change to the cost of the Work resulting from the Change Order, not to exceed ten percent (10%).

Subcontractor's percentage markup on Change Orders for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractor's overhead and profit markups exceed seven and a half percent (7.5%) of the Subcontractor's cost of the Work. In the event Subcontractor is affiliated with the Contractor by common ownership or management, or is effectively controlled by the Contractor, no fee will be allowed on the Subcontractor's costs. In the event there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all of the Subcontractors' percentage markups for overhead and profit shall not, in the aggregate, exceed ten percent (10%) of the cost of the Work. Subcontractor's cost of the Work shall be determined in accordance with Article 12, hereof.

37.05.04 Contractor shall not start work on any alteration requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the CITY unless there is an immediate need to perform the work to maintain the CPM Project Schedule. If there were such a need, the Contract Administrator will issue direction to perform the work on the basis of a preliminary estimate provided by the Contractor and approved by the Project Manager. Upon receipt of a Change Order Contractor shall promptly proceed with the work set forth within the document.

37.05.05 In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right at its sole option to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed work; or submit the matter in dispute to Project Manager and Contract Administrator as set forth in Article 11, hereof. During the pendency of the dispute, and upon receipt of a Change Order, DESIGN/BUILD FIRM shall promptly proceed with the change in the Work involved and advise the Project Manager and Contract Administrator in writing within five (5) calendar days of DESIGN/BUILD FIRM's agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

37.05.06 Upon approval of any Contract change increasing the Contract Price, DESIGN/BUILD FIRM shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total Contract Price as increased.

37.05.07 Change Orders may be issued unilaterally by CITY.

37.05.08 The DESIGN/BUILD FIRM hereby waives any claim not made with a timely request for a Change Order.

**37.05.09 Notwithstanding anything in this Article 37, or in any other term or condition of this Agreement, DESIGN/BUILD FIRM acknowledges and agrees that**

**after the Guaranteed Maximum Price has been established, no Change Order shall be approved in the case where the DESIGN/BUILD FIRM encounters a DCP discrepancy and has failed to foresee and/or coordinate any conditions in the Work, including conflicts between the Contract Documents, Plans and Specifications, and the existing Project site conditions, utilities, and unforeseen underground conditions, which will cause an increase to the Contract Price or the Contract Time.**

37.05.10 No change in the Guaranteed Maximum Price shall be allowed for delays caused by labor disputes and strikes specific to the Project, or for other delay caused by the DESIGN/BUILD FIRM or its Subcontractors or suppliers of any tier.

37.05.11 The DESIGN/BUILD FIRM waives all claims for additional time or additional compensation for Work performed without a written Change Order, unless as stated in Subsection 37.05.04.

37.05.12 The DESIGN/BUILD FIRM agrees that, regardless of the pendency of any claim for additional compensation or time, the DESIGN/BUILD FIRM shall continue to execute all Work. The DESIGN/BUILD FIRM shall take all reasonable measures to minimize the effect of the pendency of a claim.

37.05.13 Should a material discrepancy be found between the DCP and the Contract Documents, and provided only that said discrepancy results from the regulatory review of an agency that has regulatory authority over the permitting process, the CITY shall issue a Change Order to the DESIGN/BUILD FIRM.

37.05.14 DESIGN/BUILD FIRM shall not include or request payment on any Change Orders that have not been formally and fully approved and executed by the appropriate parties.

### **ARTICLE 38 DIFFERING SITE CONDITIONS**

38.01 No equitable adjustment to the Contract shall be allowed for DESIGN/BUILD FIRM and no change to Contract Price or Contract Time, in the event that during the course of the Work DESIGN/BUILD FIRM encounters an existing condition that was not shown on the Contract Documents; or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents.

### **ARTICLE 39 (This Article left intentionally blank)**

### **ARTICLE 40 NO DAMAGES FOR DELAY**

40.01 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST CITY BY REASON OF ANY DELAYS. DESIGN/BUILD FIRM shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from CITY for direct, indirect, consequential, impact, or other costs, expenses or damages including, but not limited to, costs of acceleration or inefficiency arising

because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, DESIGN/BUILD FIRM hindrances or delays are not due solely to fraud, bad faith or active interference on the part of CITY or its agents. Unless the delay is due solely to fraud, bad faith, or active interference by the City, DESIGN/BUILD FIRM shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and to the extent specifically provided above. The specific application of this Article to other provisions of this Agreement shall not be construed as a limitation of any sort upon the further application of this Article. Ten Dollars (\$10.00) of DESIGN/BUILD FIRM'S fee is acknowledged as separate and independent consideration for the covenants contained in this Article.

#### **ARTICLE 41 SUBSTANTIAL COMPLETION**

41.01 When DESIGN/BUILD FIRM considers that the Project, or a designated portion thereof, which is acceptable to CITY (in the event CITY chooses to accept same pursuant to the sole authority and discretion afforded to it under Article 30 hereof), is substantially complete, DESIGN/BUILD FIRM shall so notify the Contract Administrator and Project Manager, in writing, and shall prepare for submission to the Contract Administrator and Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items. The failure to include any items on such list does not alter the responsibility of DESIGN/BUILD FIRM to complete all Work in accordance with the Contract Documents. The Contract Administrator, Project Manager, and such other persons as they may deem necessary, shall conduct a joint inspection to determine that the Project (or designated portion thereof) is substantially complete. The Contract Administrator will then instruct DESIGN/BUILD FIRM to prepare and deliver to the Contract Administrator a Certificate of Substantial Completion which shall establish the date of Substantial Completion for the Project (or that portion of the Project). After review of the certificate by the Contract Administrator, CITY shall either accept or reject the certificate. Acceptance of Substantial Completion by CITY shall be based upon compliance with the Contract Documents and Applicable Laws. DESIGN/BUILD FIRM shall have thirty (30) days to complete the items listed therein. Warranties required by the Contract Documents and submitted in appropriate form to the Contract Administrator along with the request for Substantial Completion shall commence on the date of Substantial Completion of the Project (or for that portion of the Project). The Certificate of Substantial Completion shall be submitted to CITY through the Contract Administrator and DESIGN/BUILD FIRM for their written acceptance of the responsibilities assigned to them in such Certificate.

#### **ARTICLE 42 SHOP DRAWINGS AND SCHEDULE OF VALUES**

42.01 DESIGN/BUILD FIRM shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of a Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.

42.02 DESIGN/BUILD FIRM shall submit to the Contract Administrator, within thirty (30) calendar days following the application for a building permit, a complete list of preliminary data on items for which Shop Drawings are to be submitted. Approval of this list by the Contract Administrator, which approval shall be in writing, shall in no way relieve DESIGN/BUILD FIRM from submitting complete Shop Drawings and providing materials, equipment, etc., fully in

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accordance with the Contract Documents. This procedure is required in order to expedite final approval of Shop Drawings.

42.03 After the approval of the list of items required in Subsection 42.02, DESIGN/BUILD FIRM shall promptly request Shop Drawings from the various manufacturers, fabricators, and suppliers.

42.04 DESIGN/BUILD FIRM shall thoroughly review and check the Shop Drawings and each and every copy shall show DESIGN/BUILD FIRM'S approval thereon.

42.05 If the Shop Drawings show or indicate departures from the Contract requirements, DESIGN/BUILD FIRM shall make specific mention thereof in its shop drawing submittal and a separate letter. Failure to point out such departures shall not relieve DESIGN/BUILD FIRM from its responsibility to comply with the Contract Documents. Contract Administrator shall determine acceptability of change and, in considering said change, may require data, technical comparisons, cost comparisons, quality comparisons and/or calculations to determine the equality of deviations. Contract Administrator is not obligated to accept deviations.

42.06 No work called for by Shop Drawings shall be done until the said Drawings have been furnished to and accepted, in writing, by the Contract Administrator. Contract Administrator shall respond to Shop Drawings pre-approved by Consultant with objections or acceptance within ten (10) business days of receipt. Acceptance is for design intent only and shall not relieve DESIGN/BUILD FIRM and Consultant from responsibility for fit, form, function, quantity or for errors or omissions of any sort on the Shop Drawings.

42.07 No acceptance will be given to partial submittal of Shop Drawings for items which interconnect and/or are interdependent. It is DESIGN/BUILD FIRM'S responsibility to assemble the Shop Drawings for all such interconnecting and/or independent items, check them, and then make one (1) submittal to the Contract Administrator, along with DESIGN/BUILD FIRM'S comments as to compliance, noncompliance, or features requiring special attention.

