

# REQUEST FOR PROPOSAL

## CONSTRUCTION OF INTERIOR ALTERATIONS TO THE MEDLEY MUNICIPAL SERVICES FACILITY (Police Department Expansion)

RFP No. 2014-03



**The Town of Medley Council:**

**Mayor Roberto Martell  
Vice Mayor Griselia DiGiacomo  
Councilmember Jack Morrow  
Councilmember Edgar Ayala  
Councilmember Susana Guasch**

The Town of Medley  
7777 NW 72<sup>nd</sup> Avenue  
Medley, Florida 33166

**DATE ISSUED: June 2, 2014**

**CLOSING DATE: July 8, 2014**

**Town of Medley, Florida**

# Request for Proposals No. 2014-03 Construction of Interior Alterations to the Medley Municipal Services Facility

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## SECTION 1

### NOTICE TO PROPOSERS

Town of Medley

### **Construction of Interior Alterations to the Medley Municipal Services Facility**

**RFP 2014-03**

The Town of Medley, Florida, and (the Town") is accepting sealed Responses for the construction of Interior Alterations to the Medley Municipal Services Facility (MMSF) from qualified General Contractor (GC) companies. Proposals must be submitted in the form of one (1) original and seven (7) copies and one CD-ROM for the Technical Proposal and one CD-ROM or the Price Proposal, and **must** be received by the Town Clerk at 7777 NW 72<sup>nd</sup> Avenue, Medley, Florida 33166, **by no later than 2:00 P.M. on July 8, 2014**, at which time the Responses will be opened.

Town is seeking an experienced GC company with the right combination of price, qualifications, and experience to help ensure that the Town will have a contractor who can bring this Project in on time, within budget and according to the plans and specifications, with a minimum of issues and change orders.

The Scope of Work includes the construction of Interior Improvements and renovations as required to expand the Police Department facilities at the Medley Municipal Services Facility (MMSF), located 7777 NW 72<sup>nd</sup> Avenue, Medley, FL 33166 and more fully described in Article 3.3 of the ITB as well as in the drawings and specifications.

Copies of the RFP, including all related documents and future addenda if any, will be made available and only obtained by visiting the Town's website at [www.townofmedley.com](http://www.townofmedley.com) and selecting "Open Bid Invitations". All documents will be in .pdf format, with some being fillable .pdf documents.

**Minimum Qualification Requirements – Proposers must be a State of Florida Certified General Contractor who meets the minimum requirements set forth in Section 4 of the RFP. The Town's preference is that the Proposer has successfully completed at least three projects of similar size, scope and complexity in the last 7 years.**

A Non-Mandatory Pre-Proposal Conference will be held on June 24, 2014 at 10:00 AM in the Medley Municipal Services Facility, located at 7777 NW 72<sup>nd</sup> Avenue, Medley, FL 33166.

**ALL** inquiries regarding this RFP must be directed to the Town Engineer and submitted by email to [bidinfo@townofmedley.com](mailto:bidinfo@townofmedley.com). It is strongly recommended that potential Proposers attend the Pre-Proposal Conference.

The Town reserves the right to reject any and all Proposals, to re-advertise the RFP or take such other action as the Town Council may deem to be in the best interest of the Town of Medley.

The Town of Medley is an Equal Opportunity Employer and encourages the participation of Disadvantage Business Enterprises (DBE) and Minority Business Enterprises (MBE) in this Project.

*Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami Dade County, public notice is hereby given that a "Cone of Silence" is imposed concerning this solicitation. The "Cone of Silence" prohibits communications concerning RFP's, RFQ's or Bids, until such time as the Town Engineer on behalf of the selection committee makes a written recommendation to the Town Council concerning the solicitation.*

*Failure to comply with the "Cone of Silence" may result in the rejection of a Response. For additional information concerning the "Cone of Silence" please refer to Section 2-11.1 of Miami Dade County Code.*

This Notice to Proposers (RFP) is dated at Medley, Florida this 2<sup>nd</sup> day of June, 2014.

## SECTION 2 – SUBMISSION OF A RESPONSE

### 2.1 Submittal Requirements

This Request For Proposal (“RFP”) consist of two parts; a technical component (“Technical”) and a Price component (“Price”), both of which when combined constitute the Proposer’s response (“Response”) to the RFP.

Proposers submitting a Response to this RFP must submit both the Technical and Price components.

Sealed written Responses must be received by the Town of Medley; Town Clerk’s Office, no later than the date, time, and at the location indicated in Section 1 of the RFP or as changed by addenda in order to be considered responsive. Faxed documents are **not** acceptable. **Responses received at any other location than the aforementioned or after the Proposal submission date and time shall be deemed non-responsive and shall not be considered.**

Only one (1) Response from an individual, firm, partnership, corporation, business entity, will be considered in response to this RFP. Subconsultants or subcontractors may be included in more than one Response submitted by more than one Proposer. An individual, firm, partnership, or corporation that submits a Response may not be a subcontractor on another Response submitted under this RFP. Responses from joint ventures will not be considered.

One (1) original and seven (7) copies of your Response, plus one (1) copy each of your Technical and Price Response in digital form (on CD-ROM or Flash Drive in .pdf format) must be timely received by the Town Clerk or your Response may be disqualified. Technical and Price Responses must be submitted in separate file folders on the CD-ROM or Flash Drive. The hard copies of the Price component must be submitted in a separate sealed envelope from the Technical component.

### 2.2 Non-Mandatory Pre-Proposal Conference

A **NON-MANDATORY** pre-proposal conference will be held on June 24, 2014 at 10:00 A.M. The conference will be held in the Council Chambers at the MMSF located at 7777 NW 72<sup>nd</sup> Avenue, Medley FL 33166. Prospective Proposers should attend this meeting to obtain information relative to the RFP. Attendees are requested to sign-in and provide the requested information at the time of sign-in. Failure to attend or sign-in will not result in a Proposer’s Response being rejected as non-responsive.

### 2.3 Additional Information or Clarification

Proposers may e-mail their requests for additional information or clarifications (“RFI”) in accordance with the “Cone of Silence” and contact information provided in herein. Requests for additional information or clarifications **must** be submitted to [bidinfo@townofmedley.com](mailto:bidinfo@townofmedley.com). The request must include the Proposer’s name, the RFP number and title, and the number of pages transmitted. Any request for additional information or clarification must be received in writing **no later than 5:00 P.M. on July 1, 2014**. Late or miss-delivered requests may not receive a reply.

The Town will issue responses to inquiries and any other corrections or amendments, it deems necessary, in the form of a written addendum, issued prior to the Response Submission Date. The Town, at its sole discretion, may not issue a response to a RFI submittal. Proposers should not rely on any oral or written representations, statements, or explanations, other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any issued addenda, the last addendum issued shall prevail.

**Addenda will only be posted and made available on the Town's webpage under the "Open Bids" section** and it is the Proposer's sole responsibility to ensure receipt of all addenda prior to submitting its Response. The Proposer should check the Town's webpage for all addenda. The webpage is [www.townofmedley.com](http://www.townofmedley.com).

The Proposer shall complete and sign the **Acknowledgment of Addenda** and include it or copies of the signed Addendum acknowledging receipt in its Response in order to have the Proposal considered. In the event a Proposer fails to acknowledge receipt of such addenda, the Town may at its sole discretion, determine that such failure to acknowledge any or all addendum does not materially affect the Response, waive the submittal of said form(s) or the acknowledgement of one or more addendum on the form.

#### **2.4 Contract Terms and Conditions**

The Proposer(s) selected to provide the work requested herein (the "Successful Proposer(s)") shall be required to execute a contract ("Contract") with the Town in substantially the same form as the Contract included as part of the RFP.

#### **2.5 Price Proposal**

The Price Proposal component of the Response will be opened at the Evaluation Committee meeting immediately following evaluation of the Technical Proposals. The price score will be incorporated into the overall rating and ranking of the Responses.

The Price Proposal is based on a firm fixed price.

The Town reserves the right to negotiate the final Contract Price should that be deemed in the best interest of the Town.

#### **2.6 Award of a Contract**

A Contract may be awarded to the Successful Proposer for the Project by the Town Council, based upon the qualification requirements contained herein. The Contract is attached hereto as Exhibit B and it is hereby incorporated into and made a part of this RFP. The Town reserves the right to execute or not execute, as applicable, a Contract with the Successful Proposer, where it is determined to be in the Town's best interests. The Town does not represent that any awards will be made.

#### **2.7 Contract Execution**

Proposer by submission of its Response agrees to the terms and conditions contained in Exhibit B, and further agree to execute the Contract as included in the RFP without change.

However, the Town in its sole discretion, as stated in Section 2.5, reserves the right to negotiate the final Contract Price.

Responses that are conditioned to additions, deletions or revisions to the Contract's terms and conditions will be rejected as non-responsive.

## **2.8 Unauthorized Work**

The Successful Proposer(s) shall not begin any work until the Town issues a Notice to Proceed. Such Notice to Proceed shall constitute the Town's authorization to begin Work. Any unauthorized work performed by the Successful Proposer(s) shall be deemed non-compensable by the Town and Proposer will not have any recourse against the Town for performing unauthorized work.

## **2.9 Submittal Instructions**

Careful attention must be given to all requested items contained in this RFP. Proposers are invited to submit Responses in accordance with the requirements of this RFP. **PLEASE READ THE ENTIRE SOLICITATION BEFORE SUBMITTING A RESPONSE.** Proposers shall make the necessary entry in all blanks and forms provided for the Response.

Responses shall be submitted in sealed envelope(s) or package(s) with the RFP number, title, and opening date clearly noted on the outside of the envelope(s) or package(s) in the following manner:

**RFP 2014-03**

**CONSTRUCTION OF INTERIOR ALTERATIONS TO THE  
MEDLEY MUNICIPAL SERVICES FACILITY (MMSF)**

## **2.10. Changes/Alterations**

Responses shall be valid and irrevocable for at least 120 days. Proposer may change or withdraw a Response at any time prior to Response Submission Deadline. All changes or withdrawals shall be made in writing to the Town Clerk. Oral/Verbal modifications will not be allowed and will be disregarded. Written modifications will not be accepted after the Response Submission Deadline. Proposers shall not assign or otherwise transfer their Response.

## **2.11. Subcontractor(s)**

Subcontractor(s) are an individual or company who has a contract with the Proposer to assist in the performance of the work required under this RFP. Subcontractor(s) shall be paid through Proposer and not paid directly by the Town. The Proposer must clearly reflect in its Response the major Subcontractor(s) to be utilized in the performance of the work. Any and all liabilities regarding the use of a Subcontractor(s) shall be borne solely by the Successful Proposer(s) and insurance for each Subcontractor(s) must be maintained in good standing and approved by the Town throughout the duration of the Contract. Neither the Successful Proposer(s) nor any of its Subcontractor(s) are considered to be employees or agents of the Town.

## **2.12 Discrepancies, Errors, and Omissions**

Any discrepancies, errors, or ambiguities in the RFP or addenda (if any) should be reported in writing to the individual identified and in the manner prescribed in Section 1 of the RFP. Should it be necessary, the Town will issue a written addendum to the RFP clarifying such conflicts or ambiguities.

## **2.13 Disqualification/Rejection of Responses**

The Town reserves the right to disqualify any Response before or after the submission date, upon evidence of collusion with intent to defraud, or other illegal practices on the part of the Proposer. The Town also reserves the right to waive any immaterial defect or informality in any Response; to reject any or all Responses in whole or in part, or to reissue the Request for Proposals.

Throughout the RFP, the phrases "must" and "shall" will denote mandatory requirements. Any Response that does not meet the mandatory requirements is subject to immediate disqualification.

Any Response submitted by a Proposer who is in arrears, e.g., money owed or otherwise in debt by failing to deliver goods, services, fees, etc. to the Town or where the Town has an open or liquidated claim against a Proposer for monies owed the Town at the time of Proposal submission, or if a Proposer has been declared in default or abandoned a prior Town contract or agreement, or has been debarred by an federal, State of Florida, or Florida public entity within the past five (5) years will be rejected as non-responsive and shall not be considered for award.

## **2.14. Proposer's Expenditures**

Proposers understand and agree that any expenditure they make in preparation and submittal of Responses or in the performance of any services requested by the Town in connection with the Responses in response to this RFP are exclusively at the expense of the Proposers. The Town shall not pay or reimburse any expenditure or any other expense incurred by any Proposer in preparation of a Response, and/or anticipation of an award of a contract, and/or to maintain the approved status of the Successful Proposer(s) if a Contract is awarded, and/or administrative or judicial proceedings resulting from the solicitation process.

## **2.15. Inspection of Site**

Proposers should carefully examine the site of the proposed Work before submission of a Response and make all necessary investigations to inform themselves thoroughly as to all difficulties involved in the completion of all work required pursuant to the mandates and requirements of this RFP and the Contract. No plea of ignorance of conditions or difficulties



that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the Work pursuant to this Proposal as a result of failure to make the necessary examinations and investigations will be accepted as an excuse for a failure or omission on the part of the Design-Build Firm to fulfill, in every detail, all of the requirements of the Contract Documents, as defined in the Contract, nor will they be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time

**2.16. Execution of Response**

The Proposal must be manually and duly signed by an authorized corporate officer, principal, or partner (as applicable) in blue ink with a signature in full. Proposer shall complete the appropriate required Certificate of Authority, which is included as part of the RFP. Corporations must furnish documentation demonstrating the officer's authority to sign on behalf of the corporation.