42.08 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. Catalog sheet with multiple options shall be highlighted to depict specific pertinent data including options.

42.09 DESIGN/BUILD FIRM shall submit to Contract Administrator eight (8) copies. Re-submissions of Shop Drawings shall be made in the same quantity until final acceptance is obtained.

42.10 Contract Administrator's acceptance of the Shop Drawings, as approved by DESIGN/BUILD FIRM, will be for general compliance with the Plans and Specifications, and shall not relieve DESIGN/BUILD FIRM of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the Work, nor for the furnishing of the Materials or Work required by the Contract and not indicated on the Drawings.

42.11 DESIGN/BUILD FIRM shall keep one (1) set of Shop Drawings, marked with the Contract Administrator's acceptance, at the Project site at all times.

42.12 The DESIGN/BUILD FIRM shall submit a Schedule of Values to the Contract Administrator as specified in the Technical Specifications. DESIGN/BUILD FIRM shall submit to

the Contract Administrator a separate Schedule of Values for demolition, abatement, and site work thirty (30) calendar days prior to commencing such portion of the Work. The schedule will be typed on 8-1/2" x 11" white paper listing: title of Project, location, Project number, Consultant, Contractor, Contract designation, and date of submission. The schedule shall list the installed value of the component parts of the work in sufficient detail to serve as a basis for computing values for progress payments during the construction. The table of contents of the specifications shall establish the format for listing the component items. Each line item will be identified by the number and title of the respective major section of the specifications. For each line item, DESIGN/BUILD FIRM shall list the sub-values of major products or operations under the item. Each item shall include the proportion of DESIGN/BUILD FIRM'S overhead and profit. For any items for which progress payments will be requested for stored materials, the value will be broken down with:

42.12.01 The cost of materials delivered, unloaded, properly stored and safeguarded, with taxes paid; and

42.12.02 The total installed value.

### **ARTICLE 43 FIELD ENGINEERING**

43.01 The DESIGN/BUILD FIRM shall provide and pay for field engineering services required for the Project. This work shall include the following elements:

43.01.01 Survey work required in execution of the Project.

43.01.02 Civil, structural or other professional engineering, architectural, landscape architectural, or land surveying services specified, or required to execute the DESIGN/BUILD FIRM'S construction methods.

43.02 The survey completed by DESIGN/BUILD FIRM will identify the qualified engineer or registered land surveyor, acceptable to the CITY, and he or she shall be retained by the DESIGN/BUILD FIRM at the outset of this Project.

43.03 The survey will locate and protect control points prior to starting site work, and will preserve all permanent reference points during construction.

43.03.01 No changes or relocations will be made without prior written notice to the Contract Administrator.

43.03.02 A written report shall be made to the Contract Administrator when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.

43.03.03 The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by state law.

43.03.04 Replacements shall be established based upon original survey control.

### **ARTICLE 44 FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS**

44.01 The entire responsibility for establishing and maintaining a line and grade in the field lies with DESIGN/BUILD FIRM. DESIGN/BUILD FIRM shall maintain an accurate and precise horizontal and vertical record of the existing building conditions; final building conditions; and all pipe lines, conduits, structures, underground utility access portals, handholes, fittings, etc. encountered or installed during construction. DESIGN/BUILD FIRM shall deliver these records in good order to the Contract Administrator as the work is completed. These records shall serve as a basis for "as-built" drawings. The cost of all such field layout and recording work is included in the Contract Price.

44.02 DESIGN/BUILD FIRM shall maintain in a safe place at the site, one (1) record copy of the Plans and Specifications, addenda, written amendments, Change Orders and written interpretations and clarifications, in good order and annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to Contract Administrator for reference. Upon completion of the Project, these record documents, samples and Shop Drawings shall be delivered to Contract Administrator.

44.03 At the completion of the Project, the DESIGN/BUILD FIRM shall turn over to the CITY a set of reproducible drawings (Mylars) and a complete set of all drawings in the latest version of AutoCAD on Compact Disk, not compressed, which accurately reflect the "as-built" conditions of the new facilities. All changes made to the Construction Documents, either as clarifications or as changes, will be reflected in the plans. The changes shall be submitted on Mylar at least monthly to the Contract Administrator. These "as-built" drawings on Mylar and the latest version of the AutoCAD format media must be delivered and found to be acceptable prior to final payments.

#### **ARTICLE 45 SAFETY AND PROTECTION**

45.01 DESIGN/BUILD FIRM shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. DESIGN/BUILD FIRM shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

45.01.01 All employees on the Project and other persons who may be affected thereby;

45.01.02 All the work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

45.01.03 Other property at the 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.

45.02 DESIGN/BUILD FIRM shall comply with all Applicable Laws, for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. DESIGN/BUILD FIRM shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in Sections 45.01.02 and 45.01.03 above, caused directly or indirectly, in whole or in part, by DESIGN/BUILD FIRM, any Subcontractor or Consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by DESIGN/BUILD FIRM; however,

DESIGN/BUILD FIRM shall not be liable for injury or damage caused by the gross negligence or willful misconduct of the CITY, its employees, consultants or its separate contractors. DESIGN/BUILD FIRM'S duties and responsibilities for the safety and protection of the Project shall continue until such time as all the Project is completed and the Contract Administrator has issued a notice to DESIGN/BUILD FIRM that the Project is acceptable except, as otherwise provided in Article 30.

45.03 DESIGN/BUILD FIRM shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be DESIGN/BUILD FIRM'S Project Representative unless otherwise designated in writing by DESIGN/BUILD FIRM to CITY.

**ARTICLE 46 (This Article left intentionally blank)**

**ARTICLE 47 ( This Article left intentionally blank)**

**ARTICLE 48 CLEANING UP AND REMOVAL OF EQUIPMENT**

48.01 DESIGN/BUILD FIRM shall at all times keep the Project site free from accumulation of waste materials or rubbish caused by DESIGN/BUILD FIRM'S operations. At the completion of the Project, DESIGN/BUILD FIRM shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If DESIGN/BUILD FIRM fails to clean up at the completion of the Project, CITY may do so, and the cost thereof shall be charged to DESIGN/BUILD FIRM.

48.02 CITY'S Right to Clean-Up: If a dispute arises between DESIGN/BUILD FIRM and separate contractors as to responsibility for cleaning up, CITY may clean up and charge the cost thereof to the contractors responsible therefore, as the Contract Administrator shall determine to be just. This provision is solely for cleaning.

48.03 Removal of Equipment: In case of termination of this Agreement before completion for any cause whatever, DESIGN/BUILD FIRM, if notified to do so by CITY, shall promptly remove any part or all of DESIGN/BUILD FIRM'S equipment and supplies from the property of CITY, failing which CITY shall have the right to remove such equipment and supplies at the expense of DESIGN/BUILD FIRM.

**ARTICLE 49 (This Article left intentionally blank)**

**ARTICLE 50 BONDS AND INSURANCE**

DESIGN/BUILD FIRM shall furnish, or cause to be furnished, on or before fifteen (15) days after execution of this Agreement, the following:

50.01 Performance Bond and Payment Bond (Surety):

50.01.01 A performance bond and payment bond of the form and containing all the provisions attached hereto and made a part hereof. Payment and Performance bonds may be in the form of dual obligee bonds from the Contractor in the amount of the contract between the DESIGN/BUILD FIRM and the Contractor, naming the CITY and DESIGN/BUILD FIRM as dual obligees. DESIGN/BUILD FIRM shall provide payment

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

and performance bonds in the remaining amount of the Contract Price naming the CITY as the obligee on those bonds.

50.01.02 The Bonds shall be in the amount of one hundred percent (100%) of the Contract amount guaranteeing to CITY the completion and performance of the Project covered in this Agreement as well as full payment of all suppliers, material persons, laborers, or Subcontractors employed pursuant to this Project. Such Bonds shall be with a surety company which is qualified pursuant to Section 50.03.

50.01.03 Such Bonds shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the Contract Price, or an additional bond shall be conditioned that DESIGN/BUILD FIRM will, upon notification by CITY, correct any defective or faulty work or materials which appear within one year after completion and acceptance of the Project.

-OR-

50.02 Performance and Payment Guaranty:

50.02.01 In lieu of a performance bond and payment bond, DESIGN/BUILD FIRM may furnish an alternate form of security which may be in the form of cash, money order, certified check, cashiers check or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by CITY for one year after completion and acceptance of the Project.

50.03 Qualifications of Surety:

50.03.01 A separate performance bond and payment 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.

50.03.02 In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

50.03.02.01 The surety company 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 company 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 CFR Section 223.10 Section 223.111). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner.

50.03.02.02 The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<b>Amount of Bond</b>	<b>Ratings</b>	<b>Category</b>
-----------------------	----------------	-----------------

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10, 000, 000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

50.04 INDEMNIFICATION OF CITY

50.04.01 In consideration of twenty-five dollars (\$25.00), separately acknowledged by DESIGN/BUILD FIRM, and other valuable consideration, DESIGN/BUILD FIRM shall indemnify and save harmless CITY, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any construction activities of DESIGN/BUILD FIRM its Consultant, Contractor, or any Subcontractors, Subconsultants, agents, servants, or employees connected with the Project; or by or in consequence of any negligence of DESIGN/BUILD FIRM, its Consultant, Contractor, or any Subcontractors, Subconsultants, agents, servants, or employees (excluding gross negligence or willful misconduct of CITY), in connection with the construction activities of the DESIGN/BUILD FIRM its Consultant, Contractor or any Subcontractors, Subconsultants, agents, servants, or employees connected with the Project; or by use of any improper materials; or by or on account of any act, error or omission of DESIGN/BUILD FIRM its Consultant, Contractor, or any Subcontractor, Subconsultants, agents, servants or employees, except to the extent caused by CITY. DESIGN/BUILD FIRM agrees to indemnify and save harmless CITY against any claims or liability arising from or based upon the violation of any federal, state, CITY or city laws, bylaws, ordinances or regulations by DESIGN/BUILD FIRM, its Consultant, Contractor, Subcontractors, Subconsultants, agents, servants or employees (excluding gross negligence or willful misconduct of CITY). DESIGN/BUILD FIRM further agrees to indemnify and save harmless CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation. This consideration is separate and distinct from any other consideration received by DESIGN/BUILD FIRM.

50.04.02 DESIGN/BUILD FIRM further agrees to indemnify, save harmless and defend CITY, its agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any negligent conduct or misconduct of DESIGN/BUILD FIRM not included in Section 50.04.01 above and for which CITY, its Consultant, Contractor, Subcontractors, Subconsultants, agents, servants or employees, are alleged to be liable.

50.04.03 The indemnification provided above shall obligate DESIGN/BUILD FIRM to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at CITY'S option, any and all claims of liability and all suits and actions of every name and description that may be brought against CITY which may result from the operations and activities under this Agreement whether the construction operations be performed by DESIGN/BUILD FIRM, its

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

Consultant, Contractor, Subcontractors, its Subconsultants, or by anyone directly or indirectly employed by any of the above.

50.04.04 The execution of this Agreement by DESIGN/BUILD FIRM shall obligate DESIGN/BUILD FIRM to comply with the foregoing indemnification provision. The obligations under this Section 50.04 shall survive termination and/or other expiration of this Agreement.

50.05 INSURANCE: The contractor shall furnish to Department of Procurement Management, City of Miami Beach, 1700 Convention Center Drive, 3<sup>rd</sup> Floor, Miami Beach, Florida 33139, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. **Worker's Compensation Insurance** for all employees of the vendor as required by Florida Statute 440.
- B. **Commercial General Liability** on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **City of Miami Beach must be shown as an additional insured with respect to this coverage.**
- C. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. **Professional (Design Errors & Omissions) Liability** Insurance in an amount not less than \$1,000,000 with the deductible per claim, if any, not to exceed 10% of the limit of liability. The policy must be endorsed to provide coverage for up to three (3) years after project completion. The policy is to be on a primary basis if other professional liability is carried.
- E. **Installation Floater Insurance** including coverage for material & equipment to be installed during the course of this project. City of Miami Beach shall be included as a Named Insured on this policy, as its insurable interest may appear. This policy shall remain in force until acceptance of the project by the City.

All deductibles for insurance required in this Agreement are the responsibility of the Contractor.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the vendor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**CERTIFICATE HOLDER MUST READ:**

**CITY OF MIAMI BEACH  
1700 CONVENTION CENTER DRIVE, 3<sup>rd</sup> FLOOR  
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

**ARTICLE 51 MISCELLANEOUS**

51.01 ROYALTIES AND PATENTS: All fees, royalties, and claims for any invention, or pretended invention, 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 this Project or appurtenances, are hereby included in the prices stipulated in this Agreement for said Project.

51.02 DATUM: All elevations are to refer to the North American Vertical Datum of 1988 (NAVD).

51.03 RIGHTS OF VARIOUS INTERESTS: Whenever work being done by CITY'S forces or by other contractors is contiguous to work covered by this Agreement, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the work in general harmony.

51.04 ASSIGNMENT: This Agreement shall not be assigned or subcontracted a whole without the written consent of the City, nor shall DESIGN/BUILD FIRM assign any monies due or to become due to it hereunder, without the prior written consent of the City.

51.05 NO INTEREST: Any monies not paid by CITY when claimed to be due to DESIGN/BUILD FIRM under this Agreement shall not be subject to interest. However, the provisions of CITY'S prompt payment ordinance, as such relates to timeliness of payment, and the provisions of Section 218.74(4), Florida Statutes, as such relates to the payment of interest, shall apply to valid and proper invoices.

51.06 OWNERSHIP OF DOCUMENTS: Drawing, specifications, design, models, photographs, computer AutoCAD disks, reports, surveys, and other data provided in connection with this Agreement and for which CITY has rendered payment, are and shall become and remain the property of CITY whether the Project for which they are made is executed or not. If this Agreement is terminated for any reason prior to completion of the Work, CITY may, in its discretion, use any design and documents prepared hereunder for the purpose of completing the Project, provided that CITY has paid for same; and provided further that if such termination occurs prior to completion of documents and/or through no fault of DESIGN/BUILD FIRM;

DESIGN/BUILD FIRM shall have no liability for such use; and provided further that any reuse without the written verification or adaptation of DESIGN/BUILD FIRM for the specific purpose intended will be without liability or legal exposure to DESIGN/BUILD FIRM. At the completion of the Project, as part of the Project closeout, copies of all drawings on AutoCAD disks shall be transmitted from DESIGN/BUILD FIRM to the Contract Administrator within seven (7) calendar days of termination of this Agreement in addition to the record drawing. The provisions of this clause shall survive termination or expiration of this Agreement and shall thereafter remain in full force and effect. Any compensation due to DESIGN/BUILD FIRM shall be withheld until all documents are received as provided herein. Notwithstanding the foregoing, the CITY retains ownership of any and all documents provided to the DESIGN/BUILD FIRM and has full use thereof without any further payment.

#### 51.07 RECORDS

DESIGN/BUILD FIRM shall keep such records and accounts and require its Contractor, Consultant, and Subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of three (3) years after the completion of the Project pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

#### 51.08 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

DESIGN/BUILD FIRM shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act in the course of providing any services funded in whole or in part by CITY, including Titles I and 11 of the (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

DESIGN/BUILD FIRM'S decisions regarding the delivery of work and services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

DESIGN/BUILD FIRM shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, DESIGN/BUILD FIRM shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

DESIGN/BUILD FIRM shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment,

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

DESIGN/BUILD FIRM shall not engage in or commit any discriminatory practice in violation of the CITY'S Human Rights Ordinance, as same may be amended from time to time, in performing the Scope of Services or any part of the Scope of Services of this Agreement.

51.09 NO CONTINGENT FEE: DESIGN/BUILD FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for DESIGN/BUILD FIRM to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for DESIGN/BUILD FIRM, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

51.10 ALL PRIOR AGREEMENTS SUPERSEDED: AMENDMENTS: The Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

51.11 NOTICES: Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY:  
City of Miami Beach  
Capital Improvement Projects Office  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
c/o CIP Director

WITH COPY TO:  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
c/o City Manager

and

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
c/o City Attorney

FOR DESIGN/BUILD FIRM:

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51.12 TRUTH-IN-NEGOTIATION CERTIFICATE: Signature of this Agreement by DESIGN/BUILD FIRM shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original Contract Price and any additions thereto shall be adjusted to exclude any significant sums by which CITY determines the Contract Price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such Contract adjustments shall be made within one (1) year following completion and acceptance of the Project.