Anyone signing the Response as agent must file with it legal evidence of signature authority. Proposers who are nonresident corporations shall furnish to the Town a duly certified copy of their permit to transact business in the State of Florida with the Response. Failure to promptly submit this evidence or qualification to do business in the State of Florida may be basis for rejection of the Response.

Failure to properly execute the Response may result in the Response being rejected as non-responsive.

Proposer understands that by submitting this RFP such submittal does not constitute an agreement or contract with the Town.

**2.17. Certification of Accuracy of Proposal**

Proposer by signing and submitting its Response certifies and attest that all Forms, Affidavits and documents related thereto that it has included in its Response, in support of its Response are true and accurate.

Any Proposer who submits in its Response any information that is determined by the Town, in its sole opinion, to be substantially inaccurate, misleading, exaggerated, or incorrect, shall be disqualified from consideration for award of the Contract.

**END OF SECTION**

## SECTION 3 – SCOPE OF WORK

### 3.1. Purpose

The Town is seeking to procure a qualified and experienced licensed General Contractor to construct the project in accordance with the plans, specifications, and Contract included as part of this RFP.

The General Contractor that the Town is seeking is an experienced company with the right combination of price, qualifications, and experience to construct this Project safely, on time, within budget, according to the plans and specifications, with a minimum of issues and change orders.

### 3.2. Project Location

The Medley Municipal Services Facility is located at 7777 NW 72<sup>nd</sup> Avenue, Medley FL 33166.

### 3.3 Project Scope of Work

The Work consist of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment and services necessary for the construction of the of the interior Alterations to the Medley Municipal Services Facility (MMSF) as depicted in the Bid Plans prepared by Rodriguez & Pereira Architects, Miami, Florida.

The MMSF will continue to be open to the public during construction.

### ~~3.4 LEED Certification~~

~~On June 25, 2008 the State of Florida enacted the Florida Energy Conservation and Sustainable Buildings Act which requires that effective July 1, 2008 all state, county and municipal public entities follow the LEED guidelines or other green building rating systems, including Green Globe and the Florida Green Building Coalition standards.~~

### ~~3.5 Incentive Bonus~~

~~The Town has included a no excuse incentive bonus for this Project. Details are included in Exhibit B.~~

## SECTION 4 – TERMS AND CONDITIONS

### 4.1. Acceptance/Rejection

The Town reserves the right to accept or reject any or all Responses or to select the Proposer that, in the opinion of the Town, is in its best interest. The Town also reserves the right to reject any Proposer(s) who has previously failed to properly perform under the terms and conditions of a contract, to deliver on time any contracts with the Town, and who is not in a position to perform the requirements defined in this RFP. Further, the Town may waive informalities, technicalities, minor irregularities, and/or request new Responses for the services specified in this RFP and may, at its discretion, withdraw and/or re-advertise the RFP. All such actions taken shall be in accordance with the applicable sections of the Town Code and this RFP.

### 4.2 Legal Requirements

This RFP is subject to all applicable federal, state, county, Town and local laws, codes, ordinances, rules and regulations that in any manner affect any and all of the services covered herein. By submitting a Response the Proposer certifies that it has full knowledge of such laws, codes, ordinances, rules, and regulations, and any lack of knowledge by the Proposer shall in no way be cause for relief from responsibility for compliance with these requirements.

### 4.3. Non-Appropriation of Funds

In the event that insufficient funds are appropriated and budgeting or funding is otherwise unavailable in any fiscal period for this Project, then the Town, shall have the unqualified right to terminate the Contract upon written notice to the Contractor, without any penalty or expense to the Town.

### 4.4 Business Tax Receipt Requirement

Proposer(s) shall meet the Town's Business Tax Receipt requirements in accordance with the Town Code, as amended. Proposer(s) with a business location outside the Town shall meet the applicable local or County Business Tax Receipt or Occupational License requirements.

### 4.5. Minimum Qualification Requirements

The Town is seeking to procure a qualified State of Florida Certified General Contractor. The General Contractor must possess a **minimum of five (5) years' experience** under its current business name. Proposer **must have completed a minimum of three (3) projects of a similar size, scope and complexity in the last seven (7) years** where the value of each of the projects exceeded \$1,000,000. **The Successful Proposer must be capable of self-performing fifteen (15%) percent of the primary physical construction Work.**

The Town will consider a Proposal as responsive where a Proposer has less than the stipulated minimum number of years of experience solely where the Proposer has undergone a name change and such change of name has been filed with the State of Florida, or where the Proposer was a subsidiary of a larger firm and the Proposer's firm has been merged into the larger firm. Proposer must include documentation substantiating such name change as part of its Response for the Town to consider crediting the years of experience from the Proposer under its previous

name. Failure to include such documentation with the Response will result in a determination of non-responsive.

**A minimum of three (3) projects must be included utilizing Exhibit 3, Experience of Proposer Questionnaire. The Proposer is to utilize its three most recently completed projects in the seven (7) years that are of the same size, scope and complexity of the Town's project.**

Failure to submit the information for the three (3) projects may result in the Response being deemed non-responsive.

Each firm interested in responding to this RFP must provide information on the firm's qualifications and experience, qualifications of the project team, members and staff, Project Manager's experience, and previous work of similar size, scope and complexity. See Section 5.0 "Instructions for Preparing a Response: Preparation Requirements" for further direction. Responses that do not adhere to the requirements of this RFP may be considered non-responsive and eliminated from the process. Additional minimum qualifications may be stated in Section 5.0, "Instructions for Preparing a Response".

For the Town to consider a project as complete a temporary or final Certificate of Occupancy must have been issued by the respective Building Department.

#### **4.6. Local Preference**

Not applicable (Exempted under Section 12-b(2) of the Procurement Ordinance C-357 (Procurement of goods/services which include funding from other entities that preclude the application of the Town's Local Preference).

#### **4.7 Public Entity Crimes**

Proposers must be in compliance with Section 287.133, Florida Statutes. Proposers shall submit Form PEC with their Response.

#### **4.8. Review of Responses for Responsiveness**

Each Response will be reviewed to determine if it is responsive to the submission requirements outlined in the RFP. A "responsive" Response is one which meets the requirements of the RFP and is submitted in the format outlined in the RFP, is of timely submission, can be evaluated in accordance with the Evaluation Criteria, and has appropriate signatures/attachments as required on each document. Failure of the Proposer to provide the information as required under Section 4 of the RFP may result in a rejection of the proposal as non-responsive.

#### **4.9. Collusion**

The Proposer shall certify that its Response is made without previous understanding, agreement or connection either with any person, firm, or corporation submitting a Response for the same services, or with any Town department. The Proposer certifies that its Response is fair, without control, collusion, fraud, or other illegal action. The Proposer further certifies that it is in compliance with the conflict of interest and code of ethics laws. The Town will investigate all situations where collusion may have occurred and the Town reserves the right to reject any and all Responses where collusion may have occurred.

The Proposer shall include in its Response, in the applicable section of its Response, the Non-Collusive Affidavit, included in this RFP. Failure by the Proposer to submit this affidavit will result in the Response being deemed non-responsive. Should the Proposer fail to include the affidavit with its Response the Town may, at its sole discretion, allow a Proposer a specified period of time to submit the affidavit to the Town, after which time the Response will be deemed non-responsive.

#### **4.10. Clarifications**

The Town reserves the right to make site visits, visit the Proposer's place(s) of business, to request clarifications of information submitted and to request or obtain any necessary supporting documentation or information of one or more Proposers, after the deadline for submission of Responses.

#### **4.11. Key Personnel**

Subsequent to submission of a Response and prior to award of a Contract, Key Personnel shall not be changed. Any changes in Key Personnel may result in the Response being rejected and not considered for award.

The Project Manager and the Construction Manager must be different individuals and the Project Manager and Construction Manager must both be employed by the Proposer.

#### **4.12. Audit Rights and Records Retention**

The Successful Proposer agrees to provide access at all reasonable times to the Town, or to any of its duly authorized representatives, to any books, documents, papers, and records of Proposer which are directly pertinent to this RFP, for the purpose of audit, examination, excerpts, and transcriptions. The Successful Proposer shall maintain and retain any and all of the books, documents, papers and records pertinent to the RFP and any resulting Contract for not less than three (3) years after the Town makes final payment, and all other pending matters are closed. Proposer's failure to or refusal to comply with this condition shall result in the immediate termination of the Contract (if awarded) by the Town.

#### **4.13. Public Records**

Proposer understands that the Response is a "public record, and the public shall have access to all documents and information pertaining the Response and the RFP, subject to the provisions of Chapter 119, Florida Statutes. The Proposer, by submitting a Response, acknowledges that the Town may provide public access to and/or copies of all documents subject to disclosure under applicable law.

Proposer must claim the applicable exemptions to disclosure as provided by said Florida Statute in its Response by identifying the materials to be protected and the reason why such exclusion from public disclosure meets the requirement of Chapter 119, Florida Statutes, and is necessary and legal.

#### **4.14. Conflict of Interest**

Proposer, by responding to this RFP, certifies that to the best of its knowledge or belief, no elected/appointed official or employee of the Town is financially interested, directly or

Indirectly, in the services specified in this RFP.

Proposer must include as part of its Response a detailed statement describing any relationships; professional, financial or otherwise that it may have with the Town, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the Services sought in this RFP. Additionally, the Proposer shall give the Town written notice of any other relationships; professional, financial or otherwise that it enters into with the Town, its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of the Contract.

Further, Proposer must disclose the name of any Town employee who owns, directly or indirectly, an interest of five percent (5%) or more of the total assets of capital stock in the Proposer's company.

Failure by the Proposer to disclose this information will result in the Response being deemed non-responsive.

#### **4.15. Debarred/Suspended Vendors**

An entity or affiliate who has been placed on the State of Florida debarred or suspended vendor list may not submit a Response or contract with a public entity for the construction or repair of a public building. In addition, such entity or affiliate may not perform any work as a supplier, subcontractor, or consultant, or subconsultant under any contract with any public entity, and may not transact business with any public entity. Any Proposer who submits a Response that includes such an entity or affiliate shall be deemed non-responsive and the Response will not be considered.

#### **4.16. Nondiscrimination**

Proposer agrees that it shall not discriminate as to race, sex, color, age, religion, national origin, marital status, or disability in connection with its performance under this RFP. Furthermore, Proposer agrees that no otherwise qualified individual shall solely by reason of his/her race, sex, color, age, religion, national origin, marital status or disability be excluded from the participation in, be denied benefits of, or be subjected to, discrimination under any program or activity.

#### **4.17. Contingent Fees**

Proposer represents and warrants to the Town that it has not employed or retained any person or company, to solicit or secure the award of a contract, and that it has not offered to pay, paid, or agreed to pay any person, company, corporation, or firm any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award or making of an contract.

#### **4.18 Assignment; Non-Transferability of Response**

A Response shall not be assigned, transferred, purchased, or conveyed. A Proposer who is, purchased by or merged with any other corporate entity during any stage of the Proposal

process, through, to and including awarding of and execution of a contract, shall have its Response deemed non-responsive and shall not be considered or further considered for award.

Exhibit B contains specific language as to the assignment, transfer, sale or conveyance of the Contract after it has been executed and any such action after execution may result in the termination of said Contract, unless it meets the specific applicable provisions of the Contract.

#### **4.19 Drug Free Workplace**

Proposer that meets the requirements of Florida Statute 287.087 shall receive preference should a tie occur in the ranking of the Responses by the Evaluation Committee.

Should a tie in the ranking of Responses occur the tied Proposers shall be requested to submit an affidavit, if applicable, attesting to meeting the requirements.

#### **4.20 Protest Process**

Any Proposer wishing to file a protest as to the requirements or award of this RFP must do so in accordance with Section 15 - Protests, of Ordinance C-357 (the Procurement Ordinance), which is available from the office of the Town Clerk or may be requested by email at [ltaboada@townofmedley.com](mailto:ltaboada@townofmedley.com).

## SECTION 5 – INSTRUCTIONS FOR PREPARING A RESPONSE

Proposer's Response to this RFP must contain the following information and documents, and follow the instructions in its preparation. Failure to do so may deem your Response non-responsive. Non-responsive submittals will receive no further consideration and will not be provided to the Evaluation Committee.

### 5.1. Preparation Requirements

Each Response must contain the following documents and forms required by Sections 5.1.A & 5.1.B, each fully completed, and signed as required. Proposers shall prepare their Responses utilizing the same format outlined below in Section 5.1.C. Each section of the Response as stipulated in 5.1.C shall be separated by a tabbed divider identifying the corresponding section number. Proposers are not to submit any information in response to this RFP that has not been requested or which the Proposer considers confidential, unless specifically required by the RFP. Submission of any confidential information will be deemed a waiver of any confidentiality or other such protection, which would otherwise be available to the Proposer, except as specifically permitted under Florida Statute. **PROPOSERS ARE NOT TO INCLUDE ANY DOCUMENTS NOT SPECIFICALLY REQUIRED OR REQUESTED, INCLUDING, BUT NOT LIMITED TO; MEDIA AND PUBLIC RELATIONS LITERATURE, ANNUAL REPORTS, PICTURES, ETC. SUCH DOCUMENTATION WILL NOT BE CONSIDERED AND WILL BE REDACTED FROM THE COPIES PROVIDED TO THE EVALUATION COMMITTEE.** Page limitations may have been established for some of the Town Forms, as well as other documents. The font size and type for Town Forms are set and cannot be changed. Proposer shall use the font style Calibri, Times New Roman, or Arial, with a font size of 11 or 12 for any other information or documents to be submitted.