51.13 INTERPRETATION: The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

51.14 RECYCLED CONTENT: In support of the Florida Waste Management Law, DESIGN/BUILD FIRM is encouraged to supply any information available regarding recycled material content in the products provided. CITY is particularly interested in the type of recycled material used (such as paper, plastic, glass, metal, etc.); and the percentage of recycled material contained in the product. CITY also requests information regarding any known or potential material content in the product that may be extracted and recycled after the product has served its intended purpose.

51.15 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, consultant or other provider, who has 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 CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor supplier, Subcontractor or consultant under a contract with the CITY and may not transact any business with the CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as amended, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in cancellation of the CITY purchase and may result in debarment.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS

The City reserves the right to modify this agreement at any time prior to execution.

51.16 APPLICABLE LAW AND VENUE: This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida. BY ENTERING INTO THIS CONTRACT, DESIGN/BUILD FIRM AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT. DESIGN/BUILD FIRM SHALL SPECIFICALLY BIND ITS PROJECT TEAM MEMBERS AND ANY AND ALL SUBCONTRACTORS TO THE PROVISIONS OF THE CONTRACT.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

ATTEST:

THE CITY OF MIAMI BEACH, FLORIDA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

DESIGN/BUILD FIRM MUST EXECUTE THIS CONTRACT AS INDICATED BELOW.

[If incorporated sign below]

DESIGN/BUILD FIRM/  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Secretary)

By:

\_\_\_\_\_  
(President)

(Corporate Seal)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

CITY REQUIRES FIVE (5) FULLY-EXECUTED CONTRACTS, FOR DISTRIBUTION.

SAMPLE AGREEMENT FOR DESIGN BUILD PROJECTS  
The City reserves the right to modify this agreement at any time prior to execution.

**RESOLUTION TO BE SUBMITTED**

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Philip Levine, Mayor and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: April 27, 2016

SUBJECT: **REPORT ON STRATEGY FOR DEALING WITH HIGH IMPACT BEACH EVENTS**

The Floatopia event that took place in South Beach on Saturday, April 16<sup>th</sup>, has raised the issue of how the City should be dealing with events on our beaches that have a high adverse impact on our City.<sup>1</sup> A detailed discussion of the Floatopia event was set forth in my Letter to Commission dated April 19, 2016, a copy of which is attached hereto. In particular, the challenge is those events that are not sanctioned or subject to special event permit by the City. As promised in that LTC and as directed by the Mayor and City Commission, I have submitted this report addressing different strategies to deal with such events.

### DISCUSSION

In analyzing how to deal with such events, I consulted with my Department Directors to determine how the City has dealt with such events in the past, and I also looked at how communities elsewhere (in and outside of Florida) have dealt with such events. The various methods employed generally break down into three categories:

- Prohibiting Beach Access;
- Implementing restrictive rules applicable to the beach to address crowd control; and
- Additional Strategies and resources to make such events manageable.

I will examine each approach below.

#### Prohibiting Beach Access

These are not events permitted or otherwise sanctioned by the City; therefore the traditional methods for canceling an event are not available. Furthermore, since these are public beaches and, specifically, the areas east of the dunes are actually state owned, we cannot selectively decide who can go on to the beach and who cannot. Some have suggested that the City simply close the applicable section of beach to all public access on such occasions. For the past few years, for example, Santa Barbara County in California has closed their beaches on the Saturday and Sunday of any scheduled Floatopia event.<sup>2</sup> Keep in mind that the circumstances and laws of other

<sup>1</sup> The focus here is on events that bring large crowds to the beaches.

<sup>2</sup> The floatopia concept appears to have originated in California.

states may not be the same or comparable to the City, and furthermore, any closure would not just be limited to persons wishing to attend the high impact event. The beaches would be closed for all persons, including residents and tourists.

a. Beach Management Plan

As you may know, the City has a Beach Management Agreement with the Division of State Lands of the State of Florida which sets forth the City's duties and responsibilities with respect to the beach. Section 4 of the Management Plan provides as follows:

4. It is understood and agreed that the City shall have the responsibility for the protection of the property; and shall through its agents and employees take all reasonable measures to provide security against property damage, property degradation and unauthorized uses.

The State, as the owner of the areas east of the dunes, is being contacted as to its position and strategies on beach closures.

b. Declaring a State of Emergency

It has also been suggested that the City Manager has the authority to close the beaches under the Civil Emergencies section of the Code. Section 26-31 of the City Code gives the City Manager the power to declare a state of emergency, if:

there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the city...

Upon such declaration, the City Manager has the power to impose certain discretionary measures, including "the closing of places of public assemblage with designated exceptions." Sec. 26-33(4). A broad reading of these provisions could support the argument that I would have the right to close the beach, if I reasonably believed that a high impact beach event is presenting an imminent threat to public property, or would result in substantial injury to person or property. Once a state of emergency is declared and the emergency measures are ordered, the same shall be filed with the City Clerk and delivered to the news media for publication and radio and television broadcast. Such powers are rarely exercised by governments and should be reserved for public emergency circumstances such as riots or widespread public disorder.

I am working with the City Attorney's office to evaluate these provisions, and to identify the City's authority, if any, during high impact beach events to actually close the beach. Even if the City Code grants (or could be amended to more specifically grant) such authority to the City Manager, it is likely that such authority would also need to be reflected in the Beach Management Plan with the State. Since it is technically their beach, they will control the conditions under which we could, if at all, close the beach to the public.

It is important to keep in mind that closing the beach is not without consequences. We would not be able to selectively allow access to the beach for our residents. The beach closure must be uniformly applied to all individuals, including our tourists and other visitors, without any exceptions. Closing the beach will have some budgetary impact

associated with it, but probably much less than the costs the City incurs dealing with these high impact events. Regrettably, the beach does not prevent folks from still coming to Miami Beach if they want to utilize other facilities.<sup>3</sup> Finally, it would likely have an adverse economic impact on our local businesses.

#### Restrictive Rules to deter the Event

There are many examples of communities that have employed methods to address crowd control, rather than prohibit attendance, at high impact beach events. Panama City, Florida, for example, adopted strict rules applicable only during the month of March to address the high volume of spring breakers. San Diego, rather than closing the beaches, adopted many beach restrictions which resulted in reduced crowds and effectively permitted law enforcement to properly monitor and control the beach event.

In my discussions with staff, we identified a series of steps that we believe provide significant crowd control and would facilitate the proper monitoring and enforcement of these impactful beach events. If we become aware that a high impact beach event will be coming to the City, these are measures that would only be implemented on a case-by-case basis and subject to objective criteria. These short term measures would include:

- Ban all coolers
- Ban all floats
- Ban all tents and similar structures
- Ban any live or amplified music
- Limit certain traffic routes or only allow vehicular access to residents and patrons and employees of businesses located in the affected area (e.g., Flamingo Park, south of Fifth).
- Create occupancy limits on different segments of the beach, and close off areas that have reached that limit<sup>4</sup>
- Zero tolerance for public consumption of alcohol
- Raise the garage and lot parking rates within one mile of the site to a premium daily flat rate of \$100 except for residents, monthly parkers and validated customers of local businesses
- Implement a license plate reader police detail on east bound MacArthur Causeway or Julia Tuttle, as applicable

The scope and extent of these measures that would be required to implement effective change is dependent upon the nature of the event, the time of year, the location on the beach, the prior history of the event in question, the pre-event information obtained from its organizers, social media and other sources, and other factors. We would also need an aggressive social media campaign to educate the public about the measures. These measures would not preclude the licensed operation of the beach chair concessions and attendant services on the beach.

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<sup>3</sup> In response to the beach closures by Santa Barbara County, students and others took the party to the streets of Isla Vista, the town on the bluffs overlooking the beach. The event took on the name "Deltopia" (after the main street Del Playa Drive) and has become a very problematic event.

<sup>4</sup> We spoke with officials at Miami-Dade County Ocean Rescue and they utilize such beach occupancy limits at Haulover and Crandon beaches, and will close a beach once bathing limits are reached.

The City has utilized some of these measures in the past, and are clearly within the City's scope of authority to regulate (e.g. alcohol prohibition, LPR details on causeway). Some of the beach-specific measures (e.g. bans on coolers, floats and tents) would likely require specific ordinances at the City level, and amendments to the Beach Management Plan. Our Environmental Department has already had preliminary discussions with the State and they indicated that we could present a set of proposals for approval at their June meeting.<sup>5</sup>

The advantage of this approach is that the City would not be closing a valuable public resource, but would simply be implementing measures that protect that asset while also promoting public safety. There will still be a budgetary impact to the City since we will need to deploy police, code and other resources to enforce these rules, particularly in the early years. But, eventually, once event participants know that the City is serious and enforcing the rules, the numbers will diminish and compliance will become the rule.

#### Making the Event Manageable

In my April 19<sup>th</sup> LTC, I laid out all the steps the City had taken to prepare for the scope and size of Floatopia we had expected for April 16<sup>th</sup>. It was clearly a significant investment by the City (and also included support from the County). As I noted in the LTC, the huge crowd overwhelmed those resources. I cannot recommend that the City's approach to high impact beach events be simply to assign the significant resources necessary to manage the event. The City's physical infrastructure cannot handle the volume of traffic and parking. The budgetary impact is significant, particularly with the heavy reliance on overtime in most of the affected departments. With such large crowds, it is difficult to adequately enforce prohibitions on litter, alcohol, etc. And, as we learned in the last event, adverse weather can aggravate the difficulties very quickly.

#### RECOMMENDATION

I recommend that the Mayor and City Commission direct City Staff to prepare a beach management ordinance that sets forth specific prohibitions and actions the City Manager can order in connection with high impact beach events that are intended to provide significant crowd control and effectively manage the event. Simultaneously, we would work with the State to have parallel provisions included in the Beach Management Plan and present it to the Division of State Lands for approval in June. With respect to any authority to close the beach, I would continue to rely on the existing City Code section on Civil Emergencies, which sets forth the very limited and specific circumstances under which such power could be exercised.

Attachment

JLM

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<sup>5</sup> The City Commission approved an amended Beach Management plan earlier this year and the State will be taking that up at a hearing in June. They will allow us to include our new measures in the item to be discussed.

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

OFFICE OF THE CITY MANAGER

LTC # **174-2016**

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: April 22, 2016

SUBJECT: **Miami Beach Convention Center Construction Project Update**

The purpose of this LTC is to update the Mayor and City Commission on the Miami Beach Convention Center renovation and expansion project for the month of March 2016. Project dashboard is attached as Exhibit A and a corresponding Budget Summary Breakdown is attached as Exhibit B. In addition, narrative updates are as follows:

## **BIDDING**

92% of the trade costs of the project have been awarded to date for a total of \$373 million of the budgeted \$410 million. No additional new awards were issued in the month of March since the pending awards are minor in nature and not on the critical path. The final 8% of the trades will include items such as ornamental railings, window washing equipment and miscellaneous metals, sound absorbing wall units, pavement striping, traffic signalization, landscaping, painting, toilet and bath accessories, toilet compartments, architectural precast, entrance mats and grilles, lockers, and wall protection.

## **GUARANTEED MAXIMUM PRICE (GMP) DRAW**

### **Direct Purchase**

The City has begun its direct purchase of materials for the project, resulting in sales tax savings budgeted to total \$6 million. Through March 31 the City has directly purchased \$14.8 million in materials resulting in a sales tax savings of \$882,000. In addition, the City saved on reduced payment and performance bond premiums totaling \$111,424 to date. The additional payment & performance bond savings is being added to the owner's contingency.

After the direct purchase amounts are taken into account, a total amount of \$38,280,546, or 7.43%, of the total GMP amount of \$515,458,058 has been invoiced to March 31, 2016. For a detailed breakdown, refer to Exhibit B (Total GMP line Item).

## **DESIGN STATUS**

During the month of March, the Fire Department and Building Department were continuing their reviews of the design documents submitted late February.

## **Smoke Control System**

Convention centers are unique in that the large exhibition halls create longer distances to exit in the event of a fire. The life safety design concept included in the GMP utilized a smoke control system to ensure guests could exit the longer distances safely in the event of a fire emergency. That system utilized fans for smoke removal, and relied

partially on automatically opening doors to the exterior for make-up air.

Through the further development of the design concept, while respecting the constraints of an existing building structure, it was determined that relying on exterior doors for introduction of make-up air was not an optimal solution, and instead, additional equipment would need to be added to introduce make-up air into the building. This entailed additional fans, additional structure to support the fans, and additional electric and controls to service the fans. Implementing this approach is cost prohibitive.

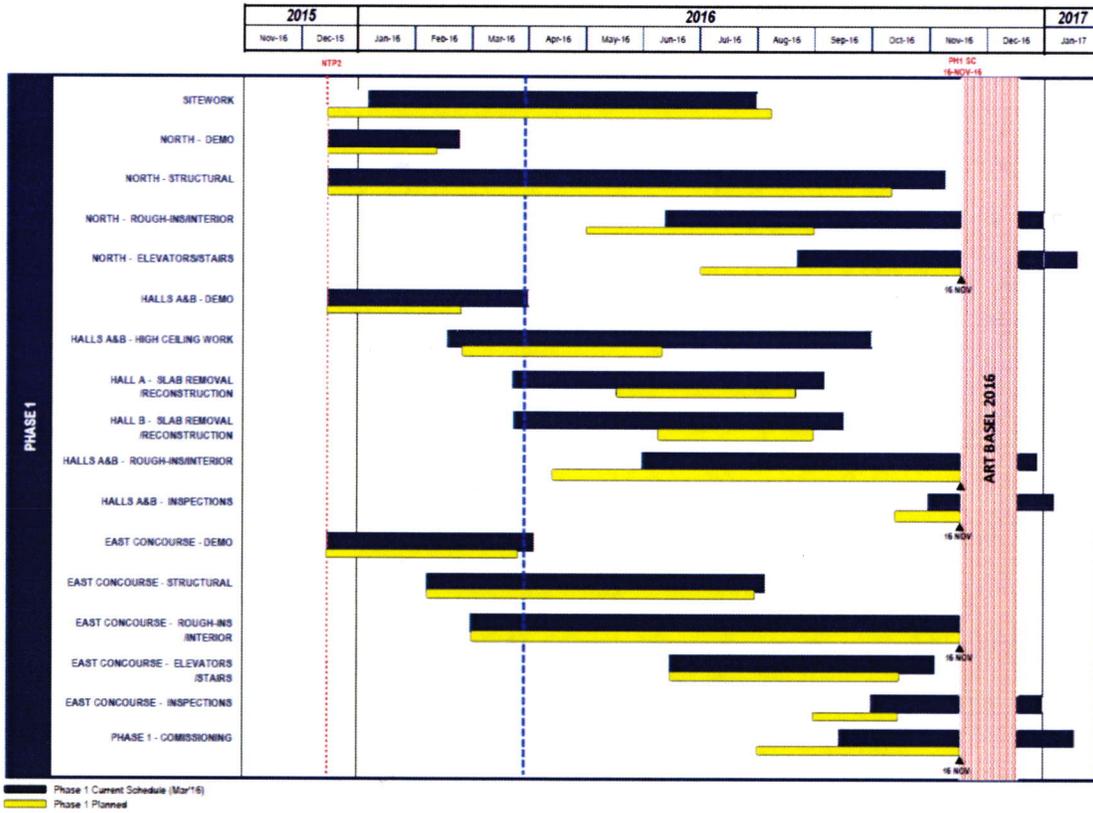
The design team is developing a new approach to the life safety design concept which eliminates the need for a smoke control system by providing more exits and closer access to exits and fire-rated corridors. The exact cost implications of this approach are still under study, but are considerably less than adding all the equipment listed above.

### **SCHEDULE**

Progress remains on schedule to meet the Art Basel 2016 milestone date of November 17, 2016. Addressing the change in life safety design discussed above will have to be worked into the schedule. The contractor (Clark) has been notified of the change and the design team is working through modifications to the construction documents. Since this new approach results in less equipment and ductwork, any schedule impacts driven by changes while under construction should be mitigated by less construction activity driven by the elimination of the smoke control system.

A second issue that impacted the schedule, but has been resolved, relates to addressing ground water contamination in the area of the ballroom addition, which delayed the dewatering permit issuance required to begin installation of foundations. The north loading dock is the only element of the north site that needs to be available for Art Basel 2016. The completion of the ballroom is not scheduled until the fall of 2017, therefore it is not on the critical path for this year. Clark is developing a schedule recovery plan to ensure the Art Basel milestone is maintained.