Double sided printing is permitted provided that the Response complies with the format set forth in 5.1.C.

#### A. TECHNICAL COMPONENT OF THE RFP:

The Proposer's response to the requirements of the Technical Proposal should provide complete detailed responses to all of the submission requirements of the Technical component of the RFP. Missing, incomplete or vague responses to the questionnaire or any of the submittal requirements can adversely impact the evaluation of the Response. The technical portion of the Proposal must contain sufficient information to enable the Evaluation Committee to evaluate each of the criteria to be used in scoring the Technical component of the Response.

##### 1. Company Declaration

Proposer shall complete and submit Exhibit 1, Company Declaration for this section of its Response.

##### 2. Qualifications of the Proposer

Proposer shall complete and submit Exhibit 2-Company Qualification Questionnaire for this section of its Response.

##### 3. Financial Stability of Proposer

Proposer must provide the required documentation required under Financial Capacity



and be capable of meeting the Contract bonding and insurance requirements to be considered responsive to the RFP.

- a. Proposer's most recent certified financial statement together with a breakdown indicating the Working Capital Ratio, Balance Sheet, and Cash Flow Statement or 2 years of business income tax returns.
- b. Most recent Dun & Bradstreet report (if available).
- c. Letter(s) from the insurance carrier stating that the Proposer is capable of meeting the insurance requirements contained in Exhibit B.
- d. Letter(s) from the bonding surety stating that the Proposer is capable of meeting the bonding requirements contained in Exhibit B.

**4. Experience of the Proposer**

Proposer shall complete and submit the following for this section of its Response.

- a. Exhibit 3, Experience of Proposer Questionnaire
- b. Exhibit 4, Construction Project Staff Experience.

**5. Construction Approach & Schedule**

Proposer shall complete and submit Exhibit 5-Project Approach & Submittals for this section of its Response.

**~~6. Qualifications and Experience of Subcontractors~~**

~~Proposer shall complete and submit the following for this section of its Response.~~

- ~~a. Exhibit 6, Subcontractor Utilization Form~~
- ~~b. Exhibit 7, Experience of Subcontractor Questionnaire~~

**7. Forms**

In addition to the Forms and documents identified elsewhere in the RFP the following Form must be submitted:

- Form AK: Anti-Kickback Affidavit
- Form PC : Public Entity Crime Affidavit
- Form NC: Non Collusive Affidavit
- Form CI: Conflict of Interest Affidavit
- Form PP: Price Proposal
- Form AA: Acknowledgment of Addenda
- Form TS: Trench Safety Act

## B. PRICE PROPOSAL

### 1. Proposal Errors

Where the Price Proposal form, Form PP has erasures or corrections, the Proposer must initial each erasure or correction in ink. In case of unit Price Proposal items, if an error is committed in the extension of an item, the unit price as shown on the Price Proposal Form will govern. Errors between any sum, computed by the Proposer and the correct sum will be resolved in favor of the correct sum. Any discrepancy between words and numbers will be resolved in favor of the written word. Use of any other forms will result in the rejection of the Response as non-responsive.

### 2. Submission of Price Proposal

Proposers shall complete Form RFP-PP for the Price component of the RFP.

The Proposer shall be solely responsible for all costs to complete the Project, except where costs are covered as reimbursable costs under the Contract, or result from Town directed changes, or changes resulting from hidden/unforeseen conditions.

The Price component shall be submitted in a separate sealed envelope concurrent with the submittal of the Technical component, utilizing the Price Proposal Form contained in the RFP.

The Price submitted in the Response shall be based upon and include but not limited to any and all costs or expenses to be incurred by the Proposer in completing all aspects of the mobilization/start-up, construction, close-out Project. The Price component, in addition to all direct and indirect costs and expenses, shall include all other costs and expenses including but not limited to such costs as the Proposer's general, administrative and overhead costs; project management and supervisory costs; all fees, charges and taxes; labor, direct and indirect payroll costs, including labor burden; insurance and bond costs; cost of equipment, material, tools and transportation; and operating margin (profit).

**Options, if any** included as part of the Price component must be priced by the Proposer.

**Reimbursable Costs:** The Town's permit fees; Town fees are not to be included within the Price component. Other fees such as Miami-Dade County WASD connection fees (if applicable) are also not to be included in the Price component. The Town will reimburse the Successful Proposer for the Town's permits and regulatory fees and Miami-Dade County WASD connection fees. All other permit and other fees, such as those assessed by Miami-Dade County, FPL, etc. are to be included as part of the Price Component.

The Price Proposal is submitted for the purposes of determining the Successful Proposer. **The Town, at its sole discretion, may conduct further negotiation to determine the final value of the Contract to be awarded.**

**3. Schedule of Values Submittal**

Proposer shall provide a proposed Schedule of Values for the Construction of the Project. The Schedule of Values will be broken down only to trade categories, such as plumbing, electrical, HVAC, roofing, windows & doors, fire protection, etc. The proposed Schedule of Values is not to include specific tasks within each trade. At a minimum the information must include the trade category, and the estimated cost of the Work. Where a discrepancy exists between the trade category's estimated cost of work and the percentage shown in the subcontract list the trade category estimated percentage of the total work will prevail.

**4. Cost and Pricing Data**

The Town shall require the Successful Proposer to provide, for itself, and Subcontractor(s), prior to commencement of any Work the raw labor rates, burden rates, and fully loaded labor rates by labor classification certified as accurate by an officer of the company to be used in determining and change orders that may occur as a condition precedent to execution of a Contract.

The Town may require that supporting documentation be submitted to support the information provided and such rates may be subject to negotiation by the Town.

**5. Subcontractor / Subconsultants / Supplier Pricing Information**

Proposers are expressly prohibited from substituting Subconsultant or Subcontractors projected to perform five percent (5%) or more of the over-all Work as stated in the RFP. Such substitution, for any reason, after receipt of the Response, and prior to award by the Town, may result in disqualification of the Response from further consideration for award.

**6. Evaluation of Price Proposal Documents**

The Price Proposal will be evaluated in the following manner:

a. For Form RFP-PP

- i. The responsive Response with the lowest total Price Proposal will be given the full weights as identified above for each Phase.
- ii. Every other Response will be given points proportionally in relation to the lowest price. This point total will be calculated by dividing the lowest price by the total price of the Price Proposal being evaluated with the result being

multiplied by the maximum weight for the price to arrive as a cost score of less than the full score for price.

Example:  $\frac{\text{Lowest Price Proposed}}{\text{Proposer's Price}} \times \text{Total Points for Price} = \text{Price Score}$

Example:  $\frac{\$1,000,000}{\$1,500,000} \times 130 = 86.7 \text{ points}$

b. Subcontractor Breakdown

This portion of the Price Proposal will be evaluated as part of the Qualification of the Project Team and Subconsultants.

C. **Response Submission Format**

Responses are to be prepared and submitted in the following format and in the stated order. Failure to comply with this format may adversely impact the evaluation of the Response. Part A and B are to be submitted in separate sealed envelopes or boxes.

**Part A - Technical Response**

1. Company Declaration
  - a. Exhibit 1 – Company Declaration
2. Qualifications of Proposer
  - a. Exhibit 2 - Company Qualification Questionnaire
3. Financial Stability of Proposer
  - a. Financial Statement or Tax Returns
  - b. Dun & Bradstreet Report
  - c. Letter from Insurance Company
  - d. Letter from Bond Surety
4. Experience of Proposer
  - a. Exhibit 3 –Experience of Proposer Questionnaire
  - b. Exhibit 4 – Construction Project Staff Experience
5. Construction Approach and Schedule
  - a. Exhibit 5 – Project Approach and Submittals
- ~~6. Qualifications of Subcontractors~~
  - ~~a. Exhibit 6 – Subcontractor Utilization Form~~
  - ~~b. Exhibit 7, Experience of Subcontractor Questionnaire~~
7. Forms
  - a. Forms AK, PC, NC, and CI

**Part B – Price Proposal**

1. Form PP – Price Proposal (including Subcontractor Breakdown)
2. Schedule of Values
3. **Bid Guaranty (5% of bid amount)**

## SECTION 6 – EVALUATION/SELECTION PROCESS

### 6.1. Preparation Requirements

#### A. Evaluation Procedures:

The procedure for response evaluation and selection is as follows:

1. Request for Proposals issued.
2. Receipt of Responses.
3. Opening of Technical Proposals and listing of all Responses received.
4. Preliminary review of the Technical Proposals by Town staff for compliance with the submission requirements of the RFP, including verification that each Response includes all required documents.
5. Review by Town Staff to confirm that the Proposer's Team is qualified to render the required services according to State regulations.
6. The Evaluation Committee ("Committee"), appointed by the Mayor, shall meet to evaluate each responsive Response Technical Proposal in accordance with the requirements of the RFP. At the Committee's option, the Proposers may be required to attend an interview session. The Committee may, at its sole discretion, shortlist the proposers and may invite only the shortlisted firms to an interview session.
7. Subsequent to completing its evaluation of the Technical Proposals the scoring for the Fee Proposal will be calculated by the Evaluation Committee.
8. Town staff will calculate the score for each Fee Proposal in accordance with the methodology stated in Section 5 and advise the Committee.
9. Town staff will then total the score of each Proposer and advise the Committee of each Proposer's combined score.
10. The Committee forwards its recommendation of the most qualified Proposer to the Mayor inclusive of the ranking of the Responses.
11. The Mayor shall review the Evaluation Committee's recommendation and make a recommendation to the Town Council for award, reject all Responses, or return the recommendation to the Committee for reconsideration. In the event of a tie the recommendation of the Mayor shall control. The Mayor may submit a recommended Proposer or "short list" of a combination of a recommended Proposer and the "short list" to the Town Council.
12. As stated in the solicitation the Mayor or designee may conduct negotiations with the highest ranked Proposer.
13. If the Mayor is unsuccessful in negotiating a Contract with the selected Proposer the negotiations with the Proposer may be terminated and the Mayor will attempt to negotiate a Contract with the next highest ranked Proposer and so on.

B. The Town Council shall make the final selection and award. Evaluation Criteria. Responses shall be evaluated according to the following criteria and respective weight:

- Qualifications of the Proposer: ..... Maximum 15 points
- Experience of the Proposer: ..... Maximum 25 points
- Project Approach: ..... Maximum 20 points
- Financial Stability: ..... Maximum 10 points
- Price Proposal: ..... Maximum 130 points
- **Maximum Total Points: ..... 200 points**

## SECTION 7 – FORMS

The following forms need to be completed by the Proposer and submitted in the applicable section of the proposal:

<b>Form</b>	<b>Name</b>	<b>Proposal Envelope</b>
PP	Price Proposal	Part B - Price
AA	Acknowledgment of Addenda	Part A - Technical
BB	Bid Bond	Part B - Price
TS	Certification -Trench Safety Act	Part B - Price
AK	Anti-Kickback Affidavit	Part A - Technical
NC	Non-collusive Affidavit	Part B - Price
PC	Public Entities Crime	Part B - Price
CI	Conflict of Interest Affidavit	Part B - Price

**RFP 2014-03**  
**Price Proposal**  
**Construction of Interior Alterations to the**  
**Medley Municipal Services Facility (MMSF)**  
**Form PP**

The Proposer declares that it has fully reviewed the requirements of the RFP, and informed itself fully of the Scope of Work and all other conditions and circumstances pertaining to the work to be performed; and that this Proposal is submitted voluntarily and willingly.

The Proposer had determined based on its business and profession expertise that it can perform the work in accordance with the requirements of the RFP and the Contract.

The Proposer agrees, if its Proposal is accepted, to timely execute a contract with the Town, pursuant to the terms and conditions of the RFP and the Agreement.

The cost of construction stated below includes all costs to complete the work under the RFP and Contract except for the cost of permits, which shall be paid by the Town as an authorized reimbursable expense from the Contingency allowance item.

Item	Description	Cost
1.	Cost of Construction	\$
2.	Contingency allowance (+15%)	\$
	<b>TOTAL PRICE OF PROPOSAL:</b>	\$

***Written amount:***

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The Town of Medley reserves the right to waive any informality in any bid, to reject any and all bids, and to delete any part of the above items or Project.

The Bidder further proposes and agrees to begin the work with an adequate force and with sufficient equipment and facilities on the date stated in the written Notice issued and served upon him by the Owner and to complete the work included in the Proposal within the time stipulated in the Agreement, including delivery time for materials and equipment, installation, start-up and inspections.





Name of Subcontractor	Value of the Work	Percent of total cost
<b>Total:</b>		

Company Name: \_\_\_\_\_

Signatory's Name: \_\_\_\_\_

Signatory's Title: \_\_\_\_\_

Signatory's Signature: \_\_\_\_\_

**NOTE: This Form is to be submitted in a separate sealed envelope (Part B- Price Proposal).**

**Form AA**  
**ADDENDUM ACKNOWLEDGEMENT FORM**

**Bidder hereby acknowledges receipt of agenda by number and date on this page.**

<b>Addendum Number</b>	<b>Date</b>

**Form BB  
BID BOND**

STATE OF FLORIDA     }  
                                  } SS:  
COUNTY OF MIAMI-DADE}

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_ as Principal and as Surety are held and firmly bound unto the Town of Medley, a municipal corporation of the State of Florida in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid, dated \_\_\_\_\_, 20\_\_ for:

**RFP 2014-03  
Construction of Interior Alterations to the  
Medley Municipal Services Facility (MMSF)**

The Contractor must furnish all supervision, labor, materials, tools, equipment, and performing all operations required to construct the Town of Medley Capital Improvements Project Number PS-1301 in accordance with the Contract Documents and as described in the Drawings, General Notes, and Technical Specifications prepared by Rodriguez Pereira Architects.