The following schedule summarizes the key milestones being tracked for Phase I which ends in December 2016:



## CONSTRUCTION

Key construction activities include:

- Installed 584 auger cast in place piles.
- Demolished East Concourse exterior façade; central vaulted roof structure; demolished of high level “gable” structure along Wash. Ave.; SE Mezzanine; remaining structures along North loading dock area.
- Installed backfill in depressed slab area along interior SE corner.
- Installed roof drains and white silicone roof coating to parapet walls.
- Installed sheet pile cofferdams for dewatering of shear wall foundations.
- Installed forms, reinforced and placed concrete for grade beams and shear walls along North expansion area.
- Installed concrete elevator pits along East Concourse.
- Installed structural reinforcing and Catwalks in Exhibit Halls A & B.
- Ran power and telecommunication conduits.
- Installed chilled water piping and rain leaders.
- Installed roof deck insulation in Halls A and B.

- Utility coordination meetings with franchise utilities continue to take place.
- Clark submitted Class V Dewatering permit and proceeded with alternate plan to dewater foundation elements along North expansion area.
- MOT for Washington Ave work was approved and implemented.
- Clark is in the process of implementing Workforce Management System to track workers with ID/RFID tags and monitor manpower, local workforce and job classification.

### **Noise Control and Mitigation**

The Clark team has implemented the following measures to improve noise control along the east side of the construction site (along Washington Avenue). These efforts are being communicated to residents through the project's social media outreach and/or face-to-face meetings, phone calls and e-mail communication.

- Construction will start no earlier than 7am Monday- Saturday and 9am on Sundays.
- All night work along Washington is required to stop at 9pm. There may be extenuating circumstances requiring a later stop due to safety or equipment problems during the construction which cannot stop until complete. The Public Information Officer (PIO) team issues alerts via email and social media when these problems occur.
- Work after 9 p.m. can occur inside of the building, away from the east facade.
- Clark will perform periodic noise monitoring along Washington during the night shift.
- All deliveries are scheduled for the day shift Monday through Saturday only. There will be no night deliveries.
- The sub-contractors are using electric and pneumatic tools where ever possible in lieu of gas powered tools or jack hammers for reduced noise.
- The majority of equipment being used shall be propane or electric powered, bobcats, man lifts, fork lifts, etc., reducing noise and emissions.
- All gas and diesel powered equipment shall use exhaust emission scrubbers, reducing emissions and exhaust noise.
- Most windows and openings along Washington shall be covered to contain construction activities inside, reducing light and noise from night operations.
- Construction light shall be directed to the interior, not exterior.
- Streets shall be swept daily and water shall be used to control dust and debris.

### **OWNER COSTS**

A total of \$42,125,323, or 59%, of the owner cost budget has been expended to date. The high percentage is due to the inclusion of design as a large component of Owner's Cost. For a full detailed breakdown refer to Exhibit B.

### **LOCAL HIRE**

Clark Construction continues their commitment to maximizing workforce opportunities for City of Miami Beach and Miami-Dade County residents. A total of 756 workers have been employed by the project to date. This includes all certified payroll from October 2015 to March 28, 2016. The labor force includes full-time, part-time, and temporary

labor and also includes daytime and nighttime shifts.

Attached as Exhibit C is a summary of the local hiring efforts, to date, of Clark and its subcontractors. The current report shows a summary of all employees on the project thus far, sorted by zip code. This shows that Clark is currently over 54% local hire (Miami Beach and Miami-Dade County) by individual and over 49% by man-hours.

**PUBLIC INFORMATION**

The City continues to dedicate efforts to advise the public of the status of the project through the City's social media outlets including Twitter, Facebook, and Constant Contact. A monthly newsletter and traffic alerts are included as part of the outreach effort. For an example of the posts for the month of March, refer to Exhibit D.

If there are any questions, please do not hesitate to contact myself or Maria Hernandez at Extension 2584.

Attachments:

- Exhibit A – Project Dashboard and Site Photos
- Exhibit B – Budget Summary Breakdown
- Exhibit C – Clark Construction Local Hiring Summary
- Exhibit D – Public Outreach Report

JLM / MH

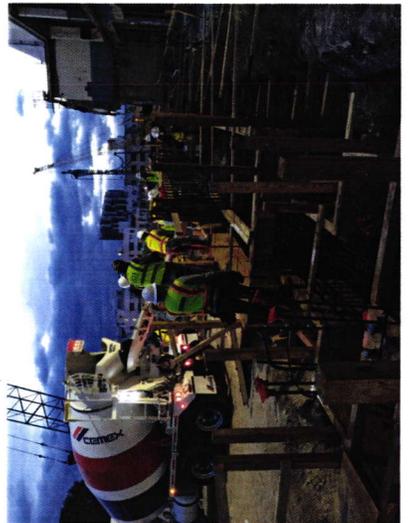
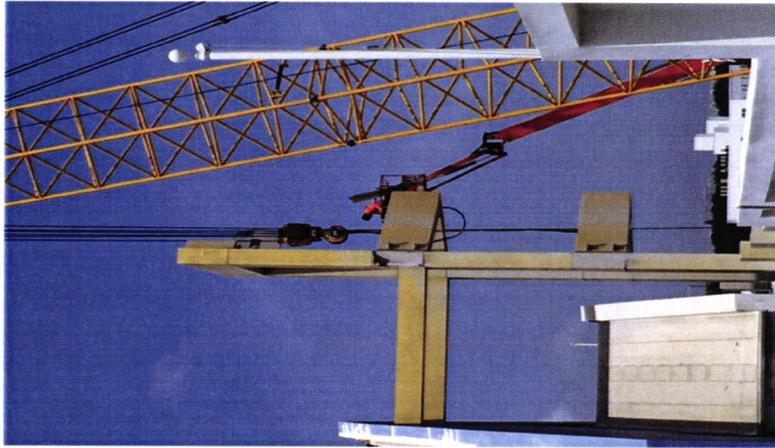
F:\cmgr\\$\ALL\Convention Center\Commission Updates - Monthly\_Quarterly\2016 March Monthly (April Commission)\MBCC Project Construction Update 2016 04 22.docx



# Convention Center Renovation & Expansion Project Dashboard

March 31, 2016

## EXHIBIT A



## EXHIBIT B

### Miami Beach Convention Center Expansion & Renovation Project

Approved Budget				Dashboard Summary				
	10/7/15 Original Budget	% Total	Budget Variance	Current Forecasted Budget	Current Budget %	Current Expenses	% Spent	Balance Remaining
Trade Costs	\$410,205,803	66.62%	0	\$410,205,803	66.61%	\$41,083,755	6.67%	\$369,122,048
Direct Purchase	0	0.00%	-14,778,031	-14,778,031	-2.40%	-14,778,031	-2.40%	0
Change Orders	0	0.00%	0	0	0.00%	0	0.00%	0
Subtotal	410,205,803	66.62%	-14,778,031	395,427,772	64.21%	26,305,724	4.27%	369,122,048
Contractor Soft Costs								
General Conditions (Clark Staffing)	24,465,886	3.97%	0	24,465,886	3.97%	3,320,000	0.54%	21,145,886
General Requirements	14,760,103	2.40%	0	14,760,103	2.40%	3,457,022	0.56%	11,303,081
Payment & Performance Bond	3,708,000	0.60%	-111,424	3,596,576	0.58%	3,596,576	0.58%	0
GL Insurance	1,807,650	0.29%	0	1,807,650	0.29%	166,665	0.03%	1,640,985
CMr Fees (3.8%)	17,288,003	2.81%	0	17,288,003	2.81%	1,434,559	0.23%	15,853,444
CM Contingency	29,747,613	4.83%	0	29,747,613	4.83%	0	0.00%	29,747,613
Base GMP	501,983,058	81.53%	-14,889,455	487,093,603	79.09%	38,280,546	6.22%	448,813,057
Other GMP Items (Including all mark ups)								
P-Lot Park (allowance)	10,000,000	1.62%	0	10,000,000	1.62%	0	0.00%	10,000,000
Storm water Drainage Culvert	3,475,000	0.56%	0	3,475,000	0.56%	0	0.00%	3,475,000
Subtotal	13,475,000	2.19%	0	13,475,000	2.19%	0	0.00%	13,475,000
<b>Total GMP (Clark Contract)</b>	<b>515,458,058</b>	<b>83.72%</b>	<b>-14,889,455</b>	<b>500,568,603</b>	<b>81.28%</b>	<b>38,280,546</b>	<b>6.22%</b>	<b>462,288,057</b>
Direct Purchases								
Direct Purchases		0.00%	14,778,031	14,778,031	2.40%	0	0.00%	14,778,031
Tax Savings	-6,000,000	-0.97%	0	-6,000,000	-0.97%	-881,992	-0.14%	-5,118,008
<b>Total Net GMP (Less Tax Savings)</b>	<b>509,458,058</b>	<b>82.74%</b>	<b>-111,424</b>	<b>509,346,634</b>	<b>82.70%</b>	<b>37,398,554</b>	<b>6.07%</b>	<b>471,948,080</b>
Owner's Cost								
City Staffing & Expenses	1,561,000	0.25%	793,318	2,354,318	0.38%	595,038	0.10%	1,759,280
Consultant Fees (SAG)	1,047,725	0.17%	0	1,047,725	0.17%	746,771	0.12%	300,954
Owner's Rep (Hill)	5,585,673	0.91%	0	5,585,673	0.91%	756,852	0.12%	4,828,821
Design Fees (Fentress)	26,669,442	4.33%	0	26,669,442	4.33%	20,782,071	3.37%	5,887,371
Owner's Cost Estimator (US Cost)	400,030	0.06%	66,448	466,478	0.08%	386,371	0.06%	80,107
Pre GMP CM Fee (Clark)	2,594,073	0.42%	0	2,594,073	0.42%	1,556,444	0.25%	1,037,629
Testing & Inspections	2,328,943	0.38%	0	2,328,943	0.38%	121,458	0.02%	2,207,485
Permit & Plan Reviews	2,400,000	0.39%	0	2,400,000	0.39%	1,673,667	0.27%	726,333
Other	847,041	0.14%	4,070,978	4,918,019	0.80%	499,893	0.08%	4,418,126
Public Art (AIPP)	6,900,000	1.12%	160,797	7,060,797	1.15%	7,060,797	1.15%	0
MBCC FF&E	6,830,945	1.11%	0	6,830,945	1.11%	0	0.00%	6,830,945
Insurance:								
OCIP GL Wrap	9,000,000	1.46%	-4,259,424	4,740,576	0.77%	4,740,576	0.77%	0
Builder Risk/Building (net)	1,600,000	0.26%	-450,000	1,150,000	0.19%	2,587,503	0.42%	-1,437,503
Professional Liability Umbrella	1,000,000	0.16%	-382,117	617,883	0.10%	617,883	0.10%	0
Carl Fisher Renovation Allowance	2,500,000	0.41%	0	2,500,000	0.41%	0	0.00%	2,500,000
Subtotal	71,264,872	11.57%	0	71,264,872	11.57%	42,125,323	6.84%	29,139,549
<b>Total Without Owner's Contingency</b>	<b>580,722,930</b>	<b>94.32%</b>	<b>-111,424</b>	<b>580,611,506</b>	<b>94.27%</b>	<b>79,523,877</b>	<b>12.91%</b>	<b>501,087,629</b>
Owner's Contingency	35,000,000	5.68%	258,873	35,258,873	5.73%	0	0.00%	35,258,873
Total Owner's Contingency	35,000,000	5.68%	258,873	35,258,873	5.73%	0	0.00%	35,258,873
<b>Total Budget With Owner's Contingency</b>	<b>\$615,722,930</b>	<b>100.00%</b>	<b>\$147,449</b>	<b>\$615,870,379</b>	<b>100.0%</b>	<b>\$79,523,877</b>	<b>12.91%</b>	<b>\$536,346,502</b>

- 1: The property insurance portion of the Builders Risk policy to be reimbursed \$2,000,004 by CMB Risk Dept.
- 2: The bond offering resulted in additional proceeds that were not included in the original budget.
- 3: A portion of the savings from insurance was allocated to AiPP to provide for actual costs. Pursuant to Sec. 82-587 of the CMB Code, the total amount allocated to AiPP has been transferred to the Art in Public Places Fund.
- 4: The remaining insurance savings is temporarily allocated to "Other" until other budget line items are refined.
- 5: Insurance Savings as a result of implementing a CCIP (Contractor Controlled Insurance Program) rather than an OCIP (Owner Controlled Insurance Program)
- 6: A portion of the savings from insurance was allocated to City Staffing to cover costs from Fiscal Year 2014 through December 2018. The previous budget estimate included only Fiscal Years 2015 through part of 2018.
- 7: Additional Cost Estimating services to support GMP reconciliation negotiations with Construction Manager – Clark Construction.
- 8: Savings from Clark Bond on Direct Purchases executed to date. These savings are added to Owner's Contingency.

# EXHIBIT C



## CLARK - #113451 - MIAMI BEACH CONVENTION CTR LOCAL WORKER UTILIZATION REPORT BY PROJECT

Project: #113451 - Miami Beach Convention Center  
 Project Code: 2015-26028  
 Contractor(s): Multiple Contractors  
 Craft(s): Multiple Crafts

From Date: 10/1/2016  
 To Date: 3/25/2016  
 Report Date: 3/25/2016

Area	Total Number of Workers	% of Total Workers	Total Hours Worked	% of Total Hours Worked	Wages w/ Benefits	Wages w/o Benefits	Number of Apprentices	Number of Journeymen	Number of Foreman	Number of Owner Operators	Number of Super
<b>Zip Lists</b>											
Miami Beach	4	0.53 %	523.00	0.42 %	\$11,065.41	\$11,027.44	1	3	0	0	0
Miami Dade County	401	53.04 %	59,564.10	48.31 %	\$1,136,503.99	\$1,068,205.81	19	382	0	0	0
Employees Not In-Specified Zip Lists	351	46.43 %	63,200.70	51.27 %	\$1,712,370.50	\$1,568,600.35	12	330	0	0	0
<b>Demographic Profile</b>											
African American	170	22.49 %	35,975.75	28.80 %	\$555,325.79	\$540,552.71	8	162	0	0	0
Asian	1	0.13 %	28.00	0.02 %	\$643.08	\$643.08	0	1	0	0	0
Hispanic	314	41.53 %	41,987.80	34.07 %	\$943,359.65	\$895,818.35	3	311	0	0	0
Caucasian	82	10.85 %	12,029.75	9.76 %	\$397,221.74	\$317,487.19	3	79	0	0	0
Other	180	25.00 %	33,646.50	27.29 %	\$963,188.64	\$803,131.28	18	171	0	0	0
Male	723	95.63 %	119,976.39	97.32 %	\$2,798,547.00	\$2,587,782.19	32	691	0	0	0
Female	33	4.37 %	3,301.50	2.68 %	\$61,431.82	\$60,000.42	0	33	0	0	0
<b>Total Employees</b>	<b>756</b>		<b>123,277.80</b>		<b>\$2,860,078.80</b>	<b>\$2,647,842.61</b>	<b>32</b>	<b>724</b>	<b>0</b>	<b>0</b>	<b>0</b>

# EXHIBIT D



## March 2016 - Social Media/Newsletter Report

Miami Beach Convention Center Renovation Project Prepared by:



Public Information Officer, Anneleise M. Sanchez

### Social Media Posts from March 2016: Twitter/Facebook

**City of Miami Beach Government**  
March 1 at 1:50pm · 🌐

Birds eye view of the work in progress over at the Miami Beach Convention Center renovation & expansion project #MBCCFuture



Posted on March 1, 2016

**City of Miami Beach** @MiamiBeachNews

Birds eye view of the work being done at @TheMiamiBeachCC for the renovation & expansion project #MBCCFuture



0:12

3/1/16, 11:08 AM

4 RETWEETS 6 LIKES

Posted on March 1, 2016



**City of Miami Beach Government**  
 March 3 at 12:05pm · 🌐

Have you seen the progress over at the Miami Beach Convention Center?  
 #MBCCFuture

59 Views

Posted on March 3, 2016

**City of Miami Beach** ✓  
 @MiamiBeachNews

#FunFact In 1972 both the Democratic & Republican parties held their conventions at @TheMiamiBeachCC  
 #MBCCFuture

3/3/16, 12:55 PM

3 RETWEETS 4 LIKES

Posted on March 3, 2016

**City of Miami Beach Government**  
 March 3 at 2:15pm · 🌐

Miami Beach Fun Fact: In 1972, both the Democratic and Republican parties held their respective conventions not only in the same town but also in the same exact building, the Miami Beach Convention Center!  
 #throwbackthursday #MBCCFuture