NOW, THEREFORE,

1. If said Bid shall be rejected, or in the alternate.
2. If said Bid shall be accepted and the Principal shall properly execute and deliver to said Town the appropriate Contract Documents, and shall in all respects fulfill all terms and conditions attributable to the acceptance of said Bid, then this obligation shall be void; otherwise, it shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the amount of this obligation as herein stated.

The Surety, for value received, hereby agrees that the obligations of the said Surety and its Bond shall be in no way impaired or affected by any extension of time within which said Town may

accept such Bid; and said Surety does hereby waive notice of any extension.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their several seals this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, the name and the corporate seal of each corporate party hereto affixed and these presents being duly signed by its undersigned representative.

IN PRESENCE OF:

\_\_\_\_\_  
(Individual or Partnership Principal)

(SEAL)

\_\_\_\_\_  
(Business Address) (Town/State/Zip)

\_\_\_\_\_  
(Business Phone)

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Corporate Principal)\*

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Corporate Surety)\*

By: \_\_\_\_\_

\_\_\_\_\_  
\*Impress Corporate Seal

Surety companies executing Bonds must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the State of Florida.

**Form TS**

**CERTIFICATION – TRENCH SAFETY ACT**

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

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

Bidder acknowledges that included in the various items of the proposal and in the total Bid price are costs for complying with the Florida Trench Safety Act. These items are a breakout of the respective items involving trenching and will not be paid separately. They are not to be confused with bid items in the schedule of prices, nor be considered additional Work.

The Bidder further identifies the costs and methods summarized below:

Description	Unit	Quantity	Unit Price	Amount	Method
				\$	
				\$	
				\$	
			<b>Total:</b>	\$	

The Bidder shall acknowledge this Bid and certifies to the above stated in Part III and IV by signing and completing the spaces provided below.

Firm's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

City, State & Zip Code: \_\_\_\_\_

Email: \_\_\_\_\_

**Form AK**  
**ANTI-KICKBACK AFFIDAVIT**

STATE OF FLORIDA            }  
  } SS:  
COUNTY OF MIAMI-DADE    }

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn and subscribed before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
(Printed Name)

My commission expires: \_\_\_\_\_

**Form NC  
NON-COLLUSIVE AFFIDAVIT**

State of Florida            }  
  } SS:  
Miami-Dade County        }

\_\_\_\_\_ being first duly sworn deposes and says that:

- a) He/she is the \_\_\_\_\_, (Owner, Partner, Officer, Representative or Agent) of \_\_\_\_\_ the Bidder that has submitted the attached Proposal;
- b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- c) Such Proposal is genuine and is not collusive or a sham Proposal;
- d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient}, or any person interested in the proposed work;

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

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



**NON-COLLUSIVE AFFIDAVIT (CONTINUED)**

**ACKNOWLEDGMENT**

State of Florida            }  
                                      } SS:  
Miami-Dade County        }

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_  
\_\_\_\_\_ to me well known and known by me to be the person described herein and who  
executed the foregoing Affidavit and acknowledged to and before me that \_\_\_\_\_ executed  
said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public State of Florida at Large

**Form PC**  
**SWORN STATEMENT ON PUBLIC ENTITY CRIMES**  
**SECTION 287.133(3)(a), FLORIDA STATUTES**

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

1. This sworn statement is submitted to the TOWN OF MEDLEY by \_\_\_\_\_  
\_\_\_\_\_ (print individual's name and title) for \_\_\_\_\_  
\_\_\_\_\_ (print name of entity submitting sworn statement) whose business address is \_\_\_\_\_  
\_\_\_\_\_ and (if applicable) its Federal Employee Identification Number (FEIN) is \_\_\_\_\_ (if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: \_\_\_\_\_ ).
2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand than an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  - a. A predecessor or successor of a person convicted of a public entity crime; or
  - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a

pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.
6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. [Indicate which statement applies.]
  - a. \_\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
  - b. \_\_\_\_ This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
  - c. \_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. [attach a copy of the final order]

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD

AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

\_\_\_\_\_  
Signature of Entity Submitting Sworn Statement

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Personally known \_\_\_\_\_ OR  
produced identification \_\_\_\_\_ (type of identification).

Notary Public – State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
(Printed, typed or stamped commissioned name of notary Public)

**CONFLICT OF INTEREST AFFIDAVIT**

State of Florida        }  
                                  } SS:  
Miami-Dade County    }

\_\_\_\_\_ first duly sworn, deposes and says that he/she is the (Owner, Partner, Officer, Representative or Agent} of \_\_\_\_\_, the Bidder that has submitted the attached Bid/Proposal and certifies the following:

Bidder certifies by submitting its Bid that no elected official, committee member, or employee of the Town shall have a financial interest directly or indirectly in this transaction or any compensation to be paid under or through this transaction, and further, that no Town employee, nor any elected or appointed officer (including Town committee members} of the Town, nor any spouse, parent or child of such employee or elected or appointed officer of the Town, may be a partner, officer, director or proprietor of Bidder and further, that no such Town employee or elected or appointed officer, or the spouse, parent or child of any of them, alone or in combination, may have a material interest in the Bidder/Proposer. Material interest means direct or indirect ownership of more than 5% of the total assets or capital stock of the Bidder. Any contract award containing an exception to these above described restrictions must be expressly approved by the Town Council. Further, Bidder recognizes that with respect to this solicitation, if any Bidder violates or is a party to a violation of the ethics ordinances or rules of the Town, the provisions of Miami- Dade County Code Section 2-11.1, as applicable to Town, or the provisions of Chapter 112, part III, Fla. Stat., the Code of Ethics for Public Officers and Employees, such Bidder/Proposer may be disqualified from furnishing the goods or services for which the bid or proposal is submitted and may be further disqualified from submitting any future bids or proposals for goods or services to Town. The terms "Bidder" as used herein, include any person or entity making a bid herein to Town or providing goods or services to Town.

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

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_, to me well known and known by me to be the person described  
herein and who executed the foregoing Affidavit and acknowledged to and before me that \_  
\_\_\_\_\_ executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public State of Florida at Large

**Company Profile and Declaration**

**Exhibit 1**

Project Title: \_\_\_\_\_ Contract

Number \_\_\_\_\_

Submitted By: \_\_\_\_\_

(Respondent Firms' Legal Name)

\_\_\_\_\_  
(Respondent D/B/A Name, if used for this Project)

\_\_\_\_\_  
(Name and Title of Officer Signing the Submittal for the Respondent)

\_\_\_\_\_  
{Signature of Officer)

\_\_\_\_\_  
(Contact Name, if different from Officer) (Street

\_\_\_\_\_  
Address)

\_\_\_\_\_  
(City/State/Zip Code)

\_\_\_\_\_  
{Email Address)

\_\_\_\_\_  
(Phone Number)

**Declaration**

I, \_\_\_\_\_, hereby declare that I am the  
(Print Name)

\_\_\_\_\_ of \_\_\_\_\_ (Title)

(Name of Company)

the ("Respondent") submitting the Company Profile and Declaration, and that I am duly authorized to sign this Company Profile and Declaration on behalf of the above named company; all information in this Company Profile and Declaration and information and documents submitted in response to this RFP are, to the best of my knowledge, true, accurate, and complete as of the submission date.

The Respondent further certifies as follows

1. This Company Profile and Declaration is submitted as part of the Respondent's submittal ("Submittal") in response to the RFP issued by the Town of Medley with respect to RFP Number 2014-03.
2. Respondent has carefully examined all the documents contained in the RFP and understands all instructions, requirements, specifications, drawings/plans, terms and conditions, and hereby offers and proposes to furnish the products and/or services described herein at the prices, fees and/or rates quoted in the Respondent's Submittal, and in accordance with the requirements, specifications, drawings/plans, terms and conditions, and any other requirements of the RFP Documents.
3. The Submittal is a valid and irrevocable offer that will not be revoked and shall remain open for the Town's acceptance for a minimum of 120 days from the date Submittals are due to the Town, to allow for evaluation, selection, negotiation, and any unforeseen delays, and Respondent acknowledges that if its Submittal is accepted, Respondent is bound by all statements, representations, warranties, and guarantees made in its Submittal, including but not limited to, representation to price, fees, and/or rates, performance and financial terms.
4. Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements under this RFP.
5. Respondent is in full compliance with all applicable Federal, State, and local laws, rules, regulations and ordinances governing its business practices.
6. All statements, information and representations prepared and submitted in response to the RFP are current, complete, true, and accurate. Respondent acknowledges that the Town will rely on such statements, information, and representations in selecting a Respondent, and hereby grants the Town permission to contact any persons identify in this RFP to independently verify the information provided in the Submittal.
7. Submission of a Submittal indicates the Respondent's acceptance of the evaluation criteria and technique and the Respondent's recognition that some subjective judgments may be made by the Town as part of the evaluation process.
8. No attempt has or will be made by the Respondent to induce any other person or firm to not submit a response to this RFP.
9. No personnel currently employed by the Town participated, directly or indirectly, in any activities related to the preparation of the Respondent's Submittal.
10. Respondent has had no contact with Town personnel regarding the RFP, the Project or evaluation of Submittals in response to this RFP. If contact has occurred, except as permitted under the Cone of Silence, so state and include a statement identifying in detail the nature and extent of such contacts and personnel involved.
11. The pricing, rates or fees proposed by the Respondent have been arrived at independently, without consultation, communication, or agreement, for the purpose of restriction of competition, as to any other Respondent or competitor; and unless otherwise required by law



the prices quoted have not been disclosed by the Respondent prior to submission of the Submittal, either directly or indirectly, to any other Respondent or competitor.

12. Respondent has reviewed a copy of the Contract, included as Attachment 1 to the RFP.
13. Respondent is not currently disqualified, de-listed or debarred from doing business with any public entity, including federal, state, county or local public entities. If yes, Respondent must provide a detailed explanation of such disqualification, de-listing or debarment, including the reasons and timeframe.
14. Respondent has visited the site(s) where the work is to be performed and is familiar with the conditions under which the work will be performed and that the Respondent has fully reviewed the drawing/plans and specifications and is fully familiar with the work to be performed. The failure to become fully familiar with the site conditions and drawings shall not form the basis for any request for additional compensation or completion of Project in compliance with the RFP documents.

This declaration was executed in \_\_\_\_\_ County, State of \_\_\_\_\_ on \_\_\_\_\_, 2014.

\_\_\_\_\_  
(signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 .

\_\_\_\_\_  
(signature)

(Notary Seal/Stamp)







# Company Qualification Questionnaire

## Exhibit 2, Part 1

Additional pages may be added if necessary utilizing the same format. Some information may not be applicable apply. In such instances insert "N/A".

1. Years has your company been in business under its current name and ownership? \_\_\_\_\_

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

_____	_____
_____	_____
_____	_____

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

2. Type of Company: (Circle one) Individual      Partnership      Corporations      LLC .      Other

If other, please describe the type of company: \_\_\_\_\_

a. FEIN/EIN Number: \_\_\_\_\_

b. Dept. of Business Professional Regulation Category (DBPR): \_\_\_\_\_

i. Date Licensed by DBPR: \_\_\_\_\_                      License Number: \_\_\_\_\_

c. Date registered to conduct business in the State of Florida: \_\_\_\_\_

i. Date filed: \_\_\_\_\_                      Document Number: \_\_\_\_\_

d. Primary Office Location: \_\_\_\_\_

e. What is your primary business? \_\_\_\_\_

(This answer should be specific)

f. Name of Qualifier, license number, and relationship to company:  
\_\_\_\_\_

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

3. Name and Licenses of any prior companies

Name of Company	License No.	Issuance Date
-----------------	-------------	---------------

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4. Company Ownership

a. identify all owners or partners of the company

Name	Title	% of ownership
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<hr/>		
<hr/>		

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

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

Name	Title	Signatory Authority			
		All	Cost	No-Cost	Other
<hr/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation for Other: 

---

5. Employee Information

Total No. of Employees: \_\_\_\_\_ Number of Managerial/Admin. Employees: \_\_\_\_\_

Number of Trades Personnel and total number per classification:

(Apprentices must be listed separately for each classification)

---

\_\_\_\_\_  
\_\_\_\_\_

6. Insurance & Bond Information

a. Insurance Carrier name & address: \_\_\_\_\_  
\_\_\_\_\_

b. Insurance Contact Name, telephone, & e-mail: \_\_\_\_\_  
\_\_\_\_\_

c. Insurance Experience Modification Rating (EMR): \_\_\_\_\_  
(if no EMR rating please explain why)

d. Number of Insurance Claims paid out in last 5 years & value: \_\_\_\_\_

e. Bond Carrier name & address: \_\_\_\_\_  
\_\_\_\_\_

f. Bond Carrier Contact Name, telephone, & e-mail: \_\_\_\_\_  
\_\_\_\_\_

g. Number of Bond Claims paid out in last 5 years & value: \_\_\_\_\_

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

8. To the best of your knowledge is your company or any officers of your company currently under investigation by any law enforcement agency or public entity.  Yes  No If yes, provide details on a separate sheet.

9. Key Staff or Principals of the company (have) \_\_\_\_\_ (have not) \_\_\_\_\_ been convicted by a Federal, State, County or Municipal Court of or have any pending violations of law, other than traffic violations. To include stockholders over ten percent (10%). Explain any convictions or pending action on a separate sheet.

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

11. Has the Proposer or any of its principals failed to qualify as a responsible proposer, refused to enter into a contract after an award has been made, failed to complete a contract during

the past five (5) years, or been declared to be in default in any contract in the last five (5) years?  Yes  No If yes, provide details on a separate sheet.

12. Has the proposer or any of its principals ever been declared bankrupt or reorganized under Chapter 11 or put into receivership?  Yes  No If yes, give date, court jurisdiction, action taken, and any other explanation deemed necessary.
13. Provide an attachment listing all of the equipment, with a value of \$3,000 or greater, owned by your company.
14. Provide an attachment listing of all equipment that your company does not own but plans to rent, lease, or borrow for the performance of the Work



**Contractor Qualification Questionnaire**  
**Exhibit 2, Part 2**  
**Safety Qualifications**

Solicitation Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Please provide the following information concerning your company's safety performance and record.

Company's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

Web Page (if existing): \_\_\_\_\_

Name of company representative completing this form: \_\_\_\_\_

Title: \_\_\_\_\_

Date questionnaire completed: \_\_\_\_\_

Previous calendar year total employee hours worked: \_\_\_\_\_

**Previous calendar year OSHA 300 logs:**

- Attach latest updated annual recordable injury/illness OSHA 300 log
- Attach OSHA 300 log from the previous three (3) calendar years.

**Previous calendar year OSHA Lost Work Day Incident Rate: = \_\_\_\_\_**

Lost Work Day Incident Rate = Total number of recordable injuries or illnesses with days away from work x 200,000 divided by the total number of hours worked by all employees.

**Previous Calendar Year OSHA Recordable Incident Rate: = \_\_\_\_\_**

Recordable Incident Rate = Total number of OSHA recordable injuries and illnesses x 200,000 divided by the total number of hours worked by all employees.

**Previous Calendar Year Severity Rate: = \_\_\_\_\_**

Severity Rate = Total number of lost work days x 200,000 divided by the total number of hours worked by all employees.

**EMR: Experience Modification Rate:** List your company's EMR for the last three (3) years and attach documentation from your insurance company on their letterhead with their representative's signature and title. If your company does not have an EMR enter "N/A".

Year	EMR
_____	_____
_____	_____
_____	_____

**Citations:** Has your company received any citations in the past three (3) years from any government agency?

\_\_\_\_\_ yes    \_\_\_\_\_ no    If yes, include copy of citation(s) and abatement action(s).

**Safety Program:** Does your company have a written Safety and/or Health Program, including a mission statement, policies, and procedures

\_\_\_\_\_ yes \_\_\_\_\_ no If yes, check the following that your safety program includes:

Accident Reduction Program \_\_\_\_\_

Safety Committee \_\_\_\_\_

Asbestos Abatement Program \_\_\_\_\_

Drug Free/Substance Abuse Program \_\_\_\_\_

If checked, attach a brief description of the Program (not to exceed ½ page per Program)

Please check the following that your training program includes:

Asbestos abatement \_\_\_\_\_ Hot Work \_\_\_\_\_

Asbestos awareness \_\_\_\_\_ Injury/Illness Record Keeping \_\_\_\_\_

Asbestos training \_\_\_\_\_ Lockout/Tagout \_\_\_\_\_

Company safety policy \_\_\_\_\_ New Hire Orientation \_\_\_\_\_

Company safety rules \_\_\_\_\_ OSHA 10 hour certification \_\_\_\_\_

Confined spaces \_\_\_\_\_ OSHA 30 hour certification \_\_\_\_\_

CPR/First aid training \_\_\_\_\_ Pre-job safety inspection \_\_\_\_\_

Electrical safety \_\_\_\_\_ Respiratory protection \_\_\_\_\_

Fall Protection \_\_\_\_\_ Scaffold training \_\_\_\_\_

Fire Prevention \_\_\_\_\_

Is your Project Manager certified in accredited "OSHA 10-hour or "30-hour construction industry federal course: \_\_\_\_\_ yes \_\_\_\_\_ no If yes, which course: \_\_\_\_\_

Is your Project Manager certified in CPR/First Aid? \_\_\_\_\_ yes \_\_\_\_\_ no

Is your Construction Superintendent certified in accredited "OSHA 10-hour or "30-hour construction industry federal course: \_\_\_\_\_ yes \_\_\_\_\_ no If yes, which course: \_\_\_\_\_

Is your Construction Superintendent certified in CPR/First Aid? \_\_\_\_\_ yes \_\_\_\_\_ no



**Experience of Proposer  
Questionnaire**

**Exhibit 3**

Proposers must have successfully completed at least three (3) projects, which are comparable in size, scope, complexity and cost within the last seven (7) years. The Proposer is to utilize its three most recently completed projects that are of the same size, scope and complexity of the Town's project. Listed projects must have been managed and constructed by the business entity submitting the Response. One Data sheet must be completed for each project. Project completed by present employees, officers, or owners of the Proposer for former employers (individual experience) or companies are not acceptable. Construction Manager at Risk and Design-Build projects are not to be included.

### Project Data Sheet

(A separate data sheet is to be used for each project)

1. Project Name: \_\_\_\_\_
2. Project Location: \_\_\_\_\_
3. Project Title: \_\_\_\_\_
4. Project Number, if applicable: \_\_\_\_\_
5. Type of Construction: \_\_\_\_\_  
(i.e.: New, Renovation, Addition, Repair, Sidewalk/Curb/Gutter, Roadway reconstruction, Roadway resurfacing, Drainage, etc. Use all that apply.)
6. Size: (i.e.: Capacity, Tonnage, linear feet, square feet, etc.): \_\_\_\_\_
7. Scope of Work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. How many bids submissions did the owner receive for the project? \_\_\_\_\_
9. Business name that constructed & managed this project: \_\_\_\_\_
10. How is this project similar to the Town's project? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Cost of the project at time of bid: \$ \_\_\_\_\_
12. Cost of work at completion: \$ \_\_\_\_\_
13. LEED Certification
  - a. Was this a LEED Certified Project: Yes \_\_\_\_\_ No \_\_\_\_\_
  - b. Minimum LEED Certification required: \_\_\_\_\_
  - c. LEED Certification obtained: \_\_\_\_\_
14. Describe the sources and/or causes of the above differences in costs with reference to the following categories as determined by written change order, the public entity or the Architect/Engineer of Record (whichever had final authority):
  - a. Errors or omissions: \_\_\_\_\_ % \$ \_\_\_\_\_
  - b. Unforeseen/Hidden conditions: \_\_\_\_\_ % \$ \_\_\_\_\_
  - c. Owner generated changes: \_\_\_\_\_ % \$ \_\_\_\_\_
  - d. Regulatory agency changes: \_\_\_\_\_ % \$ \_\_\_\_\_
  - e. Contractor recommended changes: \_\_\_\_\_ % \$ \_\_\_\_\_
  - f. Other: \_\_\_\_\_ % \$ \_\_\_\_\_

Explain other: \_\_\_\_\_  
\_\_\_\_\_

15. How many RFIs did your company submit with respect to the plans and specifications for the project? \_\_\_\_\_

16. What was the primary reasons for the RFIs: \_\_\_\_\_  
\_\_\_\_\_

17. What year did the project start construction? \_\_\_\_\_

18. What year did the project complete construction? \_\_\_\_\_

19. Project Timeframe for completion (number of calendar days):

- a. \_\_\_\_\_ Contract timeframe at time of bid/proposal date for Substantial Completion
- b. \_\_\_\_\_ Contract timeframe at time of bid/proposal date for Final Completion (if different from Substantial Completion)
- c. \_\_\_\_\_ Formally adjusted contract timeframe based on change orders (if none state N/A)
- d. \_\_\_\_\_ Timeframe not covered under approved change orders (if none state N/A)
- e. \_\_\_\_\_ Actual time between issuance of Notice to Proceed and date of Substantial Completion
- f. \_\_\_\_\_ Actual time between date of Substantial Completion and Final Completion
- g. \_\_\_\_\_ Total number of days between original contract timeframe and Substantial Completion
- h. \_\_\_\_\_ Total number of days between original contract timeframe and Final Completion (if different from Substantial Completion)

20. If completion did not occur within the contract time established at bid/proposal date or within the formally adjusted contract time (as identified in item 17c above, explain the reason(s) for the delay:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. Total number of task on the punch list? \_\_\_\_\_

22. If punch list items were not completed/performed explain the reason(s):

\_\_\_\_\_  
\_\_\_\_\_

23. Were liquidated damages or actual damages for delay assessed on this project?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, state the amount: \$ \_\_\_\_\_

24. Name of the Project Manager: \_\_\_\_\_

25. Name of the Construction Superintendent: \_\_\_\_\_

26. Total amount of the work self-performed: \_\_\_\_\_% \$ \_\_\_\_\_

a. If yes, specify the trade, percentage, and value (add additional pages if necessary)

\_\_\_\_\_% \$ \_\_\_\_\_  
\_\_\_\_\_% \$ \_\_\_\_\_

\_\_\_\_\_ % \$ \_\_\_\_\_  
\_\_\_\_\_ % \$ \_\_\_\_\_

27. Were subcontractors used on the project? \_\_\_\_\_ yes \_\_\_\_\_ no

a. If yes, specify the trade, percentage, and value (add additional pages if necessary)

\_\_\_\_\_ % \$ \_\_\_\_\_  
\_\_\_\_\_ % \$ \_\_\_\_\_  
\_\_\_\_\_ % \$ \_\_\_\_\_

28. Were any Claims\* or Dispute filed on the project? \_\_\_\_\_ yes \_\_\_\_\_ no

\*A Claim means a demand or assertion by your firm seeking as matter of right, adjustment or interpretation of contract terms, compensation, extension of time or other relief with respect to the terms of the contract or other disputes between the owner and your firm.

29. If a Claim(s) was filed on the project, provide the following details for each Claim\*:

a. Dollar amount for Initial Claim: \_\_\_\_\_

b. Source of Claim: (e.g. contractor, subcontractor, supplier, etc.) \_\_\_\_\_

c. Method of resolution (e.g. negotiation, mediation, arbitration, litigation): \_\_\_\_\_

d. Final amount of Claim settlement: \_\_\_\_\_

30. If a formal Dispute(s) was filed on the project, provide the following details for each Dispute. Identify the reason for the Dispute and the resolution (use additional pages if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

31. Did your company fail/refuse to perform or complete any of work it was obligated to complete?

\_\_\_\_\_ yes \_\_\_\_\_ no

If yes, explain what work was not performed/completed and reasons why:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

32. Was your company required to perform any work under a directive to proceed pending the resolution of an interpretation of the contract or dispute?

\_\_\_\_\_ yes \_\_\_\_\_ no

33. Identify up to four (4) constructability issues encountered by your company on the project and briefly describe how your company resolve each issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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34. Did your company perform any value engineering or other cost savings measures, which improved the quality of the project or saved cost? If yes, provide details and any cost savings.

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Project Owner's Name: \_\_\_\_\_

Is the Project Owner a public entity? \_\_\_\_\_ yes \_\_\_\_\_ no

Contact Name for Project Owner: \_\_\_\_\_

Contact Name's Title: \_\_\_\_\_

Project Owner's Address: \_\_\_\_\_

Project Owner's City, State, and Zip Code: \_\_\_\_\_

Contact Name's Telephone Number: \_\_\_\_\_

Contact Name's Email Address: \_\_\_\_\_

Architect/Engineer of Record: \_\_\_\_\_

Architect/Engineer of Record Contact Name: \_\_\_\_\_

Architect/Engineer of Record Contact Name's Telephone No. \_\_\_\_\_

Architect/Engineer of Record Contact Name Email Address: \_\_\_\_\_



**Construction Project Staff Experience  
Questionnaire**

**Exhibit 4**

**A. Project Manager**

1. Name of Project Manager to be committed to this Project and continuously retained throughout this Project: \_\_\_\_\_

a. Attach Project Manager's resume.

b. Employed by the Company: \_\_\_\_\_ years

c. Present position/job function: \_\_\_\_\_

d. Years in present position/job function: \_\_\_\_\_ years

e. Prior position with company (if applicable) \_\_\_\_\_

f. Years in prior position/job function: \_\_\_\_\_ years

g. The Project Manager named above was assigned to the following comparable projects:

	<u>Project Name</u>	<u>Construction Cost</u>
i.	_____	_____
ii.	_____	_____
iii.	_____	_____

h. The Project Manager named above worked on the following projects for which Project Data Sheets are submitted: (Note: If the designated Project Manager did not work in this capacity on at least two (2) comparable projects for which Project Data Sheets were submitted, provide a Project Data Sheet for two (2) of the projects listed A.1.g above.