Posted on March 3, 2016



City of Miami Beach Government

March 7 at 1:40pm · 🌐

Calling all construction workers! Come out to the Miami Beach Convention Center expansion & renovation construction job fair, tomorrow, March 8 from 3:00 PM to 5 PM at Miami Beach Botanical Garden #MBCCFuture



Posted on March 7, 2016



City of Miami Beach

@MiamiBeachNews

Calling all construction workers!  
Construction job fair for  
@TheMiamiBeachCC project on 3/8  
3PM-5PM #MBCCFuture



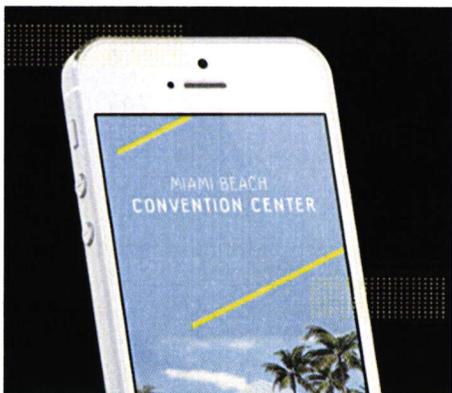
Posted on March 7, 2016



City of Miami Beach

@MiamiBeachNews

Sign up to receive info on the  
#MBCCFuture renovation & expansion  
project [mbccfuture.com](http://mbccfuture.com)  
@TheMiamiBeachCC



Posted on March 8, 2016



City of Miami Beach

@MiamiBeachNews

For the next month there will be 1 lane  
going NB/SB on Washington Ave from  
18 ST to 21 ST #MBCCFuture



Posted on March 11, 2016

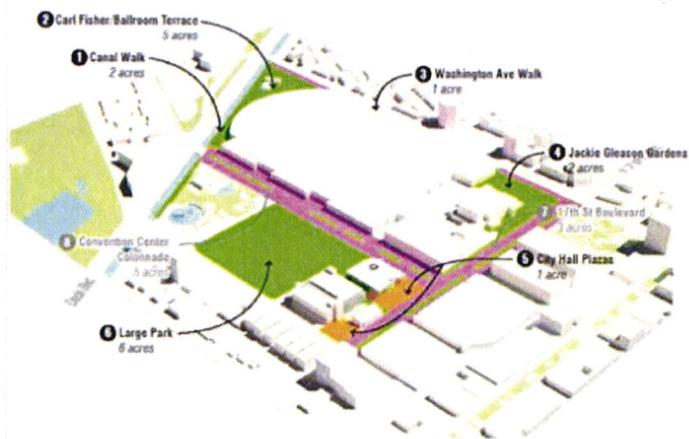


**City of Miami Beach Government**

March 24 at 10:00am · 🌐

Take a look & walk through our new Convention Center Map #MBCCFuture cc: Miami Beach Convention Center

### A Walk Through the Park



Posted on March 24, 2016



**City of Miami Beach** ✓

@MiamiBeachNews

Take a look & walk through our new #ConventionCenter Map #MBCCFuture cc: @TheMiamiBeachCC

### A Walk Through the Park



3/24/16, 8:45 AM

Posted on March 24, 2016



**City of Miami Beach** ✓

@MiamiBeachNews

We love our beaches for the same reasons you come to visit! Enjoy Spring Break but remember to #KeepMBClean

3/18/16, 4:25 PM

7 RETWEETS 5 LIKES

Posted on March 18, 2016



**City of Miami Beach Government**  
 March 28 at 2:15pm · 🌐

From Technology, to Design, to that blue life 🌊!  
 Find them all at the Miami Beach Convention Center  
 #MBCCFuture

**EVENTS SCHEDULE**

4/18/16 - 4/20/16  
 eMerge Americas Technology Conference

5/10/16 - 5/13/16  
 Maison & Objet Design Show

5/20/16 - 5/22/16  
 South Florida Boat Show

Posted on March 28, 2016

**City of Miami Beach** ✓  
 @MiamiBeachNews

From Technology, to Design, to that blue life 🌊! Find them all at  
 @TheMiamiBeachCC #MBCCFuture

**EVENTS SCHEDULE**

4/18/16 - 4/20/16  
 eMerge Americas Technology Conference

5/10/16 - 5/13/16  
 Maison & Objet Design Show

5/20/16 - 5/22/16  
 South Florida Boat Show

Posted on March 28, 2016



**City of Miami Beach Government**

22 hrs · 🌐

"This will be the center for creative collaboration. This is the future of Miami Beach" - Mayor Philip Levine #MBCCFuture



Posted on March 29, 2016



**City of Miami Beach** 🌐

@MiamiBeachNews

"This will be the center for creative collaboration. This is the future of #MiamiBeach" - @MayorLevine #MBCCFuture



3/29/16, 2:15 PM

Posted on March 29, 2016



**City of Miami Beach** 🌐

@MiamiBeachNews

Crews working quickly & diligently to complete work on Washington Ave before hurricane season begins #MBCCFuture



3/30/16, 11:15 AM

Posted on March 30, 2016



## Newsletter & Infographic: Sent Through Constant Contacts

Miami Beach Convention Center Renovation & Expansion  
PROJECT UPDATE - MARCH 10, 2016

**Washington Avenue Traffic Shift Underway**  
East Side of Building Receives a Face-Lift

Starting this week all northbound and southbound travel lanes will be reduced to one lane in each direction along Washington Avenue from 18 Street and 21 Street. This closure will be in place for approximately three to four weeks. During this period, the contractor for the MBCC Renovation & Expansion Project will be performing demolition to the existing east facade wall that faces Washington Avenue.

**PROJECT AREA**

**LEGEND**  
Work Zone

**MBCC Before & After**

Fast forward to the year 2017, the MBCC Team is excited to showcase the newly re-designed facade on Washington Avenue. This new design will go hand in hand with our Miami Beach aquatic taste. Stay tuned for more updates!

**Construction Update**

- Continuing demolition of Halls A&B inside the Convention Center at various locations.
- Performing demolition of the east facade of the convention center along Washington Avenue between 18 Street and 21 Street.
- Performing soil stabilization and structural piles at North addition location.
- City Public Works utility construction along Washington Avenue between 19 Street and 21 Street continues for future storm water improvements. During the week of March 7, 2016, the contractor will continue to install the 96-inch storm sewer pipe from the west side of Washington Avenue to Collins Canal. Backfill is scheduled to be completed by end of March.

This schedule is subject to change due to weather, special events, or unforeseen circumstances.

**Open For Business – Event Schedule**

- 3/18/16-3/21/16 Miami Home Design & Remodeling Show
- 4/3/16 4/5/16 Miami Wholesale Tradeshow
- 4/9/16 4/11/16 Jeweler's International Showcase

**MBCC In Motion**

Birds eye view of the work in progress at the Miami Beach Convention Center Renovation & Expansion Project.  
Check out our new time lapse video [here](#).

**Celeb in the Spotlight**

What happens when receive Oscar winner Leonardo DiCaprio visits Miami Beach? There's art, music and interviews with our very own Mayor. Rapid Photo League was interviewed by him at Miami Beach for his upcoming climate change documentary!  
P.S. He has also been spotted at MBCC during Art Basel!

Miami Beach Rising Above - MBCC Re-imagined Facade

### Make Wave for the Future

Take a dive and have a deeper look into the inspiration behind the reimagined state-of-the-art Convention Center.

**U.S. GREEN BUILDING COUNCIL  
LEED CERTIFIED  
USGBC**

Leadership in Energy & Environmental Design  
(LEED) Certified Design

Architectural design based on ocean elements

Sun shading design concepts will allow natural lighting

Environmentally sensitive design will have a 20% energy reduction

**"This will be the center for creative collaboration. This is the future of Miami Beach,"** said Miami Beach Mayor Philip Levine. **"We are excited to be delivering what our convention center clients need in order to book future events in Miami Beach and also a new attraction for our residents and visitors."**

**MIAMI BEACH CONVENTION CENTER**

**General Project Overview**

This work is part of the Convention Center Renovation & Expansion Project. Work began in December 2015 and is anticipated to be completed by July 2018. The total project budget is \$415 million and is funded by County and Municipal bonds.

Download Project Fact Sheet [here](#)

Watch our Project Animation [here](#)

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Annaliese Sanchez | [annaliese@carcare.com](mailto:annaliese@carcare.com) | 786.354.8456  
[www.mbccfuture.com](http://www.mbccfuture.com)