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

**B. Construction Superintendent**

1. Name of Construction Superintendent to be committed to this Project and continuously retained throughout this Project: \_\_\_\_\_

a. Attach Construction Superintendent's resume.

b. Employed by the Company: \_\_\_\_\_ years

- c. Present position/job function: \_\_\_\_\_
- d. Years in present position/job function: \_\_\_\_\_ years
- e. Prior position with company (if applicable) \_\_\_\_\_
- f. Years in prior position/job function: \_\_\_\_\_ years
- g. The Construction Superintendent named above was assigned to the following comparable projects:

<u>Project Name</u>	<u>Construction Cost</u>
---------------------	--------------------------

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- h. The Construction Superintendent named above worked on the following projects for which Project Data Sheets are submitted: (Note: If the designated Construction Superintendent did not work in this capacity on at least two (2) comparable projects for which Project Data Sheets were submitted, provide a Project Data Sheet for two (2) of the projects listed A.1.g above.

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

3. Team Members:

Complete Exhibit 2, Team Member Table, with respect to all employees or members of your company that will be assigned to this Project, their planned responsibilities on the Project, the anticipated percentage of time each will devote to the Project, the person's years of experience in the industry and education experience.

**Project Approach & Submittals**  
**Exhibit 5**

Using separate pages address the following items. **Do not exceed any page limitations as any excess pages will not be provided to the Evaluation Committee.**

**A. Project Approach and Work Plan**

1. Describe your anticipated approach to this project, including specifically project supervision, management, scheduling and accounting methods you intend to employ. (1 page maximum)
2. List all permits your company expects will be required for each component of the Project using the following format:

Permit Required	Project Component	Permitting Entity

3. Describe any difficulties, challenges, or risks your company foresees in providing the required services to the Town, how you expect to manage these difficulties, challenges, or risks, and what assistance will be required by the Town. In particular, site safety and site management to minimize impact on the use of the Medley Municipal Services Facility (MMSF) during construction. (1/2 page maximum)
4. Describe any value-added special services, knowledge, expertise, or other benefits or advantages that will be afforded the Town in selecting your company for this project. (1/2 page maximum)
5. Identify any concerns your company noted in your review of the plans and specification included as part of the RFP. (1 page maximum)
6. Request for Information (“RFI”) and Shop Drawings: Describe your firm’s approach to handling RFIs and Shop Drawings to ensure the timeliness of RFI and Shop Drawing submittals and the accuracy of Shop Drawings. (1/2 page maximum)

**B. Schedule**

1. Attach a **DRAFT** Critical Path Method (“CPM”) Schedule for the Project and include a written, detailed description of your scheduling logic. The **DRAFT** CPM schedule should identify tasks to be performed and/or deliverables to be provided the predecessors for each task, time frames to complete performance of the

identified tasks, and the expected time frame in which the Project will be completed. Describe any and all scheduling assumptions made in developing the schedule. When preparing **DRAFT** CPM schedule assume the following:

- a. The Town and Architect/Engineer of Record will review submittals, such as Shop Drawings, RFIs, etc. within ten (10) calendar days.

**C. Quality Control**

1. Describe the process and procedures your company will utilize to maximize quality control to ensure the work performed is done in accordance with the plans and specifications, minimizes the need for re-work, and helps ensure that the work performed will minimize the rejection of the work by the permitting entities, and the Town representatives. (1 page maximum)

**D. Constructability Issues**

1. Identify up to four (4) constructability issues your company has identified based on the Town's plans or specifications and describe your company's approach to resolving each issue. (1 page maximum)

**E. Value Engineering**

1. Describe any value engineering or cost savings opportunities your company has identified based on your review of the plans and specifications. (1 page maximum)

**RFP 2014-03**  
**Price Proposal**  
**Construction of Interior Alterations to the**  
**Medley Municipal Services Facility (MMSF)**  
**Form PP**

The Proposer declares that it has fully reviewed the requirements of the RFP, and informed itself fully of the Scope of Work and all other conditions and circumstances pertaining to the work to be performed; and that this Proposal is submitted voluntarily and willingly.

The Proposer had determined based on its business and profession expertise that it can perform the work in accordance with the requirements of the RFP and the Contract.

The Proposer agrees, if its Proposal is accepted, to timely execute a contract with the Town, pursuant to the terms and conditions of the RFP and the Agreement.

The cost of construction stated below includes all costs to complete the work under the RFP and Contract except for the cost of permits, which shall be paid by the Town as an authorized reimbursable expense from the Contingency allowance item.

Item	Description	Cost
1.	Cost of Construction	\$
2.	Contingency allowance (+15%)	\$
	<b>TOTAL PRICE OF PROPOSAL:</b>	\$

**Written amount:**

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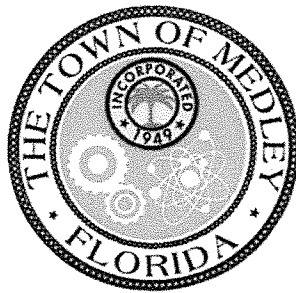




**Contract for:**

**CONSTRUCTION OF INTERIOR ALTERATIONS  
FOR THE  
MEDLEY MUNICIPAL SERVICES FACILITY**

**Contract No. 2014-03**



**The Town of Medley Council:**

**Mayor Roberto Martell  
Vice Mayor Griselia DiGiacomo  
Councilmember Jack Morrow  
Councilmember Edgar Ayala  
Councilmember Susana Guasch**

**Office of Capital Projects & Development Services  
Project No. PS-1301**

**The Town of Medley  
7777 NW 72<sup>nd</sup> Avenue  
Medley, Florida 33166**



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## SECTION 1

### GENERAL TERMS AND CONDITIONS

#### 1.1 DEFINITION OF TERMS

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

**Change Order** means a written document ordering a change in the Contract price or Contract time or a material change in the Work. A Change Order must comply with the Contract Documents.

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

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

**Construction Schedule** means a schedule, as defined and required by the Contract Documents.

**Contract** means the RFP and the RFP documents that have been submitted by the Contractor and the Contract Documents.

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

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

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

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

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

**Design Documents** means the construction Plans and specifications included as part of the RFP prepared by the Consultant for this Project under a separate agreement with the Town.

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

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

**Final Completion** means the date subsequent to the date of Substantial Completion at which time the Contractor has completed all the Work under a Work Order and submitted all documentation required by the Contract Documents.

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

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

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

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

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

**Project Manager** means the individual assigned by the Mayor or his designee to manage the Project.

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

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

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

**Town** means the Town Council of the Town of Medley or the Mayor or his designee, as applicable.

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

## 1.2 EXAMINATION OF CONTRACT DOCUMENTS AND THE SITES

By executing this Contract the Contractor certifies that it has:

- Carefully review the requirements of the Contract and notified the Town of any

conflicts, errors or discrepancies.

- Visited the site to become familiar with conditions that may affect costs, progress, or performance of the Work.
- Taken into account federal, state and local, including, without limitation, the Town's Code, and Miami-Dade County and the State of Florida's statutes laws, rules, regulations, and ordinances that may affect a Bidder's ability to perform the Work.
- Studied and carefully correlated Contractor's observations with the requirements of the Contract.

The signing of the Contract by the Contractor shall constitute an incontrovertible representation by Contractor that it will comply with the requirements of the Contract and that without exception, the Contractor is fully capable performing and furnishing the Work required under the Contract and that the Contract are sufficient in detail to indicate and convey understanding of all terms and conditions for performance of the Work.

### **1.3 INTENTION OF THE TOWN**

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

### **1.4 TIME IS OF THE ESSENCE**

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

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

### **1.5 NOTICES**

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

For Town:

Roberto Martell  
Mayor  
Town of Medley  
7777 NW 72<sup>nd</sup> Ave.  
Medley, FL 33166

With copy to:  
Jorge E. Corzo, PE  
Town Engineer  
Town of Medley  
For Contractor:

(To Be Determined)

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

#### **1.6 PRIORITY OF PROVISIONS**

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

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

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

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

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

Where the plans and specification do not meet the minimum requirements of the Florida Building Code then the Florida Building Code shall prevail. Where the plans and specifications exceed the Florida Building Code then the plans and specifications shall prevail.

**1.7 INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or



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

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

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

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

## 1.8 **INSURANCE**

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

**a. Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000 each accident and a waiver of subrogation. The policies must include:

- Waiver of subrogation
- Statutory State of Florida
- Limit of Liability

- b. **Employer's Liability:** Limit for each bodily injury by an accident shall be \$1,000,000 policy limit for each accident, per employee, including bodily injury caused by disease.
- c. **Comprehensive Business Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.
- d. **Commercial General Liability ("CGL")**. This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.
- Products and/or Completed Operations for contracts, with an Aggregate Limit of **One Million Dollars (\$1,000,000)** per project. Contractor shall maintain in force until at least three years after completion of all Work required under the Contract, coverage for Products and Completed Operations, including Broad Form Property Damage.
  - Personal and Advertising Injury with an aggregate limit of **One Million Dollars (\$1,000,000)**.
  - CGL Required Endorsements
    - Employees included as insured
    - Contingent Liability/Independent Contractors Coverage
    - Contractual Liability
    - Waiver of Subrogation
    - Premises and/or Operations

- Explosion, Collapse and Underground Hazards (if not specifically covered under the policy)
- Loading and Unloading
- Mobile Equipment (Contractor's Equipment) whether owned, leased, borrowed or rented by Contractor or employees of the Contractor.

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

- e. Umbrella Policy:** Contractor shall provide a \$1,000,000, per occurrence, coverage with a \$1,000,000 aggregate limit. The policy shall provide excess coverage on CGL, Business Automobile, and Employer's liability.
- f. Certificate of Insurance:** Contractor shall provide the Mayor or his designee or designee with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall specifically cite this Contract and shall state that such insurance is as required by this Contract. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Mayor or his designee or designee.
- g. Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Contract. The Town shall be named as additional insured under the CGL, business automobile insurance and umbrella policies. Town shall be named as an additional insured under Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

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

#### **1.9 PERFORMANCE AND PAYMENT BOND**

Contractor shall within fifteen (15) calendar days of being notified of award, furnish a Performance/Payment containing all the provisions of the attached Performance/Payment forms.

Each Bond shall be in the amount of one hundred percent (100%) of the Contract value guaranteeing to Town the completion and performance of the Work covered in the Contract as well as full payment of all suppliers, laborers, or subcontractors employed pursuant to this Project(s). Each Bond shall be with a Surety, which is qualified pursuant to Article 3.8, Qualification of Surety.

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

The Town must be listed as an Oblige.

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

Alternate Form of Security:

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

#### **1.10 QUALIFICATIONS OF SURETY**

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

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

The Town will accept a surety bond from a company with a rating of "B+" or better and a Financial Size Category of "Class II", provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the Town shall review and either accept or reject the surety company based on the financial information available to the Town. A surety company that

is rejected by the Town may be substituted by the Bidder with a surety company acceptable to the Town, only if the Bid amount does not increase.

#### **1.11 GENERAL REQUIREMENTS**

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

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

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

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

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

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

The apparent silence of the Contract as to any detail, or the apparent omission from them of a detailed description concerning any Work to be done and materials to be furnished, shall be regarded as meaning that only best practices are to prevail and only materials and workmanship of the best quality are to be used in the performance of the Work.

#### **1.12 RULES AND REGULATIONS**

The Contractor shall comply with the Florida Building Code and all laws and regulations applicable to provision of the Work specified in the Contract. The Contractor shall be familiar with all federal, state and local laws, rules, regulations, codes, and ordinances that affect the Work.

#### **1.13 SITE INVESTIGATION AND REPRESENTATION**

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

Work site(s) may have existing utilities, such as, but not limited to, irrigation, phone, water and sewer, CATV, traffic signals, electrical, and storm sewer. Known utilities and structures adjacent to or encountered in the Work will be shown on the Drawings. The locations

shown are taken from existing records and the best information available from existing plans and utility investigations; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the Contractor only, and no responsibility is assumed by the Town for their accuracy or completeness. No request for additional compensation or Contract time resulting from encountering utilities not shown will be considered.

It shall be the responsibility of the Contractor to verify the location of all such utilities, structures, etc., by hand excavation or other appropriate measures before performing any Work. The Contractor shall call Sunshine State One Call of Florida, Inc. and other appropriate agencies, as applicable, at least forty-eight (48) hours prior to the commencement of any excavation or digging to determine the locations of existing utilities prior to the commencement of any Work. The Contractor is responsible for any and all claims resulting from the damage caused to any utilities, identified or not.

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

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

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

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

#### **1.14 METHOD OF PERFORMING THE WORK**

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

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

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

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

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

If the Project Manager reasonably determines the rate of progress of the Work is not such as to ensure its completion within the designated completion time, or if, in the opinion of the Project Manager, the Contractor is not proceeding with the Work diligently or expeditiously or is not performing all or any part of the Work according to the Project schedule accepted by or determined by the Project Manager, the Project Manager shall have the right to order the Contractor to do either or both of the following: (1) improve its work force; and/or (2) improve its performance in accordance with the schedule to ensure completion of the Project within the specified time. The Contractor shall immediately comply with such orders at no additional cost to the Town. (3) The Town at its sole option may also have Work performed by a third party contractor and deduct such cost from any monies due the Contractor.

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

Depending on the nature of the Work the Project Manager may require a staging plan be submitted to and approved by the Project Manager prior to the start of the Work issuance of the Notice to Proceed. Such staging plan shall be revised and resubmitted as necessary during construction.

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

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

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

#### **1.16 SUPPLEMENTAL DRAWINGS AND INSTRUCTIONS**

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

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

#### **1.17 SHOP DRAWINGS AND SUBMITTALS**

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

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

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

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

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

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



If the Shop Drawings show or indicate departures from the Contract, Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract.

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

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

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

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

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

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

#### **1.18 PRODUCT DATA AND SAMPLES**

Contractor shall submit four (4) copies of product data, warranty information and operating and maintenance manuals. Each copy must be marked to identify applicable products, models, options and other data. Contractor shall supplement manufacturer's standard data to provide information unique to the Work.

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

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

Contractor shall submit samples to illustrate the functional characteristics of the product(s). Submittals shall be coordinated for different categories of interfacing Work. Contractor shall include identification on each sample and provide full information.

#### **1.19 DIFFERING SITE CONDITIONS**

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

No request by Contractor for an equitable adjustment to the Contract under this provision shall be allowed unless Contractor has given written notice in strict accordance with the provisions of this Article. No request for an equitable adjustment or change to the Contract Price or Contract Time for differing site conditions shall be allowed if made after the date certified by Consultant or Project Manager as the date of substantial completion.

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

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

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

#### **1.21 COORDINATION OF THE WORK**

Operations and events/programs will be ongoing at the site where the Work will shall be performed. Prior to the commencement of the Work, the Project Manager will make every effort, based on available information, to notify the Contractor of any ongoing operations or events/programs scheduled at the Project site that may require coordination. The Contractor shall be solely responsible for coordinating the Work to minimize any potential adverse impacts. Contractor shall not be entitled to any days of delay for failure to properly coordinate the Work. The Contractor shall notify the n writing Project Manager of any Work that will impact ongoing operations or scheduled events/programs. Such notification shall be provided to the Project Manager at least 72 hours in advance of the Contractor performing any such Work.

Contractor is responsible for coordination of all Subcontractors and suppliers who will perform under the Contract.

#### **1.22 ACCESS TO THE PROJECT SITE**

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

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

#### **1.23 SAFETY PRECAUTIONS**

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

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

The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the

requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, and the Manual of Uniform Traffic Control Devices (MUTCD) to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

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

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

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

The Contractor shall provide such equipment and facilities as are necessary or required, in the case of accidents, for first aid service to person who may be injured during the Project(s) duration. Contractor shall immediately report to the Project Manager every accident to persons and shall furnish in writing full information, including witness statements, regarding any and all accidents.

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

#### 1.24 TRENCH SAFETY ACT

Pursuant to Chapter 90-96 (CS/SB 2626), Laws of Florida, "Trench Safety Act", any person submitting a Bid is required to comply with the requirements of the **FLORIDA TRENCH SAFETY ACT (90-96, LAWS OF FLORIDA)**. The Contractor must complete the Trench Safety Act Form ("Form") and return the Form with its Proposal. Failure to submit said Form will result in the Contractor being deemed non-responsive. The Town in its sole discretion may allow the Form to be submitted during the evaluation process.

Any costs identified on the Form are not a pay item. The purpose of this form is to gather information on the costs associated with trench safety measures and to insure that the Bidder has considered these costs and included them in its Bid prices. Failure to complete this form may result in the Bid being declared non-responsive.

#### 1.25 LABOR AND MATERIALS

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

### **1.26 VEHICLES AND EQUIPMENT**

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

### **1.27 PROJECT MANAGEMENT**

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

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

The Project Manager and the Contractor shall meet at least bi-weekly or as determined by the Project Manager, during the course of the Work to review and agree upon the Work performed and outstanding issues. The Contractor shall publish, keep, and distribute minutes and any comments thereto of each such meeting.

### **1.28 SUBCONTRACTORS**

Contractor is solely responsible for all acts and omissions of its Subcontractors. Nothing in the Contract shall create any contractual relationship between any Subcontractor and the Town. Contractor is responsible for the timely payment of its Subcontractors and suppliers as required by Florida Statute Chapter 218.735. Failure to comply with these payment requirements will place the Contractor in default of the Contract.

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

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

### **1.29 AUTHORITY OF THE PROJECT MANAGER**

The Mayor or his designee hereby authorizes the Project Manager to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to

or on account of the Work, and questions as to the interpretation of the Work to be performed under the Contract.

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

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

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

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

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

The Project Manager's authority to act under this paragraph, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Project Manager to the Contractor, any subcontractor, supplier or any of their agents, employees, or any other person performing any of the Work.

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

### **1.30 INSPECTION OF THE WORK**

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

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

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

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

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

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

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

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

No Work shall be performed until required permits are provided to the Project Manager.

### **1.32 TAXES**

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

### **1.33 REMOVAL OF UNSATISFACTORY PERSONNEL**

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

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any or Subcontractor engaged by the Contractor to provide and perform services or Work

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

#### **1.34 UNCOVERING FINISHED WORK**

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

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

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

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

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



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

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

#### **1.36 FIELD DIRECTIVE**

The Project Manager or Consultant may at times issue Field Directives to the Contractor based on visits to the Project Site. Such Field Directive(s) shall be issued in writing and the Contractor shall be required to comply with the directive. Where the Contractor believes that the directive is outside the scope of the Work, the Contractor shall, within 48 hours, notify the Project Manager that the work covered by the Field Directive is outside the scope of the Work. At that time the Field Directive may be rescinded or the Contractor may be required to submit a request for a change to the Contract. Where the Contractor is notified of the Town's position that the Work is within the scope and the Contractor disagrees, the Contractor shall notify the Project Manager that the Contractor reserves the right to make a claim for the time and monies based on the Field Directive, in accordance with the requirements of Article 3.38. At no time shall the Contractor refuse to comply with the Field Directive. Failure to comply with the Field Directive may result in a determination that the Contractor is in default of the Contract.

#### **1.37 CHANGE ORDERS**

Without invalidating the Contract and without notice to any Surety (if any), the Town reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work under the Contract as may be considered necessary or desirable to complete the Work in a manner satisfactory to the Town. The Town reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract and all such changes shall be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town.

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

In the event satisfactory adjustment cannot be reached and a Change Order has not been issued, the Town reserves the right, at its sole option to direct the Contractor to proceed

on a time and materials basis or make such arrangements as may be deemed necessary to complete the proposed additional Work.

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

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

Contractor shall utilize the Town's standard requests for change orders and change order forms unless otherwise specifically approved by the Town's Procurement Manager. . The Town's Forms are available at the website address identified in Article 4.10.

#### 1.38 FORCE MAJEURE

Should any failure to perform on the part of Contractor be due to a condition of Force Majeure then, the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform.

If the Contractor is delayed in performing any obligation under the Contract due to a Force Majeure condition, the Contractor shall request a time extension from the Town within five (5) working days of said Force Majeure occurrence. Any time extension shall be subject to mutual agreement and shall not be cause for any claim by the Contractor for extra compensation unless additional services are required. **Do Not Include** inclement weather except as permitted by Florida law and do not include the acts or omissions of Subcontractors or suppliers.

#### 1.39 EXTENSION OF TIME

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

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

- The cause of the delay arises after issuance of the NTP and could not have been anticipated by the Contractor by reasonable investigation before proceeding with the Work;
- The Contractor demonstrates that the completion of the Work will be actually and necessarily delayed;

- The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay.

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

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

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

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

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

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

Where the Contractor is delayed for any period of time by two or more of the causes mentioned in Article 1.40, Excusable Delay, Non-Compensable, the Contractor shall not be entitled to a separate extension for each one of the causes, only one period of extension shall be granted for the delay.

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

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

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

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

Contractor is entitled only to a time extension of the Contract time for each day the Work is delayed due to Excusable Delay. Contractor shall document its claim for any time extension as provided in Articles 1.38 and 1.39

Failure of Contractor to comply with Articles 1.38 and 1.39, as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment or relinquishment of any and all claims resulting from that particular event of delay.

#### **1.41 CLAIMS**

Contractor shall only be entitled to submit a claim after submitting its request for additional compensation or time in accordance with Articles 1.37 and 1.39 of the Contract and the request(s) have been denied or the Contractor does not agree with the decision of the Town.

Any claim for a change in the Contract time for completion of any Work, the Contract Term, or Contract price shall be made by written notice by Contractor to the Town representatives identified in Article 1.3 within ten (10) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless the Mayor or his designee or designee allows an additional period of time to ascertain more accurate data in support of the claim. The written notice must be accompanied by Contractor's written notarized statement that the adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes shall be determined in accordance with the Contract. It is expressly and specifically agreed that any and all claims for changes to the Contract shall be waived if not submitted in strict accordance with the requirements of this Article.

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

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

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

The Contractor agrees to make no claim for damages for delay of any kind in the performance of the Contract whether occasioned by any act or omission of the Town or any of its representatives and the Contractor agrees that any such claim shall be compensated solely by an extension of time to complete performance of the Work due to an Excusable Delay as defined in Article 1.38 and 1.39. The Contractor alone specifically assumes the risk of such delays, including, without limitation: delays in processing or approving any submittals to the Town, or the failure to render determinations, approvals, replies, inspections, in a timely manner. Contractor shall not receive monetary compensation for Town delay(s).

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

#### **1.42 DISPUTES AND MEDIATION**

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

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

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager identified in Article 1.3, Notices, of the claim or dispute

The Contractor shall submit its dispute in writing, with all supporting documentation, to the Procurement Manager, as identified in Article 1.3, Notices. Upon receipt of said notification the Procurement Manager shall review the issues relative to the claim or dispute and issue a written finding.

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

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

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

In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract price or Contract time adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Work or expiration of the Contract Term, the parties shall participate in mediation to address all objections to any determinations hereunder and to attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator shall be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

#### **1.43 CONTINUING THE WORK**

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

**1.44 FRAUD AND MISREPRESENTATION**

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

**1.45 STOP WORK ORDER**

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

- Cancel the Stop Work Order; or
- Terminate the Work covered by such order as provided in Article 3.50, Termination for Convenience.

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

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

**1.46 HURRICANE PREPAREDNESS**

During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning, the Contractor, at no cost to the Town, shall immediately respond by taking all precautions necessary to secure any Work threatened by storm events, regardless of whether the Contractor has been given notice of same by Project Manager or other Town representative.

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

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

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

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

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

**1.48 MAINTENANCE OF TRAFFIC**

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

Prior to commencement of the Work Contractor shall provide the Project Manager the proposed MOT plan for review. The Project Manager may require revisions to the proposed MOT plan. The MOT plan shall be updated by the Contractor every two weeks.

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

**1.49 SUBSTITUTIONS**

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



#### 1.50 SET-OFFS, WITHHOLDING, AND DEDUCTIONS

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

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

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

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

#### 1.51 CONTRACTOR DEFAULT

##### a. Event of Default

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

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

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

Where an Event of Default ("Default") occurs under the Contract, the Town may at its sole discretion notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town; or, the Contract with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder. The Town, at its sole discretion, may have a default corrected by its own forces or another contractor and any such costs

incurred will be deducted from any sums due the Contractor under any contract with the Town.

The Mayor or his designee or designee may also suspend any payment or part thereof or order a Work stoppage until such time as the issue(s) concerning compliance are resolved.

c. Termination for Default

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

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

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

**1.52 TERMINATION FOR CONVENIENCE**

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

Upon receipt of such notice, unless otherwise directed by the Town, the Contractor shall, Stop all Work on the date specified in the notice ("the Effective Date") and;

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

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

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

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

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

**1.54 COMPLIANCE WITH APPLICABLE LAWS**

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

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

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

**1.56 INDEPENDENT CONTRACTOR**

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

**1.57 THIRD PARTY BENEFICIARIES**

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

**1.58 ASSIGNMENT OR SALE OF CONTRACT**

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

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

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

**1.59 MATERIALITY AND WAIVER OF BREACH**

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

**1.60 DEFENSE OF CLAIMS**

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

**1.61 FUNDS AVAILABILITY**

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

**1.62 ACCESS TO AND REVIEW OF RECORDS**

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

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

**1.63 ROYALTIES AND PATENTS**

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

**1.64 TIME IN WHICH TO BRING ACTION AGAINST THE TOWN**

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

**1.65 APPLICABLE LAW AND VENUE OF LITIGATION**

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

**1.66 NON-EXCLUSIVE CONTRACT**

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

**1.67 SEVERABILITY**

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

**1.68 CONTRACT CONTAINS ALL TERMS**

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

**1.69 ENTIRE AGREEMENT**

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

EXHIBIT 10

## SECTION 2

### SPECIAL TERMS AND CONDITIONS

#### 2.1 SCOPE OF WORK

The Work consist of furnishing all labor, materials, machinery, tools, means of transportation, supplies, equipment and services necessary for the construction of the proposed Interior Improvements at the Medley Municipal Services Facility ("Project"), which includes but is not limited to expansion of the second and third floors to provide additional facilities for the Police Department, all in accordance with the Drawings and Specifications prepared by Rodriguez Pereira Architects.

On June 25, 2008 the State of Florida enacted the Florida Energy Conservation and Sustainable Buildings Act which requires that effective July 1, 2008 all state, county and municipal public entities follow the LEED guidelines or other green building rating systems, including Green Globe and the Florida Green Building Coalition standards.

The Medley Municipal Services Facility (MMSF) will continue to be open to the public during construction.

#### 2.2 REFERENCE STANDARDS

Reference to the standards of any technical society, organization or body shall be construed to mean the latest standard adopted and published at the date of the award of the Contract, even though reference may have been made to an earlier standard. Such reference is hereby made a part of the Contract the same as if herein repeated in full and in the event of any conflict between any of these standards and those specified, the most stringent shall govern unless otherwise stated.

#### 2.3 TIME FOR PERFORMANCE OF THE WORK

Contractor shall complete the Work and obtain all permit approvals, and Substantial Completion by the Town within One Hundred and Eighty (180) days from the date of issuance of the Notice To Proceed. Contractor shall achieve Final Completion within thirty (30) days of the date of Substantial Completion.

#### 2.4 CONTRACT TERM

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

#### 2.5 COMPENSATION

The Contractor shall be compensated in the amount of \$ [REDACTED]. Any reduction or increase in the Contract value shall be done in accordance with Article 1.37, Change Orders.

#### 2.6 INCENTIVE BONUS

~~The Town desires to expedite construction on this to reduce the time of construction.~~

~~In order to achieve this, the Town has established this "No-Excuse Bonus" ("Bonus") based on the Contractor achieving Substantial Completion, as determined in accordance with the Contract.~~

~~A Bonus of \$50,000 shall be paid if Substantial Completion is achieved within fifty five (55) days ("Bonus Date") of the date established in the Notice To Proceed issued by the Town.~~

~~Payment of the Bonus is subject to the following conditions:~~

~~The Bonus date, as established in the Notice to Proceed, will not be adjusted for any reason, cause, or circumstance whatsoever, regardless of fault in the instance of catastrophic event, as determined solely by the Mayor or his designee (i.e. hurricane, tornado, or declared state of emergency).~~

~~Both the Town and the Contractor anticipate that delays may be caused by or arise from any number of events during the performance of the work under the Contract, including, but not limited to, Work performed, Work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects (including errors & omissions), time extensions, extra work, right of way or access issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the date established for the Bonus in the Notice To Proceed. In addition, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Contract by the established Bonus date, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.~~

~~In the event of a catastrophic event, as stated above. Directly and substantially affecting the performance of the Work by the Contractor under the Contract, the Mayor or his designee, at his/her sole discretion and determination shall establish the number of days to extend the Bonus Date and the Contractor shall have no right whatsoever to contest such determination.~~

~~The Contractor, in addition to obtaining the Substantial Completion Form signed by the Town must provide to the Project Manager copies of all Final Release of Liens from all Subcontractors or suppliers or Consent of Surety prior to requesting the Bonus.~~

## 2.7 HOURS FOR PERFORMING WORK

All Work shall be performed in accordance with the hours set forth in the Town's noise Ordinance No. C-\_\_\_\_\_. Work on weekends and after hours may be performed with advance approval of the Town



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

## 2.8 PROGRESS PAYMENTS

Contractor may make application for payment for Work completed during the Project at intervals of not more than one invoice per month or upon completion and Final Acceptance of the Work. Contractor will be paid based on the line item breakdown, contained in the Bid Form, with payments based on actual Work performed. All applications shall be submitted in triplicate and the Contractor shall only use the Town's Contractor Payment Application Form or an invoice format approved by the Town. Supporting evidence to be included with any application for payment shall include, but is not limited to, an updated Project schedule as required by Article 4.9 and a partial or final release of liens or consent of Surety relative to the Work, which is the subject of the application for payment and any other information required by the Project Manager. Each application for payment shall be submitted in duplicate for approval.

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

The Town shall not pay more than five (5%) of the Total Contract price as retainage should a schedule of values be required of the contractor

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

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

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

the Town's title to such materials or equipment, or otherwise protect the Town's interest, including applicable insurance in the name of Town and transportation to the Project site.

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

## **2.9 INVOICES**

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

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

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

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

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

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

## **2.10 LIQUIDATED DAMAGES**

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

completion beyond the timeframe set forth in the Contract for Final Completion the Contractor shall pay to the Town for each and every calendar day of unexcused delay, the sum of five hundred dollars (\$350.00) per calendar day, which is hereby agreed upon not as a penalty but as liquidated damages. The Contractor will be notified in writing of any approved exceptions or extensions. The total amount of liquidated damages shall not exceed the value of the Project.

The Town shall have the right to deduct liquidated damages assessments from any payment due or which may thereafter become due to the Contractor under any contract the Contractor has with the Town. In case the amount, which may become due hereunder, shall be less than the amount of liquidated damages due the Town, the Contractor shall pay the difference upon demand by the Town. Should the Contractor fail to compensate the Town for any liquidated damages, the Town shall consider this as a form of indebtedness and may deny any future Work under the Contract or any other Town contract until such indebtedness is paid in full to the Town.

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

#### **2.11 PROJECT SCHEDULE**

Contractor shall submit a proposed Project schedule as follows:

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

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

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

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

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Town upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances and that no Work, materials or equipment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

The Contractor shall, starting with the second (2<sup>nd</sup>) invoice, provide the Project Manager Partial or Final Releases of Lien/Subcontractor's Statement of Satisfaction for the Project. As an option the Contractor may also submit a Consent of Surety authorizing the release of payment. Failure to submit such documentation shall result in rejection of the application for payment.

The Town may, in its sole discretion withhold any payments for any Work performed by the Contractor where a requested Final Release of Lien has not been submitted. A conditional Release of Lien will not be accepted by the Town.

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

All materials shall be F.O.B. delivered. The Contractor shall be solely responsible for the purchase, delivery, and installation of all equipment and material(s) not provided by the Town. Contractor shall make all arrangement for delivery. Contractor shall be solely liable receiving, inspecting, accepting, and for replacing any damaged equipment or material(s) and filing any and all claims with suppliers. All transportation must comply with all federal, FDOT, Miami-Dade County, and Town rules and regulations.

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

No materials will be stored on site without the prior written approval, using the appropriate Town form, by the Project Manager. The Town's Forms are available at the website address identified in Article 4.10.

Should the Contractor wish to be paid for materials stored off-site such materials must be insured and store in a bonded warehouse. Prior written approval is required utilizing the form available at the website address identified in Article 4.10.

#### **2.14 TOWN FURNISHED DRAWINGS**

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

Drawings and specifications are intended to be consistent, be mutually explanatory, and should be used together and not separately. During the performance of the Project(s), should any errors, omissions, conflicts, ambiguities or discrepancies be found in the drawings and/or specifications, the Project Manager or the Consultant will clarify in writing the intent of the drawings and the Contractor agrees to abide by the Project Manager's or Consultant's interpretation and perform the Work in accordance with the decision of the Project Manager or the Consultant. In such event, the Contractor will be held to have included in its Contract Price the best materials suitable for the purpose and/or methods of construction.

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

#### **2.15 WORK STAGING AND PHASING**

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

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

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

## **2.16 SUBSTITUTIONS**

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

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

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

The Project Manager shall be allowed a reasonable time within which to evaluate each proposed substitute. Project Manager and the Town shall be the sole judges of the acceptability of any substitute. No substitute shall be ordered, installed or utilized without the Town's and the Project Manager's prior written acceptance which shall be evidenced

by either a Change Order or an approved submittal. The Town and the Project Manager may require the Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. If the Town and the Project Manager rejects the proposed substitute, at their discretion, the Town may require the Contractor to reimburse the Town for the charges of the Consultant for evaluating the proposed substitute.

#### **2.17 REQUEST FOR INFORMATION**

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

The RFI process is not intended to be used to correct defective Work performed by the Contractor. Solutions to correct defective Work, including means and methods are the sole responsibility of the Contractor. Should the RFI process be utilized to correct the Contractor's defective Work, the Contractor may be required to reimburse the Town for any costs incurred by the Town in responding to the RFI. Such reimbursements will be taken as a deduction against any payments due the Contractor.

#### **2.18 WARRANTY**

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

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

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

Should the Contractor fail to perform any required warranty work the Town, at its sole discretion, may have the work performed by others, and deduct such costs from any monies due the Contractor from the Town. Where such funds are not available, the Town will bill the Contractor and Contractor shall reimburse the Town within thirty (30) calendar days. The Town may take any necessary and appropriate action provided under this Contract or with law to collect such payment due the Town.

#### **2.19 ACCESS TO WATER AND UTILITIES**

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

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

#### **2.20 PROGRESS MEETINGS**

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

#### **2.21 STAGING SITE**

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



## **2.22 PROJECT SITE FACILITIES**

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

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

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

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

Contractor is required to provide any necessary temporary utilities to the site, such as electric, water, and sanitary services to the site for new construction or additions to a facility. The Project Manager may authorize the use of existing utilities. Such decision will be made at the sole discretion of the Project Manager.

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

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

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

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

When the Contractor believes that the Work is substantially complete, the Contractor shall request in writing that the Project Manager or Consultant inspect the Work to determine if Substantial Completion has been achieved. Where the Work requires the Contractor to obtain a Certificate of Completion no request for Substantial Completion inspection is to be submitted until the Contractor has obtained the Certificate(s) of Completion. The Project

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

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

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

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

#### **2.24 ACCEPTANCE AND FINAL PAYMENT**

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

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

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

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

#### **2.25 OWNERSHIP OF THE WORK**

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

#### **2.26 RECORD SET**

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

#### **2.27 AS-BUILT DRAWINGS**

During the Work, Contractor shall maintain records of all deviations from the Drawings as approved by the Project Manager or Consultant and prepare two copies of As-Built Record Drawings showing correctly and accurately all changes and deviations made during construction to reflect the Work as it was actually constructed. It is the responsibility of the Contractor to check the As-Built Drawings for errors and omissions prior to submittal to the Town and to certify in writing that the As-Built Record Drawings are correct and accurate, including the actual location of all internal piping, electrical/signal conduits in or below the concrete floor. Indicate the size, depth and voltage in each conduit.

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

- Depths of various elements of foundation in relation to finish first floor datum.
- All underground piping and ductwork with elevations and dimensions and locations of valves, pull boxes, etc. Changes in location. Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface

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

Specifications and Addenda: Legibly mark each section to record:

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

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

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

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

## 2.28 **NDPES REQUIREMENTS**

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

## 2.29 **PROJECT SIGNAGE**

Contractor shall furnish and install a Project sign at each of the Project Site in accordance with the requirements provided by the Project Manager.

### 2.30 CONSTRUCTION PHOTOGRAPHS

Prior to commencement of the Work the Contractor shall take digital photographs to document existing conditions and submit copies to the Project Manager prior to the commencement of Work. Contractor shall submit with each application for payment photographs that accurately reflect the progress of all aspects the Work. The number of photographs to be taken will be based on the magnitude of work being performed. Contractor shall submit one copy of each photograph in print and digitally. The photographs shall be printed on 8"X10" high resolution glossy commercial grade and weight color photographic print paper. Each photograph shall be imprinted on its face with the title of the Project, the date, and time the picture was taken. Digital photographs shall be taken using .jpeg format and will be submitted on a CD-ROM clearly identifying the name of the Project, the name of the Contractor, and the timeframe in which the pictures were taken. Initial set up prints will be submitted in a three ring binder with each picture protected by a clear plastic sleeve. Subsequent prints are to be submitted in clear plastic sleeves that can be added to the binder. The three ring binder shall be of such size to be able to hold all print pictures.

**CONTRACT EXECUTION FORM**

This Contract **2014-03** made this \_\_\_\_ day of \_\_\_\_\_ in the year **2014** in the amount of \$ \_\_\_\_\_ by and between the Town of Medley, Florida, hereinafter called the "Town," and \_\_\_\_\_ (name of Contractor)

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

Attest:

TOWN OF MEDLEY

By: \_\_\_\_\_  
Lina Taboada, Town Clerk

By: \_\_\_\_\_  
Mayor Roberto Martell

By: \_\_\_\_\_  
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

(Contractor's Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

CORPORATE RESOLUTION

WHEREAS, \_\_\_\_\_, Inc. desires to enter into a contract with the Town of Medley for the purpose of performing the work described in the contract to which this resolution is attached; and

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

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

\_\_\_\_\_, is hereby authorized  
(type name of officer)

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

(Corporate Seal)

**FORM OF PERFORMANCE BOND** (Page 1 of 2)

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

WHEREAS, Contractor has by written agreement entered into a Contract, RFP No: **2014-33**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, **2014**, with Town which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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



**FORM OF PERFORMANCE BOND** (Page 2 of 2)

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor

WITNESSES:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

IN THE PRESENCE OF:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name of Corporation)

By: \_\_\_\_\_  
(Signature)

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

INSURANCE COMPANY:

By: \_\_\_\_\_  
Agent and Attorney-in-Fact

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_

**FORM OF PAYMENT BOND** (Page 1 of 2)

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

WHEREAS, Contractor has by written agreement entered into a Contract, No. 2014-03, for the **Medley Municipal Services Facility (MMSF)**, awarded the \_\_\_\_\_ day of \_\_\_\_\_, 2014, with Town which Contract are by reference incorporated herein and made a part hereof, and specifically include provision for liquidated damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

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

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

- 2.1. A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the Work, furnish to Contractor a notice that he intends to look to the bond for protection.
- 2.2. A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to Contractor and to the Surety, written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.

**FORM OF PAYMENT BOND** (Page 2 of 2)

- 2.3. No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions (2.1) and (2.2) have been given.
- 2.4. Any action under this Bond must be instituted in accordance with the longer of the applicable Notice and Time Limitations provisions prescribed in Section 255.05(2), or Section 95-11, Florida Statutes.

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contractor

ATTEST:

\_\_\_\_\_  
(Name of Corporation)

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

By:

\_\_\_\_\_  
(Signature)

(Corporate Seal)

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

IN THE PRESENCE OF:

INSURANCE COMPANY:

By:

\_\_\_\_\_  
Agent and Attorney-in-Fact

Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City/State/Zip Code)

Telephone No.: \_\_\_\_\_